

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

IN THE MATTER OF:)	
)	
CAVIAR and)	
KIRILL BENSONOFF,)	
)	
RESPONDENTS.)	Docket No. E-2017-0120
)	

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (hereinafter the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (hereinafter the “Complaint”) to commence an adjudicatory proceeding against Caviar, a Cayman Islands company, and Kirill Bensonoff (collectively, hereinafter “Respondents”) for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (hereinafter the “Act”), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (hereinafter the “Regulations”). The Enforcement Section alleges that Respondents have engaged in acts and practices in violation of Sections 201 and 301 of the Act and Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and desist from further conduct in violation of the Act; 4) censuring Respondents; 5) requiring Respondents to offer rescission to all investors from whom

they have received funds; 6) requiring Respondents to provide a verified accounting of all proceeds which were received as a result of the alleged wrongdoing; 7) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 8) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 9) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

The Enforcement Section brings this action against Respondents Caviar and Kirill Bensonoff (hereinafter “Caviar” and “Bensonoff,” respectively) for offering the sale of a security without such security being registered or exempt from registration. The security at issue is a so-called “token” being offered by Caviar and Bensonoff pursuant to an initial coin offering (hereinafter “ICO”). In a typical ICO, issuer entities will offer for sale a unique “token,” an intangible crypto-asset which may entitle purchasers to certain rights or privileges in the venture to be funded with the proceeds of the ICO. The value of cryptocurrencies and their related crypto-assets such as coins or tokens is driven largely by speculation. ICOs often operate without regard for regulation and markets for such securities may be thin or nonexistent. Tokens are distributed using the same underlying “blockchain” technology of more popular cryptocurrencies such as Bitcoin and Ethereum.

Despite the speculative nature, potential for fraud, and risk of loss associated with cryptocurrencies, they have captured the public imagination. Fueled by the frenzied interest surrounding Bitcoin and other cryptocurrencies, ICOs have become an

increasingly popular mechanism for entities and individuals seeking to raise capital quickly.

Bensonoff is a resident of Brookline, Massachusetts, and the majority partner (and de facto control person) of a Cayman Islands company known only as Caviar. The Caviar entity has no actual place of business in the Cayman Islands, and its business operations take place principally in Bensonoff's own Brookline home. Bensonoff organized Caviar in the Cayman Islands in an attempt to avoid U.S. securities registration requirements.

Since October 2017, and continuing through the date of this filing, Bensonoff and Caviar have engaged in general solicitation for the sale of so-called "Caviar tokens." These solicitations have both originated from, and in cases been directed to, the Commonwealth. Actual sales of Caviar tokens have taken place since December 1, 2017, and continue through the date of this filing. Respondents represent that Caviar tokens are not available for sale to U.S. citizens, and the Caviar website ostensibly provides screening procedures to ensure that sales are not made to U.S. residents. These screening procedures are inadequate to prevent the sale of Caviar tokens to U.S. residents. In at least two instances, U.S. residents were able to complete these screening procedures and were "verified" and approved to participate in the Caviar ICO. As of the date of this filing, Caviar and Bensonoff claim to have raised over \$3.1 million in investor capital through the Caviar ICO.

Ownership of Caviar tokens is recorded via cryptographically verified entries on a distributed digital ledger, rather than through stock certificates. Caviar tokens are nevertheless a textbook example of a conventional security, required to be registered or

exempt from registration in the Commonwealth. No such registration or exemption from registration exists in Massachusetts.

