



SCUDDER TAX ADVANTAGED DIVIDEND )  
FUND, SCUDDER FLAG INVESTORS VALUE )  
BUILDER FUND, SCUDDER FOCUS )  
VALUE+GROWTH FUND, SCUDDER )  
LIFECYCLE MID RANGE FUND, SCUDDER )  
LIFECYCLE LONG RANGE FUND, SCUDDER )  
LIFECYCLE SHORT RANGE FUND, SCUDDER )  
PATHWAY CONSERVATIVE PORTFOLIO, )  
SCUDDER PATHWAY GROWTH PORTFOLIO, )  
SCUDDER PATHWAY MODERATE )  
PORTFOLIO, SCUDDER RETIREMENT FUND )  
SERIES V, SCUDDER RETIREMENT FUND )  
SERIES VI, SCUDDER RETIREMENT FUND )  
SERIES VII, SCUDDER TARGET 2010 FUND, )  
SCUDDER TARGET 2012 FUND, SCUDDER )  
TARGET 2013 FUND, SCUDDER TOTAL )  
RETURN FUND, SCUDDER EMERGING )  
MARKETS GROWTH FUND, SCUDDER )  
EMERGING MARKETS INCOME FUND, )  
SCUDDER EUROPEAN EQUITY FUND, )  
SCUDDER GLOBAL FUND, SCUDDER )  
GLOBAL BOND FUND, SCUDDER GLOBAL )  
DISCOVERY FUND, SCUDDER GREATER )  
EUROPE GROWTH FUND, SCUDDER )  
INTERNATIONAL FUND, SCUDDER )  
INTERNATIONAL EQUITY FUND, SCUDDER )  
INTERNATIONAL SELECT EQUITY FUND, )  
SCUDDER JAPANESE EQUITY FUND, )  
SCUDDER LATIN AMERICA FUND, SCUDDER )  
NEW EUROPE FUND, SCUDDER PACIFIC )  
OPPORTUNITIES FUND, SCUDDER )  
WORLDWIDE 2004 FUND, SCUDDER FIXED )  
INCOME FUND, SCUDDER HIGH INCOME )  
PLUS FUND, SCUDDER HIGH INCOME FUND, )  
SCUDDER HIGH INCOME OPPORTUNITY )  
FUND, SCUDDER INCOME FUND, SCUDDER )  
PRESERVATIONPLUS FUND, SCUDDER )  
PRESERVATIONPLUS INCOME FUND, )  
SCUDDER SHORT TERM BOND FUND, )  
SCUDDER SHORT DURATION FUND, )  
SCUDDER STRATEGIC INCOME FUND, )  
SCUDDER US GOVERNMENT SECURITIES )  
FUND, SCUDDER CALIFORNIA TAX-FREE )  
INCOME FUND, )  
**[CAPTION CONTINUED ON NEXT PAGE]** )

