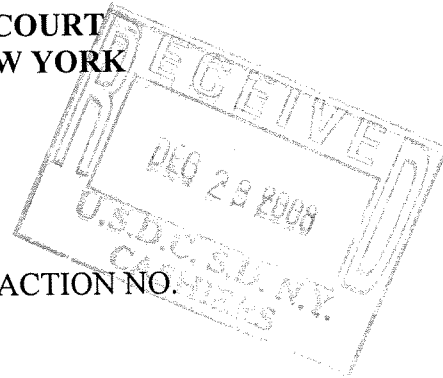


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID B. NEWMAN and IRA F/B/O
DAVID NEWMAN- PERSHING LLC as
Custodian, on behalf of themselves and all
Others Similarly Situated, and Derivatively on
behalf of FM LOW VOLATILITY FUND,
L.P.,

Plaintiffs,

v.

FAMILY MANAGEMENT CORPORATION,
SEYMOUR W. ZISES, ANDREA L.
TESSLER, ANDOVER ASSOCIATES LLC I,
BEACON ASSOCIATES LLC I, BEACON
ASSOCIATES MANAGEMENT CORP.,
BEACON/ANDOVER GROUP, MAXAM
ABSOLUTE RETURN FUND, LP, MAXAM
CAPITAL MANAGEMENT LLC, FULVIO &
ASSOCIATES, LLP, and JOHN DOES 1-100,

Defendants,

and FM LOW VOLATILITY FUND, L.P.,

Nominal Defendants.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

Plaintiffs David B. Newman and IRA F/B/O David Newman, Pershing LLC as Custodian, of which David B. Newman is the owner ("Newman IRA"), (together "Plaintiffs") and a Class (defined below) and on behalf of the Nominal Defendant (defined below), allege upon the investigation made by and through their counsel, complaints filed by the United States Government and Securities and Exchange Commission (the "SEC"), and reports and interviews published in the financial press, as follows:

I. SUMMARY OF ACTION

1. This is both a derivative action brought by limited partners of FM Low Volatility Fund, L.P. (the “Fund”), on behalf of the Fund, and a class action on behalf of all persons, other than defendants, who invested in the Fund from April 8, 2008 until the present (the “Class Period”), to recover damages caused by defendants’ violations of the federal securities laws and common law (the “Class”).

2. This case arises from a massive, fraudulent scheme perpetrated by Bernard L. Madoff (“Madoff”) through his investment firm, Bernard L. Madoff Investment Securities, LLC (“BMIS”), and others, and which was facilitated by the defendants named herein, who, recklessly or with gross negligence and/or in breach of fiduciary duties owed to Plaintiffs and other class members, caused and permitted the Fund’s assets to be invested in at least three “funds of funds” that were invested in Madoff-related entities.

3. Family Management Corporation (“FMC” or the “General Partner”) was the general partner of the Fund. Plaintiffs’ investments with FMC were decimated as a direct result of FMC’s reckless and/or grossly negligent dereliction of its fiduciary duties, and the complete failure of Fulvio and Associates, LLP (“Fulvio”), the Fund’s auditor, to perform adequate due diligence despite the existence of a myriad of “red flags” indicating that a high concentration of the Fund’s assets were invested in Madoff related investments.

4. Throughout the Class Period, Madoff deceived investors by operating a securities business that traded and lost investors’ money, and then paid certain investors purported returns on investment with the principal received from different investors. In short, Madoff and his cohorts operated a massive “Ponzi” scheme the likes of which are unparalleled.

5. On December 10, 2008, Madoff informed two senior BMIS employees, reportedly his sons, that BMIS’ investment advisory business was a complete fraud. Madoff

stated that he was “finished,” that he had “absolutely nothing,” that “it's all just one big lie.” He confessed he had been running “basically, a giant Ponzi scheme.” Madoff further told his sons that for years he paid returns to certain investors from principal received from other investors. Madoff stated that the business was insolvent and that it had been for years. Madoff also stated that he estimated the losses from this fraud to be approximately \$50 billion. Published reports now indicate that Madoff’s estimate may be on the conservative end of the range once the full effect of the fraud is understood.

6. On December 11, 2008, SEC and criminal charges were brought against Bernard Madoff. He was arrested and admitted to a Special Agent of the Federal Bureau of Investigation that “there is no innocent explanation” for BMIS’ losses and that he “paid investors with money that wasn’t there.”

7. Defendants Andover Associates LLC I, Beacon Associates LLC I, and Maxam Absolute Return Fund, LP were three “funds of funds” whose assets were blindly entrusted to Madoff. Plaintiffs and other members of the Class were never informed that the majority of the Fund’s investment in these three “funds of funds” was actually funneled to Madoff. As a result of the undisclosed and improper investment in Madoff-related vehicles, the Fund and its investors have lost at least \$15 million.

8. Plaintiffs seek to recover damages caused to the Class by defendants’ violation of Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), as well as for common law fraud, negligent misrepresentation and breach of fiduciary duty under New York law. Plaintiffs also seek to recover derivatively for breach of fiduciary duty, gross negligence and mismanagement, and common law fraud.

II. JURISDICTION AND VENUE

9. The claims asserted herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act, 15 U.S.C. §§78j and 78t(a), and Rule 10b-5, 17 C.P.R. §240.10b-5, promulgated thereunder by the SEC, 17 C.P.R. § 240.10b.5., as well as under the laws of the State of New York. This Court has jurisdiction in this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. 78aa and pursuant to the supplemental jurisdiction of this Court. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, Section 22 of the Securities Act, 15 U.S.C. § 77u, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

10. Venue is proper in this judicial district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. §77v, Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. §1391(b). Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District. Additionally, defendants (defined below) maintain their headquarters or conduct substantial business in this District.