According to Bensonoff, Caviar offers “the first dual purpose investment fund on the blockchain,” and seeks to raise up to \$25 million in U.S. dollars. Bensonoff and Caviar represent to investors that proceeds from the ICO will be pooled and used to finance the acquisition of a portfolio of various cryptocurrencies, and to finance short-term “flips” of residential real estate properties. Purchasers of Caviar tokens are told they will receive quarterly dividends equal to their pro rata share of 75% of the combined profits from this pooled investment fund of cryptocurrencies and real estate debt. According to an investor presentation generally available on the Internet, “Caviar [sic] mission is to provide investors with a diversified, risk adjusted, data-driven portfolio in a single token, with exposure to stable U.S. real estate, select cryptocurrencies, and crypto-assets, and to maximize return on investment while hedging against potential markets [sic] downturns.” In sum and substance, Bensonoff and Caviar seek to use the proceeds of the ICO to finance the creation of a hedge fund and offer freely transferable shares to investors in the form of Caviar tokens. Bensonoff and Caviar have offered and continue to offer Caviar tokens without registration or exemption from registration in the Commonwealth. In addition, Bensonoff has attempted to effectuate the sale of Caviar tokens without registering as an issuer agent.

With this action, the Enforcement Section of the Division seeks to stop Caviar and Bensonoff from offering and selling unregistered and non-exempt securities in the Commonwealth, along with additional remedies.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act.
3. This proceeding is brought in accordance with Sections, 201, 301, and 414 of the Act.
4. The Enforcement Section 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 August 1, 2017 to the present (the "Relevant Time Period").

V. RESPONDENTS

6. Caviar is a Cayman Islands exempted company formed on November 14, 2017. According to Cayman Islands company filings, Caviar has a registered office at 71 Fort Street, 1st Floor Appleby Tower, PO Box 950, Grand Cayman KY1-1102, Cayman Islands. However, Caviar has no actual place of business in the Cayman Islands. Caviar's principal place of business is located in Brookline, Massachusetts.

7. Kirill Bensonoff (hereinafter “Bensonoff”) is a natural person with a last known address in Brookline, Massachusetts. Bensonoff is the majority partner of Caviar. Bensonoff has never been registered in any capacity in the securities industry.

VI. RELATED PARTIES

8. Caviar Capital LP (hereinafter “Caviar Capital”) is a Massachusetts limited partnership formed on April 18, 2013, with a principal place of business in Brookline, Massachusetts. Bensonoff is the sole general partner of Caviar Capital.

9. Caviar Partners, LLC is a Delaware Limited Liability Corporation formed by Bensonoff on November 15, 2017.

VII. STATEMENT OF FACTS

A. Bensonoff and Caviar Capital

10. Bensonoff was born in 1978 in Belarus. Bensonoff immigrated to the United States in 1989 and is now a naturalized U.S. citizen.

11. Bensonoff attended high school in Connecticut, and obtained a bachelor’s degree from Central Connecticut State University in the early 2000s.¹

12. Since graduating from Central Connecticut State University, Bensonoff has worked for or founded several information technology companies with a primary focus on providing computer support and consulting services to other businesses.

13. In 2013, Bensonoff founded Caviar Capital to administer a real estate debt fund. Certain friends and members of Bensonoff’s immediate family are the primary investors in Caviar Capital.

¹ On Caviar’s website, and in other marketing materials, Bensonoff regularly represents himself as a graduate of the “MIT Entrepreneurial Masters program.” Bensonoff is not a graduate of the Massachusetts Institute of Technology, or any of its affiliated programs. The “Entrepreneurial Masters Program” is a paid, four-day executive education program hosted by the Entrepreneurs’ Organization. The program is hosted in a Dedham private function space owned by MIT, but has no other ties to the university.

14. Caviar Capital's business consists of extending short-term loans to a small number of Connecticut real estate developers, who use the funds to purchase and "flip" distressed residential real estate properties at a profit. Profits from each short-term loan are shared among Bensonoff and his fellow investors.

15. Bensonoff and Caviar have stated that Caviar is the "successor" to Caviar Capital, and have touted Bensonoff's experience managing Caviar Capital as a credential.

16. In his testimony before the Enforcement Section, Bensonoff stated that he intends to continue operating Caviar Capital as a separate and completely independent entity.

B. The Caviar Initial Coin Offering

17. An initial coin offering (hereinafter "ICO") is a fundraising event in which an entity offers participants a unique "coin" or "token" in exchange for consideration, often in the form of cryptocurrencies² such as Bitcoin and Ethereum.