SCUDDER FLORIDA TAX-FREE INCOME )  
FUND, SCUDDER HIGH YIELD TAX-FREE )  
FUND, SCUDDER INTERMEDIATE TAX/AMT )  
FREE FUND, SCUDDER MANAGED )  
MUNICIPAL BOND FUND, SCUDDER )  
MASSACHUSETTS TAX-FREE FUND, )  
SCUDDER MUNICIPAL BOND FUND, )  
SCUDDER NEW YORK TAX-FREE INCOME )  
FUND, SCUDDER SHORT TERM MUNICIPAL )  
BOND FUND, SCUDDER EAFE (R) EQUITY )  
INDEX FUND, SCUDDER EQUITY 500 INDEX )  
FUND, SCUDDER S&P 500 STOCK FUND, )  
SCUDDER SELECT 500 FUND, SCUDDER US )  
BOND INDEX FUND, SCUDDER CASH )  
RESERVES FUND, SCUDDER ADVISOR )  
FUNDS, SCUDDER ADVISOR, FUNDS II, )  
SCUDDER ADVISOR FUNDS III, SCUDDER )  
AGGRESSIVE GROWTH FUND, SCUDDER )  
BLUE CHIP FUND, SCUDDER CALIFORNIA )  
TAX FREE TRUST, SCUDDER CASH )  
INVESTMENT TRUST, SCUDDER CASH )  
MANAGEMENT PORTFOLIO, SCUDDER )  
SECURITIES TRUST, SCUDDER DYNAMIC )  
GROWTH FUND, SCUDDER EQUITY 500 )  
INDEX PORTFOLIO, VALUE EQUITY TRUST, )  
SCUDDER EQUITY TRUST/IL, SCUDDER )  
FLAG INVESTORS COMMUNICATIONS FUND )  
INC., SCUDDER FLAG EQUITY PARTNERS )  
FUND INC., SCUDDER FLAG INVESTORS )  
VALUE BUILDER FUND, INC., SCUDDER )  
FLOATING RATE FUND /MA/, SCUDDER )  
FOCUS VALUE PLUS GROWTH FUND, )  
SCUDDER MONEY MARKET TRUST, )  
SCUDDER FUNDS TRUST, )  
GLOBAL/INTERNATIONAL FUND INC., )  
SCUDDER GNMA FUND, SCUDDER GROWTH )  
TRUST, SCUDDER HIGH INCOME SERIES, )  
SCUDDER INCOME TRUST, SCUDDER )  
INSTITUTIONAL FUNDS, SCUDDER )  
INTERNATIONAL FUNDS INC., )  
SCUDDER INTERNATIONAL RESEARCH )  
FUND INC., SCUDDER INVESTMENT )  
PORTFOLIOS, INVESTMENT TRUST, )  
SCUDDER INVESTMENTS VIT FUNDS, )  
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SCUDDER INVESTORS FUNDS INC., )  
 SCUDDER INVESTORS PORTFOLIOS TRUST, )  
 SCUDDER INVESTORS TRUST, SCUDDER MG )  
 INVESTMENTS TRUST, SCUDDER MONEY )  
 FUNDS, SCUDDER MUNICIPAL TRUST, )  
 SCUDDER MUTUAL FUNDS INC., SCUDDER )  
 PATHWAY SERIES /NEW/, SCUDDER )  
 PORTFOLIO TRUST, SCUDDER PORTFOLIOS, )  
 SCUDDER RREEF SECURITIES TRUST, )  
 SCUDDER STATE TAX FREE TRUST, )  
 SCUDDER STATE TAX-FREE INCOME )  
 SERIES, SCUDDER STRATEGIC INCOME )  
 FUND, SCUDDER TARGET FUND, SCUDDER )  
 TAX FREE MONEY FUND, SCUDDER TAX )  
 FREE TRUST, SCUDDER TECHNOLOGY )  
 FUND, SCUDDER TOTAL RETURN FUND, )  
 SCUDDER TREASURY MONEY PORTFOLIO, )  
 SCUDDER U.S. GOVERNMENT SECURITIES )  
 FUND, SCUDDER U.S. TREASURY MONEY )  
 FUND, SCUDDER VALUE SERIES INC., )  
 SCUDDER YIELDWISE FUNDS and DOES 1 - )  
 100, )  
 Defendants. )  
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Plaintiff, John Driscoll (“Plaintiff”), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the defendants’ public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding the Scudder Family of Mutual Funds and advisories about the funds, and information readily obtainable on the Internet. Plaintiff believes that

substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a class action on behalf of a class (the “Class”) of all purchasers, redeemers and holders of the Scudder family of funds (as defined below), who purchased, held, or otherwise acquired shares between January 22, 1999 and January 12, 2004 (the “Class Period”), seeking to pursue remedies under the Securities Act of 1933 (the “Securities Act”), the Securities Exchange Act of 1934 (the “Exchange Act”), the Investment Company Act of 1940 (the “Investment Company Act”), and for common law breach of fiduciary duties.

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b), and 20(a) of the Exchange Act, [15 U.S.C. §§ 78j(b) and 78t(a)], and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5]. Additionally, this action arises under Sections 11 and 15 of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77k, 77l(a)(2), and 77(o)] and pursuant to §§ 34 and 36 of the Investment Company Act [15 U.S.C. §§ 80a-33 and 35].

3. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Exchange Act of 1934 [15 U.S.C. § 78aa]; Section 22 of the Securities Act [15 U.S.C. § 77v]; and §§ 34 and 36 of the Investment Company Act [15 U.S.C. § 80a-35].