11. In connection with the acts alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

III. PARTIES

12. Plaintiff, David B. Newman, a resident of North Carolina, is a limited partner in the Fund. Plaintiff Newman IRA, which is owned David B. Newman, also invested in the Fund. David B. Newman and the Newman IRA are collectively referred to as Plaintiffs. Plaintiffs entrusted FMC to make investment decisions on their behalf. Plaintiffs invested approximately \$610,000 in the Fund and have suffered damages as a result.

13. Nominal Defendant, FM Low Volatility Fund, LP, is a Delaware limited investment partnership formed under the laws of the State of Delaware on April 8, 2008, and managed by FMC. Its principal office is located at 485 Madison Avenue, New York, NY 10022. In or about April 2008, limited partnership interests in the Fund were offered via an Offering Memorandum. The minimum capital contribution entitling an investor to access to the Fund was \$250,000, unless FMC determined that a lower amount was acceptable. Prior to the revelation of Madoff's fraud on December 15, 2008, the Net Asset Value of the Fund was approximately \$25 million.

14. Defendant Family Management Corporation is a New York corporation, located at 485 Madison Avenue, 19th Floor, New York, NY 10022. FMC is a registered investment advisor. As of May 31, 2008, FMC had approximately \$1.3 billion in assets under management. According to its website, FMC's "mission is to preserve capital and achieve income and appreciation goals through the understanding of the risk/reward relationship of investing. Traditional investment vehicles are employed and are blended with more modern techniques of investing. Through a thorough process of analysis and planning, Family Management strives not only to protect your capital, but to help you take advantage of important trends and opportunities as they present themselves." FMC is the General Partner of the Fund.

15. Defendant Seymour W. Zises is the President and Chief Executive Officer of FMC, as well as the co-head of FMC's Investment Committee with Defendant Tessler (identified below). Mr. Zises is also President and Chief Executive Officer of Family Management Securities, LLC ("FMS"), a registered broker dealer affiliate of FMC and Forest Hill Capital Corporation, an insurance brokerage firm.

16. Defendant Andrea L. Tessler is the Managing Director and Chief Operating Officer of FMC. She is also co-head of FMC's Investment Committee with Defendant Zises. Defendant Tessler is also the Managing Director and Chief Operating Officer of FMS and Forest Hill Capital Corporation.

17. FMC, Zises and Tessler are sometimes referenced collectively as the "FMC Defendants."

18. Defendant Andover Associates LLC I ("Andover") purports to be a multi-strategy hedge fund of funds. It is a limited liability company formed under the laws of the state of New York. Andover is the successor company to Andover Associates, L.P., I. Andover is located at 230 Park Ave, 26th floor, New York, NY 10169.

19. Defendant Beacon Associates LLC I ("Beacon") purports to be a multi-strategy hedge fund of funds. Beacon is located at 123 Main Street, Suite 900, White Plains, NY 10601. Beacon is a limited liability company formed under the laws of the state of New York, and is managed by Defendant Beacon Associates Management Corp. (identified below).

20. Defendant Beacon Associates Management Corp. ("Beacon Corp.") is located at 123 Main Street, Suite 900, White Plains, NY 10601. Beacon Corp. manages Beacon.

21. Upon information and belief, Defendant Beacon/Andover Group ("Beacon/Andover") is the parent company of Andover. It is located at 123 Main Street, Suite 900, White Plains, NY 10601.

22. Defendant Maxam Absolute Return Fund, LP ("Maxam") purports to be a feeder fund that seeks long term capital appreciation with low volatility. According to documents filed with the SEC, Maxam is located at 16 Thorndal Circle, Darien, CT 06820.

23. Defendant Maxam Capital Management LLC (“Maxam Capital”) is the manager of Defendant Maxam. Maxam Capital is located at 16 Thorndal Circle, Darien, CT 06820.

24. Defendant Fulvio & Associates LLP (“Fulvio”), located at 5 West 37th Street, New York, NY 10018, is the Fund’s independent auditor. Upon information and belief, Fulvio was the auditor of several other hedge funds managed by FMC.

25. Defendants FMC, Zises, Tessler, Andover, Beacon, Beacon Corp. Beacon/Andover, Maxam, Maxam Capital and Fulvio are sometimes referenced collectively as the “Defendants.”

26. Defendant John Does 1-100. The true identities, roles and capacities of John Does 51-100 have yet to be ascertained. Included in John Does 1-100 are the control persons of Andover, Beacon and Maxam, hedge funds, hedge fund managers, brokerage firms and fiduciaries to the Fund who participated, exploited and perpetrated the wrongdoing alleged herein, and knowingly violated the policies established, though not enforced because of the breaches of fiduciary duties alleged herein. The identities of John Does 1-100 will be disclosed in amendments to this complaint when the true identities are discovered.

27. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on Fund investors by their actions.

IV. PLAINTIFFS’ CLASS ACTION ALLEGATIONS

28. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of all those persons who were investors in the Fund during the Class Period and who suffered damages thereby. Excluded from the Class are Defendants, the officers and directors of the Defendants, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

29. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe there are approximately one hundred members in the proposed Class. Members of the Class may be identified from records maintained by the Fund or FMC and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

30. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of the federal and state laws described herein.

31. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

32. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. whether the federal securities laws were violated by Defendants' acts as alleged herein;

b. whether statements made by Defendants during the Class Period misrepresented material facts about the business, operations, investments, and financial condition of the Fund;

c. whether Defendants acted knowingly or recklessly in making materially false and misleading statements during the Class Period;

d. whether Defendants' conduct alleged herein was intentional, reckless, and/or grossly negligent and/or in violation of fiduciary duties owed to Plaintiffs and other Class members and therefore violated the statutory and common law of New York; and

e. to what extent the members of the Class have sustained damages and the proper measure of damages.

33. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

V. PLAINTIFFS' DERIVATIVE ALLEGATIONS

34. Plaintiffs bring this action derivatively in the right and for the benefit of the Fund to seek redress for the injuries suffered, and to be suffered, by the Fund as a direct result of the breach of fiduciary duties, abuse of control, gross mismanagement, negligence, and fraud alleged herein. The Fund is named as a Nominal Defendant solely in a derivative capacity.

35. Plaintiffs will adequately and fairly represent the interests of the Fund and its limited partners in enforcing and prosecuting its rights.

36. Plaintiffs are limited partners of the Fund and were limited partners of the Fund at all times relevant to Defendants' wrongful course of conduct alleged herein.

37. Plaintiffs have not made any demand upon the General Partner to bring an action on behalf of the Fund asserting the claims herein to recover damages for the injuries suffered by Fund, since such demand would have been a futile, wasteful and useless act, and therefore is excused for the following reasons.

38. Demand is excused because the unlawful acts and practices alleged herein cannot be defended by the General Partner, and are not subject to the protection of any independent business judgment since it would undoubtedly be to the benefit of the Fund to recover the damages caused by Defendants' wrongdoing and to assert these derivative claims.

39. Demand is excused because the wrongs alleged herein constitute violations of the fiduciary duties owed by the General Partner to the limited partners and the Fund. The General Partner is subject to liability for breaching its fiduciary duties to the Fund by, *inter alia*, causing the Fund's assets to be invested with Madoff or Madoff-related entities without any oversight or supervision, causing or permitting the reckless investing practices alleged herein, failing to adequately monitor the investment vehicles in which it placed the Fund's assets, and failing to detect, prevent, or halt the misstatements and omissions of material fact alleged herein.

40. Demand is excused because the General Partner exercises ultimate authority over the Fund and profited at the expense of the Fund by receiving monthly management and administrative fees and other fees from the Fund while in possession of material, adverse, non-public information.

41. Demand is excused because the General Partner faces a substantial likelihood of liability in this action because of its acts and omissions alleged herein. The dramatic breakdowns and gaps in the General Partner's internal controls were so widespread and systematic that the General Partner faces substantial exposure to liability under the "Caremark" or similar doctrine for total abrogation of its duty of oversight. The General Partner either knew or should have known that the Fund's assets were invested in funds of funds that were actually part of a massive Ponzi scheme, or otherwise generated purported results that would

have been impossible to achieve under Madoff's split-strike conversion strategy, and took no steps in a good faith effort to prevent or remedy that situation, proximately causing millions of dollars of losses.

42. In addition, demand is also excused because the General Partner has ratified the egregious actions outlined herein, and the General Partner cannot be expected to prosecute claims against itself and persons or entities with whom it has extensive inter-related business, professional and personal entanglements, if Plaintiffs demanded that it do so. The General Partner, because of these relationships, has developed debilitating conflicts of interest that prevent it from taking the necessary and proper action on behalf of the Fund.

43. Demand is also excused because the General Partner participated in, approved, or permitted the wrongs alleged herein, concealed or disguised those wrongs, or recklessly or negligently disregarded them, and therefore is not a disinterested party and lacks sufficient independence to exercise business judgment as alleged herein.

44. Given the size, scope, and blatancy of the wrongdoing and the misrepresentations alleged above, the General Partner either knew of the financial risks to the Fund's assets or turned a blind eye to them. Such conduct is not protected by the business judgment rule and exposes the General Partner to a substantial threat of liability in this action.

45. The General Partner lacks sufficient independence to make a disinterested decision on whether to pursue the derivative claims alleged herein against Defendants.

46. In addition, demand would be a futile and useless for the additional following reasons:

- a. The General Partner, because of its inter-related business, professional and personal relationships, has developed debilitating conflicts of interest that

prevent it from taking the necessary and proper action on behalf of the Fund as requested herein;

- b. The General Partner, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from the Fund's limited partners or recklessly and/or negligently disregarded the wrongs complained of herein, and is therefore not a disinterested party. The General Partner exhibited a sustained and systemic failure to fulfill its fiduciary duties, which could not have been an exercise of good faith business judgment and amounted to gross negligence and extreme recklessness;
- c. In order to bring this suit, the General Partner would be forced to sue itself and persons with whom it has extensive business and personal entanglements, which it will not do, thereby excusing demand;
- d. The acts complained of constitute violations of the fiduciary duties owed by the General Partner and these acts are incapable of ratification; and
- e. The Fund has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the General Partner has not filed any lawsuits against itself, its principals, or others who were responsible for that wrongful conduct to attempt to recover for the Fund any part of the damages the Fund has suffered and will continue to suffer.

47. Finally, Plaintiffs have not made any demand on the limited partners to institute this action since such demand would be a futile and useless act for the following reasons:

- a. The Fund has approximately one hundred or more limited partners;
- b. Making demand on such a number of limited partners would be impossible for Plaintiffs who have no way of finding out the names, addresses or phone numbers of the limited partners; and
- c. Making demand on all the limited partners would force Plaintiffs to incur huge expenses, even assuming all the limited partners could be individually identified.

48. The Fund has been directly and substantially injured by reason of the General Partner's intentional breach and/or reckless disregard of its fiduciary duties to the Fund. Plaintiffs, as limited partners and representatives of the Fund, seek damages and other relief for the Fund, in an amount to be proven at trial.