18. In a typical ICO, an issuer will offer for sale a unique "token," an intangible crypto-asset which may entitle purchasers to certain rights or privileges in a venture to be funded with the proceeds of the ICO.

² A "cryptocurrency," also known as a virtual currency, is:

a digital representation of value that can be digitally traded and functions as: (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued or guaranteed by any jurisdiction, and fulfills the above functions only by agreement within the community of users of the virtual currency. Virtual currency is distinguished from fiat currency (a.k.a. "real currency," "real money," or "national currency"), which is the coin and paper money of a country that is designated as its legal tender; circulates; and is customarily used and accepted as a medium of exchange in the issuing country. It is distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency.

FATF Report, Virtual Currencies, Key Definitions and Potential AML/CFT Risks, FINANCIAL ACTION TASK FORCE (June 2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

19. Ownership of these so-called tokens is recorded via cryptographically verified entries on a distributed digital ledger, or “blockchain.”
20. Respondents are, and have been, conducting an ICO for the issuance of so-called Caviar tokens, purportedly to finance the creation of a pooled investment fund with hedged exposure to crypto-assets and real estate debt.
21. Respondents represent that Caviar tokens will be distributed utilizing the Ethereum blockchain. The Ethereum blockchain is designed to facilitate the creation and exchange of new tokens which comply with certain standard software protocols, known as ERC20 tokens.
22. Caviar has not yet formally created or distributed any of the Caviar tokens purchased to date. Respondents represent that any Caviar tokens purchased will be distributed within 30 days of the close of the Caviar ICO.
23. Investors may purchase Caviar tokens using either fiat currency or one of several cryptocurrencies.
24. The stated ICO price per Caviar token is \$0.10 USD.
25. Respondents state that they intend to distribute a total of 375,000,000 Caviar tokens. Respondents intend to distribute 85% of the total supply through ICO sales, and to distribute 12% of the remainder to “partners and advisors.” At the conclusion of the ICO, Bensonoff will receive a share of the Caviar tokens reserved for partners equal to his ownership share of Caviar.
26. The Caviar ICO began on December 1, 2017, with a so-called “presale” in which the earliest investors were permitted to purchase Caviar tokens at substantial discounts of up to 30% off the stated token price.

27. Like other forms of crowdfunding, many ICOs have both “soft caps” and “hard caps.” A soft cap is a minimum threshold amount that must be raised for a fundraising entity to retain the invested funds. A hard cap is a maximum amount that may be raised in an ICO.

28. The Caviar ICO has a stated hard cap of \$25 million.

29. Caviar began its ICO with a “hidden” soft cap amount. After concluding the so-called presale, Bensonoff announced that the soft cap had been \$1.5 million. Bensonoff also claimed that Caviar had raised more than \$1.5 million during the presale.

30. Caviar continued to offer “bonus” incentives to early investors in the ICO. For example, an investor who purchased \$1 worth of Caviar tokens in the second week of the ICO might be credited with having purchased \$1.15 worth of Caviar tokens.

31. The Caviar ICO has a stated closing date of January 31, 2018. As of the date of this filing, the Caviar ICO is ongoing and accepting new investors.

32. Since December 1, 2017, investors have purchased Caviar tokens by visiting Caviar’s website at www.caviar.io (hereinafter the “Caviar Website”).

33. The Caviar Website contains general investor information about the Caviar ICO, including press releases, team biographies, and a link to the Caviar “Whitepaper,” a type of offering document commonly issued in connection with an ICO.

34. In large font at the top of the page, the Caviar Website reads, “Crypto And Real Estate In One Token.” Immediately below, in smaller font, it reads, “Caviar provides

instant diversification with real estate debt and cryptocurrencies, powered by an algorithmic model and profit sharing in ETH.”³

35. Immediately below, visitors are shown two updating fields displayed side-by-side. On the left, a timer counts down the time remaining until the end of the Caviar ICO in days, hours, minutes, and seconds. To the right, a counter labelled “Funds Raised” displays the total amount of capital raised, denominated in USD.