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), as many of the acts and practices complained of herein occurred in substantial part in this District.

5. 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.

### **PARTIES**

6. Plaintiff John Driscoll bought and held shares of Scudder-Dreman High Return Equity Fund during the Class Period and has suffered damages as a result of the wrongful acts of defendants as alleged herein.

7. Defendant Deutsche Bank AG (“Deutsche Bank”) is a Germany-based financial services firm providing asset management, mutual fund, retail, private and commercial banking, investment banking and insurance services. Deutsche Bank is the ultimate parent of the defendants bearing the Deutsche and Scudder name herein, and conducts its asset management activities in the United States under the marketing name “Deutsche Asset Management.” Deutsche Asset Management is a global asset management organization and is also the marketing name for the asset management activities of Deutsche Investment Management Americas Inc., Deutsche Asset Management, Inc., Deutsche Asset Management Investment Services Ltd., Deutsche Bank Trust Company Americas, Scudder Investments, and Scudder Trust Company. Deutsche Bank maintains its United States corporate headquarters at 60 Wall Street, New York, New York 10005.

8. Defendant Deutsche Asset Management, Inc. was registered as an investment adviser under the Investment Advisers Act and acted as investment advisor, along with Deutsche Investment Management Americas, Inc. (“Deutsche Investment Management”), to the Scudder Funds during this period. Deutsche Asset Management, Inc., along with Deutsche Investment Management, had ultimate responsibility for overseeing the day-to-day management of the Scudder Funds. Deutsche Asset Management, Inc. is located at 280 Park Avenue, New York, NY 10017.

9. Defendant Deutsche Investment Management was registered as an investment adviser under the Investment Advisers Act and acted as investment advisor, along with Deutsche Asset Management, Inc., to the Scudder Funds during this period. Deutsche Investment Management, along with Deutsche Asset Management, Inc., had ultimate responsibility for overseeing the day-to-day management of the Scudder Funds. Deutsche Investment Management is a wholly-owned subsidiary of Deutsche Bank, and is located at 345 Park Avenue, New York, NY 10154.

10. Defendants Deutsche Asset Management, Inc. and Deutsche Investment Management are collectively referred to herein as the “DB Advisors.”

11. Defendant Scudder Investments is the United States retail mutual fund operation of Deutsche Asset Management. Through Deutsche Asset Management, Scudder Investments offers a research organization that includes portfolio managers and analysts, and management of over 95 mutual funds, including the Scudder Funds. Scudder Investments maintains its headquarters at 222 South Riverside Plaza, Chicago, Illinois 60606.

12. Defendants Scudder Advisor Funds, Scudder Advisor, Funds II, Scudder Advisor Funds Iii, Scudder Aggressive Growth Fund, Scudder Blue Chip Fund, Scudder California Tax Free Trust, Scudder Cash Investment Trust, Scudder Cash Management Portfolio, Scudder Securities Trust, Scudder Dynamic Growth Fund, Scudder Equity 500 Index Portfolio, Value Equity Trust, Scudder Equity Trust/IL, Scudder Flag Investors Communications Fund Inc., Scudder Flag Equity Partners Fund Inc., Scudder Flag Investors Value Builder Fund, Inc., Scudder Floating Rate Fund /Ma/, Scudder Focus Value plus Growth Fund, Scudder Money Market Trust, Scudder Funds Trust, Global/international Fund Inc., Scudder GNMA Fund, Scudder Growth Trust, Scudder High Income Series, Scudder Income Trust, Scudder Institutional Funds, Scudder International Funds Inc.,

Scudder International Research Fund Inc., Scudder Investment Portfolios, Investment Trust, Scudder Investments Vit Funds, Scudder Investors Funds Inc., Scudder Investors Portfolios Trust, Scudder Investors Trust, Scudder MG Investments Trust, Scudder Money Funds, Scudder Municipal Trust, Scudder Mutual Funds Inc., Scudder Pathway Series /New/, Scudder Portfolio Trust, Scudder Portfolios, Scudder RREEF Securities Trust, Scudder State Tax Free Trust, Scudder State Tax-free Income Series, Scudder Strategic Income Fund, Scudder Target Fund, Scudder Tax Free Money Fund, Scudder Tax Free Trust, Scudder Technology Fund, Scudder Total Return Fund, Scudder Treasury Money Portfolio, Scudder U.S. Government Securities Fund, Scudder U.S. Treasury Money Fund, Scudder Value Series Inc., Scudder Yieldwise Funds (collectively known as the “Fund Registrants”) are the registrants of the Scudder Family of Mutual Funds.