49. FMC, as General Partner of the Fund, violated its fiduciary duties to the Fund by failing to act with due care, loyalty and good faith when it failed to conduct any due diligence on the hedge funds in which it invested the Fund. FMC allowed the Fund to invest with Madoff-related entities, or in conscious abrogation of its fiduciary duties, permitted it to occur.

VI. SUBSTANTIVE ALLEGATIONS

50. During the Class Period, Defendant FMC offered limited partnerships in the FM Low Volatility Fund, LP to qualified investors such as Plaintiffs.

51. Participation in the Fund was offered primarily through an offering memorandum dated on or about April 8, 2008 ("Offering Memorandum"). According to the Offering Memorandum, Defendants Zises and Tessler made all investment, trading, allocation and reallocation decisions for the Fund.

52. Neither the Offering Memorandum nor any other offering materials used to solicit investments in the Fund disclosed that the majority of the Fund's assets were invested in at

least three hedge funds of funds (“FOF”), Beacon, Andover and Maxam, that were, in reality, funds some or all of whose assets were blindly entrusted to Madoff, BMIS, or other Madoff-controlled entities.

53. In fact, the Offering Memorandum falsely stated that the Fund “***will allocate its assets to no fewer than three Investments,***” and that “***no single Investment Vehicle will comprise more than 35% of the Fund’s Net Asset Value at the time of investment.***” (Emphasis added.) The Offering Memorandum similarly assured potential investors that their investments in the Fund would not be concentrated:

The General Partner is only required to maintain a minimum of three Investments and to commit no more than 35% of the Fund’s assets to any one Investment Vehicle. The General Partner expects, at least initially, that the Fund’s portfolio will not be significantly more diversified than the foregoing limitations would permit. The result of such concentration of investments is that a loss in any Investment could materially reduce the Fund’s capital.

54. In other words, while the Offering Memorandum sought to lull potential investors into believing the investments in the Fund would be diversified, in reality, the majority of the assets in the Fund were invested in a discrete set of funds that ultimately were invested in whole or in part in Madoff, BMIS or other Madoff-controlled entities. ***Indeed, FMC admitted that these FOFs were heavily invested in Madoff-related entities, and that FMC knew this as of the time it was soliciting subscriptions for the Fund.***

55. The Offering Memorandum also falsely stated that the General Partner would: (i) endeavor to verify the integrity of each manager of a FOF in which the Fund was invested (“Manager”); (ii) attempt to monitor the performance of each Manager; and (iii) request detailed information regarding the historical performance and investment strategy of each of the selected investments for the Fund.

56. These statements were materially false and misleading and failed to disclose that FMC, as the General Partner, allowed at least 60% of the Fund's assets to be funneled through three FOFs – Andover, Beacon and Maxam – and invested in Madoff, BMIS and other Madoff-related entities.

57. According to material prepared by FMC, Andover is:

a multi-strategy hedge fund of funds. The majority of assets of Andover Associates LLC I are managed directly by the General Partner by investing in a portfolio of large cap stocks while utilizing various hedging techniques involving options, with the primary objective of preservation of capital while achieving an above average consistent investment return. ... The majority of the Fund's investment are in a Split Stock Conversion Strategy, Longacre Capital Partners and Elliot Associates, L.P.

58. Similarly, according to material prepared by FMC, Beacon is:

A multi-strategy hedge fund of funds. Seventy four percent of the Fund will invest in a split-strike conversion strategy. This strategy entails the purchase of 35-50 large capitalization stocks from the S&P 500 Index and the simultaneous sale of out-of-the-money calls and the purchase of out-of-the-money puts on the S&P 500 Index. The transactions are undertaken on a hedged basis, such that the basket of stocks purchased is intended to correlate with the index options. Proprietary systems are designed to continuously optimize the basket of stocks and the index options.

59. According to material prepared by FMC, Maxam is:

A feeder fund that seeks long term capital appreciation with low volatility. The partnership will invest in equity securities, equity related derivatives, and in options. The Fund employs a split-strike conversion option strategy which entails the purchase of 35-50 large capitalization stocks from the S&P 500 Index and the simultaneous sale of out-of-the-money calls and the purchase of out-of-the-money puts on the S&P 500 Index. The transactions are undertaken on a hedged basis, such that the basket of stocks purchased is intended to correlate with the index options. Proprietary systems are designed to continuously optimize the basket of stocks and the index options.

60. The FMC Defendants never disclosed that Andover, Beacon and Maxam were mere conduits and actually were wholly or partially invested with Bernard Madoff.

61. In addition, despite FMC's assertion that *no more than 35% of the Fund's net assets at the time of investment would be allocated to any one Investment Vehicle*, at least 60% of the Fund's net assets, through Andover, Beacon and Maxam, were invested with Madoff.

62. The FMC Defendants, in breach of their fiduciary duties, failed to conduct even the most rudimentary due diligence on the FOFs in which they were investing the proceeds of the subscriptions of Plaintiffs and the Fund's other limited partners. The FMC Defendants instead relied on the "reputation" of Madoff without conducting any investigation of the *bona fides* of Madoff and his operation, and/or an analysis of the trading strategies and investment returns reported by Madoff, which remained consistently high even during adverse market conditions.