36. As of the date of this filing, Respondents claim to have raised a total of \$3,110,010 USD.

37. To invest in the Caviar ICO, investors must click a large orange button displayed immediately below the two updating fields. For most of December 2017, this button read “Invest Now.” Several days before Bensonoff appeared pursuant to a subpoena to testify before the Enforcement Section in this matter, the button was updated to read “Contribute Now.”

38. Visitors who click the “Invest Now”/“Contribute Now” button are taken to an account registration page.

39. To register for the offering, prospective investors must provide an e-mail address and check two boxes. The first checkbox asks users to confirm that they have read and understood the Caviar whitepaper and Terms and Conditions, and that they are not a United States or Cayman Islands citizen, resident, or entity. The second checkbox asks users to certify that they have “carried out research or taken relevant advice from specialized attorneys” ensuring that they are not prohibited by law or regulation from

³ “ETH” is an abbreviation, analogous to a conventional stock ticker symbol, used to refer to the cryptocurrency Ethereum. Although these abbreviations resemble conventional ticker symbols, cryptocurrencies are not traded on any registered securities exchange.

participating in the Caviar ICO. Users may then click a red button labelled “BUY TOKENS.”

40. On the immediately following screen, prospective investors are asked to input their name, address, and date of birth. Prospective investors may or may not be required to upload government issued photo identification, as described in more detail below.

41. Respondents take no steps to ascertain or to verify any prospective investor’s net worth or annual income.

42. If a prospective investor is approved to participate in the token sale, they are granted access to a so-called “subscription dashboard.”

43. The subscription dashboard provides prospective investors with wallet addresses to which they may transfer various cryptocurrencies in order to fund their investment. A unique wallet address is generated for each user to transfer funds in the cryptocurrency of their choice. Because each investor transfers cryptocurrency to a unique address, the Enforcement Section has been unable to corroborate Respondents’ representations regarding the total amount raised in the ICO.⁴

44. The subscription dashboard also provides wire instructions for prospective investors to purchase Caviar tokens via transfers of fiat currency. Fiat subscriptions must be wired to a Bank of America account held in the name of Caviar Partners, LLC. As of December 31, 2017, a total of \$65,768.41 USD had been wired to this account from Caviar token investors.

⁴ In general, a “wallet” is a software application which contains both the public and private cryptographic keys needed to effectuate transactions in a given cryptocurrency. Cryptocurrency may be transferred to any public wallet address, a unique identifier very loosely analogous to a traditional deposit account number. Because Ethereum and Bitcoin, among other cryptocurrencies, utilize a permissionless (or public) blockchain, it is possible to observe the complete transaction history of any public wallet address.

a. Respondents' Procedures to Prevent the Sale of Caviar Tokens to U.S. Investors Are Inadequate.

45. Respondents claim that they do not permit sales of Caviar tokens to U.S. and Cayman Islands investors, and purportedly utilize a third party vendor to specifically screen out such prohibited persons. Bensonoff stated in sworn testimony before the Enforcement Section, "as far as I know, there's not a single U.S. investor who has contributed."

46. The third party vendor attempts to screen out nominally prohibited investors based on criteria such as a prospective purchaser's IP address.⁵ If identified by the third party vendor as a potentially prohibited purchaser, prospective investors are prompted to upload copies of government-issued photo identification in order to verify their eligibility to purchase Caviar tokens.

47. Bensonoff and one of the minority partners in Caviar are responsible for conducting a manual review of the uploaded documents.

48. Despite these nominal efforts, Caviar's identity verification procedures are relatively easy to circumvent, and inadequate to prevent the sale of Caviar tokens to Massachusetts investors.