13. Defendants Scudder 21st Century Growth Fund, Scudder Aggressive Growth Fund, Scudder Blue Chip Fund, Scudder Capital Growth Fund, Scudder Dynamic Growth Fund, Scudder Flag Investors Communications Fund, Scudder Global Biotechnology Fund, Scudder Gold & Precious Metals Fund, Scudder Growth Fund, Scudder Health Care Fund, Scudder Large Company Growth Fund, Scudder Micro Cap Fund, Scudder Mid Cap Fund, Scudder Small Cap Fund, Scudder Strategic Growth Fund, Scudder Technology Fund, Scudder Technology Innovation Fund, Scudder Top 50 US Fund, Scudder Contrarian Fund, Scudder-Dreman Financial Services Fund, Scudder-Dreman High Return Equity Fund, Scudder-Dreman Small Cap Value Fund, Scudder Flag Investors Equity Partners Fund, Scudder Growth & Income Fund, Scudder Large Company Value Fund, Scudder-RREEF Real Estate Securities Fund, Scudder Small Company Stock Fund, Scudder Small Company Value Fund, Scudder Tax Advantaged Dividend Fund, Scudder Flag Investors Value Builder Fund, Scudder Focus Value+Growth Fund, Scudder Lifecycle Mid Range Fund,

Scudder Lifecycle Long Range Fund, Scudder Lifecycle Short Range Fund, Scudder Pathway Conservative Portfolio, Scudder Pathway Growth Portfolio, Scudder Pathway Moderate Portfolio, Scudder Retirement Fund Series V, Scudder Retirement Fund Series VI, Scudder Retirement Fund Series VII, Scudder Target 2010 Fund, Scudder Target 2012 Fund, Scudder Target 2013 Fund, Scudder Total Return Fund, Scudder Emerging Markets Growth Fund, Scudder Emerging Markets Income Fund, Scudder European Equity Fund, Scudder Global Fund, Scudder Global Bond Fund, Scudder Global Discovery Fund, Scudder Greater Europe Growth Fund, Scudder International Fund, Scudder International Equity Fund, Scudder International Select Equity Fund, Scudder Japanese Equity Fund, Scudder Latin America Fund, Scudder New Europe Fund, Scudder Pacific Opportunities Fund, Scudder Worldwide 2004 Fund, Scudder Fixed Income Fund, Scudder High Income Plus Fund, Scudder High Income Fund, Scudder High Income Opportunity Fund, Scudder Income Fund, Scudder PreservationPlus Fund, Scudder PreservationPlus Income Fund, Scudder Short Term Bond Fund, Scudder Short Duration Fund, Scudder Strategic Income Fund, Scudder US Government Securities Fund, Scudder California Tax-Free Income Fund, Scudder Florida Tax-Free Income Fund, Scudder High Yield Tax-Free Fund, Scudder Intermediate Tax/AMT Free Fund, Scudder Managed Municipal Bond Fund, Scudder Massachusetts Tax-Free Fund, Scudder Municipal Bond Fund, Scudder New York Tax-Free Income Fund, Scudder Short Term Municipal Bond Fund, Scudder EAFE (R) Equity Index Fund, Scudder Equity 500 Index Fund, Scudder S&P 500 Stock Fund, Scudder Select 500 Fund, Scudder US Bond Index Fund, and Scudder Cash Reserves Fund (collectively referred to as the “Scudder Funds”) are mutual funds that are registered under the Investment Company Act and managed by Scudder.

14. The true names and capacities (whether individual, corporate, associate, or otherwise) of defendants Does 1 through 100, inclusive, and each of them, are unknown to Plaintiff, who sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the defendants fictitiously named herein is legally responsible in some actionable manner for the events described herein, and thereby proximately caused the damage to the Plaintiff and the members of the Class.