63. Unlike the FMC Defendants, other investment advisors who conducted due diligence on Madoff and ran even the most simplistic models testifying the validity of Madoff's results recognized the fraudulent irregularities with Madoff's investments with ease. For example, the financial press reported that Robert Rosenkranz of Acorn Partners, an investment advisor for high net worth individuals, conducted due diligence on Madoff and found it very likely that the BMIS account statements were generated as part of a fraudulent scheme. Mr. Rosenkranz reached this conclusion based, *inter alia*, on the abnormally stable and high investment returns claimed by Madoff and the inconsistencies between customer account statements and the audited BMIS financial statements filed with the SEC.

64. The financial press also reported that, prior to the disclosure of the massive fraud committed by Madoff, Simon Fludgate, head of operational due diligence at Aksia, another advisory firm, concluded that the stock holdings reported in the quarterly statements of BMIS filed with the SEC appeared too small to support the size of the assets Madoff claimed to be managing. Mr. Fludgate's conclusion is supported by the determination of the investigators who examined the materials in Madoff's offices that Madoff was operating a secret, unregistered investment vehicle from his office.

65. Similarly, as *The New York Times* reported on December 17, 2008, routine due diligence on Madoff conducted by Société Générale revealed serious irregularities:

What [Société Générale] found that March was hardly routine: Mr. Madoff's numbers simply did not add up. Société Générale immediately put Bernard L. Madoff Investment Securities on its internal blacklist, forbidding its investment bank from doing business with him, and also strongly discouraged wealthy clients at its private bank from his investments.

The red flags at Mr. Madoff's firm were so obvious, said one banker with direct knowledge of the case, that Société Générale "didn't hesitate. It was very strange."

Schwartz, N., "European Banks Tally Losses Linked to Fraud," *The New York Times*, Dec. 17, 2008.

66. The FMC Defendants acted with gross negligence and violated their fiduciary duties by failing to perform, or causing to be performed, appropriate due diligence that would have revealed that the FOFs in which the Fund was invested actually were invested with Madoff such that at least 60% of the Fund's losses were attributable to Madoff.

67. Moreover, despite the representation in the Offering Memorandum that Defendants Zises and Tessler would make all investment, trading, allocation and reallocation decisions for the Fund, the reality was that the FMC Defendants gave carte blanche to Madoff,

via Beacon, Andover, and/or Maxam, or otherwise, to manage the majority of the Fund's assets, and did not have any say in how those assets would be managed. The FMC Defendants, in blatant dereliction of their fiduciary duties, exercised no oversight whatsoever over Madoff, or Beacon, Andover and Maxam, despite entrusting more than half of the Fund's assets FMC controlled and was duty-bound to protect.

68. The Offering Memorandum was false and misleading because it contained a material omission in that it failed to disclose that the FMC Defendants, with no or inadequate due diligence or oversight, abdicated their responsibilities and entrusted the assets of the Fund to investment vehicles that were connected with Madoff.

69. In stark contrast to its representations and undertaking that it had ultimate responsibility for the management, operations and investment decisions made on behalf of the Fund, FMC abdicated its responsibilities as the General Partner of the Fund, and utterly failed to supervise, monitor and manage the investments of the Fund. As a result, FMC breached its fiduciary duty to the Fund and its limited partners.

70. The FMC Defendants' investing of the Fund's assets in Beacon, Andover and Maxam gave rise to duties owed by Beacon, Andover and Maxam to the Fund. The Managers of the Beacon, Andover and Maxam FOFs knew that the Fund's assets were entrusted to their care and owed fiduciary duties of good faith, fair dealing and due care to the Fund and its limited partners. They knew, or, in the exercise of due care in discharging their fiduciary duties, were reckless in not knowing that Madoff was engaged in a massive Ponzi scheme, or, at a minimum, was reporting results that could neither be verified nor explained. Nonetheless, they knowingly and willfully invested the Fund's assets in BMIS or other Madoff-managed

investment vehicles. They had a fiduciary obligation to protect the assets of the Fund, which they utterly failed to fulfill.

71. Further, the Managers of Beacon, Andover and Maxam violated their fiduciary duties to the Fund and its limited partners by not disclosing that some or all of their assets were invested with Madoff. The majority of Andover's investments supposedly were in a "Split-Strike Conversion Strategy, Longacre Capital Partners and Elliot Associates, L.P." Similarly, Beacon reported that it would invest only 74% of its assets in a split-strike conversion strategy, with the remaining assets allocated to managers employing a variety of other opportunistic trading strategies. Maxam also reportedly employed a split-strike technology that sought long term capital appreciation with low volatility. All three FOFs failed to disclose that, in reality, they were investing in Madoff-related entities. These material misrepresentations and omissions caused the Fund to lose over 60% of its value, or approximately \$15 million.

72. Despite FMC's egregious conduct in failing to properly conduct due diligence and failing to ensure that the Fund's assets were invested in accord with the Offering Memorandum instead of in a Ponzi scheme orchestrated by Madoff, FMC nevertheless has been collecting advisory fees of 1.4% of the Fund's net asset value. Moreover, the Fund's limited partners also paid management fees to the very same Managers of Beacon, Andover and Maxam (and potentially other FOFs that invested with Madoff) who improperly invested in the Madoff-related entities. As *The Wall Street Journal* reported on December 12, 2008, investors in "so-called fund-of-hedge funds ... entrust[ed] their wealth with fund managers who then spread it among several individual hedge funds – and pay two layers of fees for the privilege." Molinski, D., Meyer, G., "Hedge Funds Face By Losses in Madoff Case," *The Wall Street Journal*, Dec. 12, 2008.

73. The FMC Defendants also breached their fiduciary duties by hiring defendant Fulvio, a small accounting firm consisting of a total of 35 employees, to act as the independent auditor for the Fund. The Offering Memorandum identified Fulvio as the Fund's auditor, which reasonably led potential investors to believe that the Fund's operations and financial condition would be reviewed and audited by a reputable accounting firm.