49. At least two U.S. residents have been approved to participate in the Caviar ICO.

50. A Texas resident applied and was approved to participate in the Caviar ICO, and funded his investment via a \$1,000 bank wire to the Caviar Partners, LLC account at Bank of America on December 7, 2017. The wire transfer included the instruction

⁵ "IP address" refers to Internet Protocol address, a numeric label assigned to a user or device by an Internet Service Provider. In general, it is possible to approximately identify a user's geolocation based on their IP address.

“ININITIAL [sic] COIN OFFERING,” followed by the name of the Texas resident. The \$1,000 investment was returned to the Texas resident on December 21, 2107.

51. On information and belief, the Texas resident’s wire transaction record provided Bensonoff with notice that the investment had come from within the United States. If the Texas resident had funded his investment via cryptocurrency, no additional identifying information would have been provided.

52. In addition, an investigator employed by the Division applied to participate in the Caviar ICO, using the name of a popular cartoon character.

53. When prompted to upload photo identification, the investigator uploaded a photo of a government-issued photo ID obtained using a Google Image search.

54. The name, address, and date of birth listed on the submitted ID image did not match the personal information provided by the Division investigator. The Division investigator’s identity was nonetheless “verified,” and the investigator was approved to participate in the Caviar ICO within 29 minutes.

b. Respondents Have Promoted the Caviar ICO Through General Solicitation.

55. In October 2017, Bensonoff began to promote the forthcoming ICO of Caviar tokens.

56. Bensonoff created, or caused to be created, several websites and social media accounts to promote the upcoming Caviar ICO. These websites and accounts include www.caviar.io, www.caviarfund.com, Twitter and Facebook accounts in the name of Caviar, and several additional accounts on social media networks popular with cryptocurrency and ICO investors, including Reddit.com and BitCoinTalk.org.

57. On October 25, 2017, a Twitter account in the name of Caviar shared a link to a PDF file with the file name "CaviarInvestorPresentation_Final.pdf," a 22 slide pitch deck highlighting the benefits (e.g., "maximiz[ing] return on investment") of investing in Caviar tokens.

58. The Caviar Website went live no later than November 3, 2017.

59. Bensonoff testified to the Enforcement Section that he has exclusive control over the content of the Caviar Website.

60. Until approximately January 4, 2018, the Caviar Website was generally accessible to any U.S. resident. Within 24 hours of appearing to provide testimony to the Enforcement Section, Bensonoff applied, or caused to be applied, a filter to exclude U.S.-based IP addresses from accessing the Caviar Website.

61. Beginning prior to the start of the Caviar ICO, and continuing through the present, Respondents have engaged in an extensive paid and unpaid social media marketing campaign to promote the ICO.

62. Respondents have utilized what is commonly known in the ICO investment community as a "bounty program." In bounty programs, third-party participants are incentivized to promote an upcoming (or ongoing) ICO through their personal social media accounts, in exchange for an allocation of tokens from the promoted ICO. Bounty program participants may be compensated with tokens based on the number of articles or posts they create and share, the number of their social media followers, or for translating the ICO whitepapers into a foreign language.

63. In addition, Respondents have retained the services of a Russian marketing firm to promote the Caviar ICO through paid advertising campaigns on Facebook and Instagram.

64. Paid Facebook and Instagram ad campaigns allow the campaign creator to select or exclude specific geographic regions from the target audience of their campaign. In sworn testimony before the Enforcement Section, Bensonoff claimed that paid marketing campaign for the Caviar ICO excluded United States investors from its target audience, and referred specifically to these geographic audience restriction features.

65. During the course of the Enforcement Section's investigation, an employee of the Division was shown multiple sponsored advertisements for the Caviar ICO on his personal Instagram feed, and captured screenshots of four such advertisements. These ads touted Caviar's "5 Year Track Record," claimed that "The hottest ICO of December is LIVE!" and promised prospective investors "Crypto and Real Estate in one TOKEN."

66. Respondents have further incentivized third-party promoters through the use of referral bonuses. When investors are approved to participate in the Caviar ICO, they are provided with a unique URL. If the investor provides this URL to another person who subsequently invests, the first investor is awarded with a bonus allocation of Caviar tokens equal to a percentage share of the new subscriber's purchase.