### **CLASS ACTION ALLEGATIONS**

15. Plaintiff brings this action as a federal class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class (the “Class”), consisting of all purchasers, redeemers and holders of the Scudder mutual fund shares that are the subject of this lawsuit, who purchased, held, or otherwise acquired shares between January 22, 1999 and January 12, 2004, inclusive, (the “Class Period”) and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, 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.

16. 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 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class.

17. Plaintiff’s claims are typical of the claims of the members of the Class, because plaintiffs and all of the Class members sustained damages arising out of defendants’ wrongful conduct complained of herein.

18. Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel who are experienced and competent in class actions and securities litigation.

19. 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 members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the 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.

20. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that defendants have acted on grounds generally applicable to the entire 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 Defendants breached their fiduciary duties by engaging in fraudulent activity; and
- (c) Whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

### **SUBSTANTIVE ALLEGATIONS**

#### **BACKGROUND**

21. This action concerns a fraudulent scheme and course of action which was intended to and indeed did benefit mutual funds and their advisors at the expense of mutual fund investors.

In connection therewith, defendants violated their fiduciary duties to their customers in return for substantial fees and other income for themselves and their affiliates.

22. The defendants' wrongful conduct involved "timing" of mutual funds. "Timing" is an investment technique involving short-term, "in and out" trading of mutual fund shares. The technique is designed to exploit inefficiencies in the way mutual fund companies price their shares. It is widely acknowledged that timing inures to the detriment of long-term shareholders. Because of this detrimental effect, mutual fund prospectuses typically state that timing is monitored and the funds work to prevent it. Nonetheless, in return for investments that will increase fund managers' fees, fund managers enter into undisclosed agreements to allow timing.

23. In fact, certain mutual fund companies have employees (generally referred to as the "timing police") who are supposed to detect "timers" and put a stop to their short-term trading activity. Nonetheless, defendants arranged to give market timers a "pass" with the timing police, who would look the other way rather than attempt to shut down their short-term trading.

24. The mutual fund prospectuses for the funds at issue created the misleading impression that mutual funds were vigilantly protecting investors against the negative effects of timing. In fact, the opposite was true: defendants sold the right to time their funds to other hedge fund investors. The prospectuses were silent about these arrangements.

25. As a result of the "timing" of mutual funds, the Doe Defendants, other timers, and defendants and their intermediaries profited handsomely. The losers were unsuspecting long-term mutual fund investors. Defendants' profits came dollar-for-dollar out of their pockets.

## TIMING

26. Mutual funds are designed for buy-and-hold investors, and are therefore the favored homes for Americans' retirement and college savings accounts. Nevertheless, quick-turnaround traders routinely try to trade in and out of certain mutual funds in order to exploit inefficiencies in the way they set their Net Asset Values or "NAVs."

27. This strategy works only because some funds use "stale" prices to calculate the value of securities held in the fund's portfolio. These prices are "stale" because they do not necessarily reflect the "fair value" of such securities as of the time the NAV is calculated. A typical example is a U.S. mutual fund that holds Japanese shares. Because of the time zone difference, the Japanese market may close at 2:00 a.m. New York time. If the U.S. mutual fund manager uses the closing prices of the Japanese shares in his or her fund to arrive at an NAV at 4:00 p.m. in New York, he or she is relying on market information that is fourteen hours old. If there have been positive market moves during the New York trading day that will cause the Japanese market to rise when it later opens, the stale Japanese prices will not reflect them, and the fund's NAV will be artificially low. Put another way, the NAV does not reflect the true current market value of the stocks the fund holds. On such a day, a trader who buys the Japanese fund at the "stale" price is virtually assured of a profit that can be realized the next day by selling. Taking advantage of this kind of short-term arbitrage repeatedly in a single mutual fund is called "timing" the fund.

28. Effective timing captures an arbitrage profit. The arbitrage profit from timing comes dollar-for-dollar out of the pockets of the long-term investors: the timer steps in at the last moment and takes part of the buy-and-hold investors' upside when the market goes up, so the next day's NAV is reduced for those who are still in the fund. If the timer sells short on bad days -- as the Doe

Defendants did -- the arbitrage has the effect of making the next day's NAV lower than it would otherwise have been, thus magnifying the losses that investors are experiencing in a declining market.