74. Defendant Fulvio either knew of or recklessly disregarded: (a) that Andover, Beacon and Maxam were invested in Madoff-related entities; (b) that the concentration of the Fund's investments (funneled through FOFs) with a single third party investment manager, Madoff, was in excess of the 35% limit set forth in the Offering Memorandum; (c) that there was a materially heightened risk to the Fund's assets from such reliance on Madoff-managed investments; (d) that Madoff's operations lacked any transparency, and, in fact, were entirely opaque; and (e) that BMIS was audited by a small accounting firm, Friebling & Horowitz, located in Rockland County, New York, which had no experience auditing large and complicating investment operations like BMIS.

75. If Fulvio had made an adequate investigation, as it was duty-bound to do, that investigation would have raised red flags about whether the Fund's assets were being invested in the appropriate investment vehicles, and whether there was sufficient diversification of the Fund's assets to further the Fund's investment objectives as represented in the Offering Memorandum. By failing to conduct a sufficient investigation of the Fund's investments, Fulvio breached its fiduciary duty to the Fund and its limited partners.

COUNT I
Violation of Section 10(b) of the Exchange Act and
Rule 10b-5 of the Securities and Exchange Commission
(Against All Defendants)

76. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

77. This Count is asserted against all Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder.

78. During the Class Period, Defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, practices, and courses of business which operated as a fraud and deceit upon Plaintiffs and the other members of the Class, and made various deceptive and untrue statements of material fact and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs and the other members of the Class. The purpose and effect of the scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiffs and the other members of the Class to purchase limited partnership investment interests in the Fund.

79. During the Class Period, Defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly and recklessly issued, caused to be issued, participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to Plaintiffs and the other Class members as particularized above.

80. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by said Defendants, Plaintiffs and the other members of the Class relied, to their detriment, on such misleading statements and omissions in purchasing limited partnerships in the Fund. Plaintiffs and the

other members of the Class have suffered substantial damages as a result of the wrongs alleged herein in an amount to be proved at trial.

81. By reason of the foregoing, Defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiffs and the other members of the Class in connection with their acquisitions of limited partnership interests in the Fund.

COUNT II
Violation of Section 20(a) of the Exchange Act
(Against Zises, Tessler, Beacon Corp.,
Andover/Beacon, Maxam Capital and John Does 51-100)

82. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

83. Zises and Tessler acted as controlling persons of FMC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high level positions, participation in and/or awareness of the Fund's operations, and/or intimate knowledge of the Fund's products, sales, accounting, plans and implementation thereof, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Fund, including the content and dissemination of the various statements that Plaintiffs contend are false and misleading. Zises and Tessler had the ability to prevent the issuance of the statements or cause the statements to be corrected.

84. Zises and Tessler had direct and supervisory involvement in the day-to-day operations of the Fund and, therefore, are presumed to have had the power to control or influence the particular statements giving rise to the securities violations as alleged herein, and exercised the same.

85. Similarly, Defendants Beacon Corp., Andover/Beacon, Maxam Capital and John Does 51-100 were in positions of control over the Andover, Beacon and Maxam FOFs. By virtue of their high level positions, participation in and/or awareness of the FOFs' investments, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the FOFs, including the content and dissemination of some of the statements that Plaintiffs contend are false and misleading, including, without limitation, the described investment strategies of Andover, Beacon and Maxam.

86. By virtue of their positions as controlling persons, Zises, Tessler, Andover/Beacon, Beacon Corp., Maxam Capital and John Does 51-100, are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of their wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their acquisitions of limited partnership interests in the Fund.

COUNT III
Common Law Fraud
(Against the FMC Defendants and Fulvio)

87. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

88. Plaintiffs and other members of the Class in reasonable and justifiable reliance upon the statements and representations made by the FMC Defendants, as previously set forth herein, purchased limited partnership investment interests in the Fund. Plaintiffs and other members of the Class would not have purchased their limited partnership investment interests

in the Fund except for their reliance upon the representations made by the FMC Defendants in the Offering Memorandum, and would not have purchased them had they been aware of the material omissions and concealment by the FMC Defendants of the fact that FMC, the General Partner, had entrusted over half of the Fund's assets to Madoff-related entities.

89. At the time the statements and representations were made by the FMC Defendants in the Offering Memorandum, the FMC Defendants knew or should have known them to be false and intended to deceive Plaintiffs and other members of the Class by making such statements and representations.

90. Similarly, as the Fund's auditor, Fulvio knew or should have known that the Fund's assets were not diversified as stated in the Offering Memorandum, but in fact, were heavily invested in Madoff-related vehicles. Fulvio, nevertheless, failed to disclose this material information to the Fund's limited partners.

91. At the time of the false statements, misrepresentations and omissions set forth above, each of the FMC Defendants and Fulvio intended that Plaintiffs and other members of the Class would act on the basis of the misrepresentations and omissions contained in the Offering Memorandum in determining whether to purchase limited partnership interests in the Fund. Plaintiffs and other Class members reasonably relied thereon to their detriment in making such decisions.

92. Had Plaintiffs and other members of the Class known of the material facts that the FMC Defendants and Fulvio wrongfully concealed and misrepresented, and the falsity of the FMC Defendants and Fulvio's representations, Plaintiffs and other Class members would not have purchased their limited partnership investment interests in the Fund.

93. Plaintiffs and other members of the Class, as a result of their purchase of limited partnership investment interests in the Fund and by reasons of the FMC Defendants and Fulvio's wrongful misrepresentations, have sustained damages, suffered mental and emotional distress and have lost a substantial part of their respective investments in an amount yet to be determined, and to be proven at trial.