67. In addition to directing the Caviar social media advertising campaigns, Bensonoff has given interviews on multiple podcasts and YouTube videos to promote the Caviar ICO.

C. Caviar Tokens Are Securities

a. Purchasers of Caviar Tokens Invest Money in a Common Enterprise.

68. Caviar accepts investments either in the form of cryptocurrency or fiat currency.

69. As described in marketing materials and the Caviar whitepaper, funds raised in the Caviar ICO will be pooled together and used to finance short-term real estate loans, as well as to acquire a diversified portfolio of multiple cryptocurrencies.

70. Respondents further represent to purchasers of Caviar tokens that they will receive a pro rata share of 75% of the quarterly profits of the pooled investment fund, and that Caviar token investors will share in the profits and risks of the pooled investment fund.

b. Purchasers of Caviar Tokens Reasonably Expect to Profit from Their Investments.

71. Throughout the Relevant Time Period, Respondents have consistently promoted Caviar tokens as an opportunity for investors to realize future profits.

72. The Caviar Website includes a subsection labeled “Benefits,” which identifies the specific purported benefits of investing in Caviar tokens.

73. One listed benefit reads: “Profit Sharing[:] Our token holders receive 75% of quarterly profits via smart contract.”

74. Additional listed benefits include: “Token value growth[:] 20% of profits are reinvested back into the fund” and “Guaranteed Liquidity[:] Capital set aside quarterly to buy back and burn tokens to provide liquidity[.]”

75. The Caviar Website also includes a subsection titled “FAQ” which purports to anticipate and answer frequently asked questions from prospective purchasers of Caviar tokens.

76. One question, “Why invest in Caviar?” is answered: “Caviar is in a unique position to be able to shift funds from crypto-markets to real estate and vice [sic] versa in order to change allocation, maximize returns, and minimize risk.”

77. Another question asks: “How will I make money with Caviar?” and provides the answer:

1. Profit Sharing

75% of Caviar’s net quarterly profits will be distributed to token holders in the form of ETH via a smart contract

2. Value Growth

20% of net quarterly profits will be reinvested back into fund for token value growth

3. Token Appreciation

5% of net quarterly profits will be used to buyback and burn Caviar tokens to provide additional liquidity and to increase token value. In addition, token value on exchanges may rise with the increase in the value of the assets under management (AUM) and Caviar Platform development.

4. Caviar Platform

Earn profit and rewards by participating in crowdfunding projects and Caviar Platform community.

(emphasis added)

78. Respondents shared an investor presentation on multiple Caviar social media accounts, which presentation claimed, “Caviar [sic] mission is to provide investors with a diversified, risk adjusted, data-driven portfolio in a single token, with exposure to stable U.S. real estate, select cryptocurrencies, and crypto-assets, and to **maximize return on investment** while hedging against potential markets [sic] downturns.” (emphasis added).

c. Purchasers of Caviar Tokens Reasonably Expect to Profit From the Efforts of Respondents.

79. Caviar token investors reasonably believe that their future profits will derive primarily from the efforts of Respondents.

80. Respondents claim that pooled fund assets will be managed and regularly rebalanced per a proprietary “Intelligent Predictive Model” which purports to algorithmically forecast the growth of a cryptocurrency in relation to Bitcoin.

81. The Caviar Website links to a YouTube video titled “Caviar.io – Over 500% Passive Income Returns Per Annum??? (Backtest Results).” In the linked video, the narrator claims, “All I got to do is hold the coins in my Ethereum wallet and ETH will drop into my Ethereum wallet every three months.”

82. Investors in Caviar tokens reasonably expect that they will have no obligation to play a role in the management of the cryptocurrency portfolio or the real estate debt fund.

83. Per the terms and conditions which investors must accept prior to investing, investors have no voting rights and or other control over the management of Caviar.