29. Besides the wealth transfer of arbitrage (called "dilution"), timers also harm their target funds in a number of other ways. They impose their transaction costs on the long-term investors. Indeed, trades necessitated by timer redemptions can also lead to realization of taxable capital gains at an undesirable time, or may result in managers having to sell stock into a falling market. Accordingly, fund managers often seek to minimize the disruptive impact of timers by keeping cash on hand to pay out the timers' profits without having to sell stock. This "strategy" does not eliminate the transfer of wealth out of the mutual fund caused by timing; it only reduces the administrative cost of those transfers. However, at the same time it can also reduce the overall performance of the fund by requiring the fund manager to keep a certain amount of the funds' assets in cash at all times, thus depriving the investors of the advantages of being fully invested in a rising market. Some fund managers even enter into special investments as an attempt to "hedge" against timing activity (instead of just refusing to allow it), thus deviating altogether from the ostensible investment strategy of their funds, and incurring further transaction costs.

30. Mutual fund managers are aware of the damaging effect that timers have on their funds. While it is virtually impossible for fund managers to identify every timing trade, large movements in and out of funds -- like those made by the Doe Defendants-- are easy for managers to spot. And mutual fund managers have tools to fight back against timers.

31. Fund managers typically have the power simply to reject timers' purchases. As fiduciaries for their investors, mutual fund managers are obliged to do their best to use these weapons to protect their customers from the dilution that timing causes.

32. The incentive to the defendant mutual funds to engage in such wrongdoing is as follows. Typically a single management company sets up a number of mutual funds to form a family. While each mutual fund is in fact its own company, as a practical matter the management company runs it. The portfolio managers who make the investment decisions for the funds and the executives to whom they report are all typically employees of the management company, not the mutual funds themselves. Still, the management company owes fiduciary duties to each fund and each investor.

33. The management company makes its profit from fees it charges the funds for financial advice and other services. These fees are typically a percentage of the assets in the fund, so the more assets in the family of funds, the more money the manager makes. The timer understands this perfectly, and frequently offers the manager more assets in exchange for the right to time. Fund managers have succumbed to temptation and allowed investors in the target funds to be hurt in exchange for additional money in their own pockets in the form of higher management fees.

34. Thus, by keeping money -- often many million dollars -- in the same family of mutual funds (while moving the money from fund to fund), the Doe Defendants assured the manager that he or she would collect management and other fees on the amount whether it was in the target fund, the resting fund, or moving in between. In addition, sometimes the manager would waive any applicable early redemption fees. By doing so, the manager would directly deprive the fund of money that would have partially reimbursed the fund for the impact of timing.

35. As an additional inducement for allowing the timing, fund managers often received “sticky assets.” These were typically long-term investments made not in the mutual fund in which the timing activity was permitted, but in one of the fund manager’s financial vehicles (e.g., a bond fund or a hedge fund run by the manager) that assured a steady flow of fees to the manager.

36. These arrangements were never disclosed to mutual fund investors. On the contrary, many of the relevant mutual fund prospectuses contained materially misleading statements assuring investors that the fund managers discouraged and worked to prevent mutual fund timing.

### **THE SCHEME WITHIN THE SCUDDER FUNDS**

37. On September 3, 2003, the New York State Attorney General Elliot Spitzer (the “Attorney General”) attacked the mutual fund industry by filing a complaint charging fraud against Edward J. Stern (“Stern”) and Canary Capital Partners (“Canary”) in connection with the unlawful mutual practices of late trading and timing. More specifically, the Attorney General alleged the following: “Canary developed a complex strategy that allowed it to in effect sell mutual funds short and profit on declining NAVs.” Additionally, the Attorney General alleged that Canary set up arrangements with Bank of America, Bank One, Janus, and Strong to late trade and time those companies respective mutual funds. The Attorney General further alleged:

Bank of America . . . (i) set Canary up with a state-of-the art electronic late trading platform, allowing it to trade late in the hundreds of mutual funds that the bank offers to its customers, (ii) gave Canary permission to time the Nations Funds Family (iii) provided Canary with approximately \$300 million of credit to finance this late trading and timing, and (iv) sold Canary the derivative short positions it needed to time the funds as the market dropped. None of these facts were disclosed in the Nations Funds prospectuses. In the process, Canary became one of Bank of America’s largest customers. The relationship was mutually beneficial in that Canary made tens of millions through late trading and timing, while the various parts of the Bank of America that serviced Canary made millions themselves.