94. By reason of the foregoing, the FMC Defendants and Fulvio are jointly and severally liable to Plaintiffs and other Class members.

95. The FMC Defendants and Fulvio's fraudulent acts were willful and wanton and Plaintiffs and other Class members are entitled to punitive damages.

COUNT IV
Negligent Misrepresentation
(Against the FMC Defendants and Fulvio)

96. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

97. The FMC Defendants and Fulvio owed to Plaintiffs and other Class members, a duty: (a) to act with reasonable care in preparing and disseminating the Offering Memorandum and other representations relied upon by Plaintiffs and other Class members in deciding to purchase their limited partnership investment interests in the Fund; and (b) to use reasonable diligence in determining the accuracy of and preparing the information contained in the Offering Memorandum. In addition, Defendant Fulvio knew that its audited financial reports would be provided to the Fund's limited partners and potential investors in the Fund and would be relied on by them in making investment decisions concerning the Fund's limited partnership interests.

98. The FMC Defendants and Fulvio breached their duties to Plaintiffs and other Class members by failing to investigate, confirm, prepare and review with reasonable care the

information contained in the Offering Memorandum and other representations, including the audited annual financial statements.

99. Neither the Offering Memorandum nor any other offering material used in soliciting investment in the Fund ever disclosed that over half of the Fund's assets were ultimately invested with Madoff, BMIS or other Madoff-controlled entities. As a direct, foreseeable and proximate result of this negligence, Plaintiffs and other Class members have sustained damages, suffered mental and emotional distress and have lost a substantial part of their respective investments in an amount yet to be determined, and to be proven at trial.

100. Moreover, the Offering Memorandum contained the material misrepresentation that the Fund's assets would be diversified such that the Fund at all times would be invested in at least three investment vehicles and that no more than 35% of the Fund's assets would be invested in a single investment vehicle. As alleged above, this was patently untrue because at least three of the investment vehicles in which the Fund invested – Andover, Beacon and Maxam – were investments ultimately managed in whole or in part by Madoff, and accounted for more than 60% of the Fund's assets, far higher than the 35% reported in the Offering Memorandum.

101. By reason of the foregoing, the FMC Defendants and Fulvio are jointly and severally liable to Plaintiffs and other Class members.

COUNT V
Breach of Fiduciary Duty
(Against the FMC Defendants and Fulvio)

102. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

103. The FMC Defendants owed and owe Plaintiffs and the Class fiduciary obligations. By reason of their fiduciary relationships, the FMC Defendants owed and owe Plaintiffs and the Class the highest obligation of good faith, fair dealing, loyalty and due care.

104. Fulvio, as the Fund's auditor, also owed fiduciary duties to the Plaintiffs and other Class members.

105. As a result of the FMC Defendants' abrogation of their duties to use due care in the management of the assets of the Fund for the benefit of its limited partners, as alleged herein, the FMC Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith, and supervision owed to Plaintiffs and the Class. They acted in bad faith, with gross negligence and with complete disregard of their obligation to use due care, and employ reasonable and prudent investment standards.

106. In addition, as a result of Fulvio's failure to adequately investigate the Fund's investments and failure to discover that its assets were not diversified as stated in the Offering Memorandum, but, rather, were heavily invested in Madoff-related vehicles, Fulvio has failed to fulfill its fiduciary duty owed to Plaintiffs and other members of the Class. Fulvio acted in bad faith, with gross negligence and with complete disregard of its obligation to use due care, including without limitation ensuring that the FMC Defendants were investing the Fund's assets in accordance with the Offering Memorandum and were using reasonable and prudent investment standards.

107. As a proximate result of the FMC Defendants' and Fulvio's bad faith breaches of their fiduciary duties, Plaintiffs and other Class members have sustained damages, suffered mental and emotional distress and have lost most, if not all, of their respective investments in an amount yet to be determined, and to be proven at trial.

108. By reason of the foregoing, the FMC Defendants and Fulvio are liable to Plaintiffs and other members of the Class who continue to own their interests in the Fund.

109. The FMC Defendants and Fulvio's acts were willful and wanton and Plaintiffs and other Class members are entitled to punitive damages.

COUNT VI
Derivative Claim for Breach of Fiduciary Duty
(Against the FMC Defendants and Fulvio)

110. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs, as though set forth fully herein.

111. The FMC Defendants owed and owe the Fund fiduciary obligations. By reason of their fiduciary relationships, the FMC Defendants owed and owe the Fund the highest obligation of good faith, fair dealing, loyalty and due care.

112. Fulvio, as the Fund's auditor, also owed fiduciary duties to the Fund.

113. As a result of the FMC Defendants' abrogation of their duties to use due care in the management of the assets of the Fund, as alleged herein, the FMC Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith, and supervision owed to the Fund. They acted in bad faith, with gross negligence and with complete disregard of their obligation to use due care, and employ reasonable and prudent investment standards.

114. In addition, as a result of Fulvio's failure to adequately investigate the Fund's investments and failure to discover that its assets were not diversified as stated in the Offering Memorandum, but, rather, were heavily invested in Madoff-related vehicles, Fulvio has failed to fulfill its fiduciary duty owed to the Fund. Fulvio acted in bad faith, with gross negligence and with complete disregard of its obligation to use due care, including without limitation

ensuring that the FMC Defendants were investing the Fund's assets in accordance with the Offering Memorandum and were using reasonable and prudent investment standards.