D. Caviar Tokens Are Not Registered for Offer or Sale in the Commonwealth, and Bensonoff is Not Registered as an Issuer Agent of Caviar

84. As early as September 2017, Bensonoff was aware of the registration requirements under U.S. securities laws. On September 21, 2017, Bensonoff published an opinion piece in Bitcoin Magazine, titled “Four Challenges to Consider When Launching Your Fund Raise on the Blockchain.” In the piece, Bensonoff discusses various exemptions to registration under the federal securities acts, and counsels readers to carefully select the jurisdiction in which they incorporate.

85. On November 14, 2017, Bensonoff formed Caviar as a Cayman Islands exempted company for the purpose of using the entity as the legal issuer of Caviar tokens.

86. Bensonoff formed Caviar as a Cayman Islands exempted company in an acknowledged attempt to avoid the jurisdiction of U.S. securities regulators. When specifically asked why he formed Caviar as a Cayman Islands exempted company,

Bensonoff replied, "Because we decided that that's a jurisdiction that we felt comfortable with from a perspective of doing what we're going to do as far as trading cryptocurrencies, raising capital. ... **We certainly did not want to form in the United States to avoid this exact conversation here**, so I'm not sure why I'm here." (emphasis added).

87. Caviar does not have a place of business in the Cayman Islands. As of the date of this filing, Bensonoff has never travelled to the Cayman Islands.

88. Although two of Bensonoff's high school classmates purportedly serve as minority partners in the Caviar venture, Bensonoff owns over 50% of the company and is the de facto control person of Caviar.

89. As he acknowledged in sworn testimony before the Enforcement Section, Bensonoff operates Caviar primarily from his home in Brookline.

90. Notwithstanding Caviar's legal place of incorporation, Respondents' offers to sell Caviar tokens originate from within the Commonwealth of Massachusetts.

91. Caviar and Caviar tokens are not and have never been registered in the Commonwealth of Massachusetts. No registration statement for the offer or sale of Caviar tokens has ever been filed or effective, and no exemption from registration is available.

92. Bensonoff has never been registered in any capacity in the securities industry in the Commonwealth of Massachusetts.

93. Bensonoff has never been registered as an issuer agent of Caviar in the Commonwealth of Massachusetts.

VIII. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A, § 201

94. Section 201 of the Act provides, in relevant part:
- (a) 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.
 - (b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered.

MASS. GEN. LAWS ch. 110A, § 201.

95. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.
96. The conduct of Respondent Bensonoff, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201(a).
97. The conduct of Respondent Caviar, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201(b).

Count II – Violations of MASS. GEN. LAWS ch. 110A, § 301

98. 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.

MASS. GEN. LAWS ch. 110A, § 301.

99. Section 401(k) of the Act provides:
- “Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate

of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

MASS. GEN. LAWS ch. 110A, § 401(k).

100. Section 14.401 of the Regulations provides:

Investment Contract, as used in Section 401(k) of the Act, includes:

- (1) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. As used in 950 CMR 14.401, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or a third party; and
- (2) any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.

950 MASS. CODE REGS. 14.401.

101. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

102. The conduct of Respondents, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 301.

IX. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for 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 such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

X. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

XI. RELIEF REQUESTED

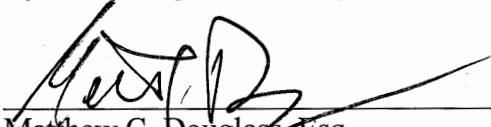
The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in Section VII of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act and the Regulations in the Commonwealth;
- D. Censuring Respondents;
- E. Requiring Respondents to offer rescission to all investors from whom they have received funds;

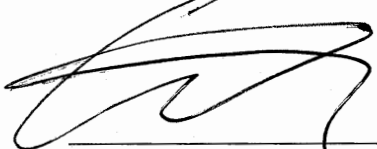
- F. Requiring Respondents to provide a verified accounting of all proceeds which were received as a result of the alleged wrongdoing;
- G. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- H. Imposing an administrative fine on Respondents in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- I. Taking any such further action 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: January 17, 2018