115. As a direct and proximate result of result of the FMC Defendants' and Fulvio's failure to perform their fiduciary obligations, the Fund has been harmed. As a result of the misconduct alleged herein, the FMC Defendants and Fulvio are liable to the Fund in an amount yet to be determined, and to be proven at trial.

116. The FMC Defendants and Fulvio's acts were willful and wanton and the Fund is entitled to punitive damages.

COUNT VII
Derivative Claim for Gross Negligence and Mismanagement
(Against Andover, Beacon, Beacon Corp., Andover/Beacon,
Maxam, Maxam Capital and John Does 1-100)

117. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs, as though set forth fully herein.

118. Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 were retained by and on behalf of the Fund to manage the Fund's assets in a manner consistent with the Fund's investment objectives as set forth in the Offering Memorandum.

119. Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 owed fiduciary duties to the Fund to conduct, manage and supervise the Fund's investments in good faith and with due care. As set forth above, Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 breached their fiduciary duties to the Fund by acting in bad faith and failing to exercise due care in the performance of their duties as Managers of the Fund.

120. Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-50 should have prevented, through the exercise of reasonable diligence, the improper investing of a majority of the Fund's assets solely into Madoff-related vehicles.

121. Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-50 authorized, approved, participated in, failed to disclose, and improperly concealed the improper conduct described herein.

122. The Fund relied to its detriment on Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 to discharge their duties as Managers of the Fund in a careful and prudent manner, to their detriment.

123. As a direct and proximate result of result of the gross negligence and misconduct of Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100, the Fund has been harmed. These Defendants are liable to the Fund in an amount yet to be determined, and to be proven at trial.

COUNT VIII
Derivative Claim for Breach of Fiduciary Duty
(Against Andover, Beacon, Beacon Corp., Andover/Beacon,
Maxam, Maxam Capital and John Does 1-100)

124. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs, as though set forth fully herein.

125. Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100, owed fiduciary duties to the Fund to act as the Managers of the Fund's investments, and to perform the services they undertook to perform on behalf of the Fund, with the highest degree of care.

126. As alleged herein, Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 breached their fiduciary duties to the Fund by their acts and omissions to act.

127. Plaintiffs and the Fund's investors relied to their detriment on Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 to discharge their duties in a careful and prudent manner and consistently with their fiduciary duties.

128. As a direct and proximate cause of Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100's failure to exercise due care in the performance of their duties, including by their failure to disclose that the Andover, Beacon and Maxam FOFs were heavily invested in Madoff-related vehicles, the Fund has sustained damages.

129. These Defendants are liable to the Fund in an amount yet to be determined, and to be proven at trial. Because of the willful and wanton nature of Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100's conduct, punitive damages should be awarded.

COUNT IX
Derivative Claim for Common Law Fraud
(Against Andover, Beacon, Beacon Corp., Andover/Beacon,
Maxam, Maxam Capital and John Does 1-100)

130. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

131. The Fund, in reasonable and justifiable reliance upon the statements and representations made by Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam

Capital and John Does 1-100, as alleged herein, invested in the Andover, Beacon and Maxam FOFs.

132. The Fund would not have invested in these FOFs had it been aware of the material omissions and concealment by Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 of the fact that by investing in these FOFs, the Fund's assets actually were being heavily invested in Madoff-related entities.

133. At the time of the omissions, Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100, knew or should have known the truth, and intended to deceive the Fund by failing to disclose the truth about the FOFs' investments.

134. At the time of the omissions set forth above, Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100, each intended that the Fund would rely on the material omission when determining whether to invest in the FOFs. The Fund reasonably relied thereon to its detriment in making such decisions.

135. Had they known of the material facts that Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 wrongfully concealed and misrepresented, the Fund would not have invested in the Andover, Beacon and Maxam FOFs.

136. The Fund, as a result of investments in the Andover, Beacon and Maxam FOFs and by reasons of the Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100's wrongful omissions, has sustained damages, has lost a substantial part of its investment in an amount yet to be determined, and to be proven at trial.

137. By reason of the foregoing, Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100 are jointly and severally liable to the Fund.

138. Andover, Beacon, Beacon Corp., Andover/Beacon, Maxam, Maxam Capital and John Does 1-100's fraudulent acts were willful and wanton and the Fund is entitled to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. determining that this action is a proper class action, designating Plaintiffs as Lead Plaintiffs and certifying Plaintiffs as Class Representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs' counsel as Lead Counsel;

B. awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing (including the return of all management fees paid by the limited partners), in an amount to be proven at trial, including both pre-judgment and post-judgment interest thereon, to the extent allowed by law;

C. awarding compensatory damages in favor of the Fund against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including both pre-judgment and post-judgment interest thereon, to the extent allowed by law;

D. awarding punitive damages in favor of Plaintiffs and the other Class members for Defendants' willful and wanton acts, in an amount to be determined at trial, including both pre-judgment and post-judgment interest thereon, to the extent allowed by law;

E. awarding punitive damages in favor of the Fund for Defendants' willful and wanton acts, in an amount to be determined at trial, including both pre-judgment and post-judgment interest thereon, to the extent allowed by law;

F. awarding Plaintiffs, the Class and the Fund their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

G. such other and further relief as the Court may deem just and proper.

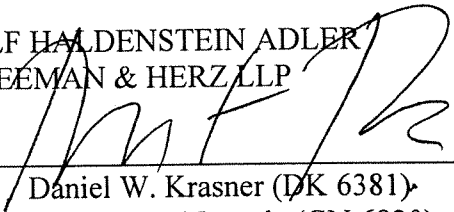
JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(a), Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: December 23, 2008

WOLF HILDENSTEIN ADLER
FREEMAN & HERZ LLP

By: _____


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