38. In connection with an examination of active trading of mutual fund shares by the United States Securities and Exchange Commission ("SEC") and the Attorney General, defendants received inquiries and subpoenas for documents from those agencies.

39. On January 12, 2004, Deutsche Asset Management announced that it had identified market timing arrangements with an investment advisory fund in Scudder Funds. More specifically, Deutsche Asset Management stated:

**As part of a review that is not yet complete, Scudder has identified an arrangement with an outside investment advisory firm that traded frequently in a small number of funds. The arrangement with the outside investment advisory firm, about which our review is continuing, began before the new Scudder management team was in place in 2002. In early 2003, management initiated steps that led to the subsequent termination of this arrangement. We have provided the preliminary results of this review to the appropriate regulators and the fund boards. (Emphasis added.)**

40. On the same day, the defendants filed with the SEC prospectus supplements for various funds and disclosed that the funds were subject to the market timing referenced in ¶ 39. More specifically, defendants stated:

**Regulatory Update. As are many other mutual fund complexes, Scudder is conducting an ongoing review of market timing in the Scudder Funds – including trading by clients, employees and ex-employees. Market timing refers generally to the frequent trading in and out of mutual fund shares in order to take advantage of pricing inefficiencies. Scudder has identified an investment advisory firm that had an arrangement with the organization that resulted in frequent trading, including trading in your fund, inconsistent with registration statement policies. We are currently investigating the extent of such trading and whether it caused dilution. The arrangement with the outside investment advisory firm began before the new Scudder management team was in place in 2002. In early 2003, management initiated steps that led to the subsequent termination of the arrangement. Scudder will work with your**

**fund's board to establish an appropriate measure of dilution losses, if any, related to the trading, and reimbursement for those losses. The inquiry into market timing in the Scudder Funds is ongoing. Scudder has provided information about the preliminary results of its review to the appropriate regulators and to the fund boards. Scudder continues to cooperate with each regulator that has sought information.** (Emphasis added.)

41. The actions of the defendants have harmed plaintiff and members of the class. In essence, the defendants' actions of allowing market timing to occur have caused plaintiff and members of the class's shares to be diluted in value.

42. As such, defendants have breached their fiduciary duties to plaintiff and the class by lying to investors about their effort to curb market timers by entering into undisclosed agreements intended to boost their fees and permitting the Doe Defendants and others to time the mutual funds. As a result, defendants have violated the Securities Act, the Exchange Act, the Investment Company Act, and common law fiduciary duties.

**THE SCUDDER FUNDS' PROSPECTUSES WERE  
MATERIALLY FALSE AND MISLEADING**

43. The Prospectuses falsely stated that the Scudder Funds safeguarded shareholders from the harmful effects of timing by forcing the timer to bear the costs of such trading. More specifically, the Scudder Prospectuses stated that frequent trading **is harmful to shareholders and is discouraged by the imposition of redemption fees: The Scudder Funds may charge a 2.00% short-term redemption fee of the net asset value of Class A shares (either by selling or exchanging into another fund) within 60 days (approximately two months) of purchase. This fee will compensate the fund for expenses directly related to the redemption of Class A shares, discourage short-term investment in Class A shares and facilitate portfolio management.** (Emphasis added.)

44. Moreover, the Prospectuses represented that the Scudder Funds protect shareholders from the harmful effects of frequent trading by limiting the number of share exchanges a customer can engage in is limited to six per year:

**Exchanges are a shareholder privilege, not a right: we may reject any exchange order or require a shareholder to own shares of a fund for 15 days before we process the purchase order for the other fund, particularly when there appears to be a pattern of "market timing" or other frequent purchases and sales. We may also reject or limit purchase orders, for these or other reasons.**  
(Emphasis added.)

45. Given that the defendants allowed market timing of its funds to occur, its prospectuses were false and misleading because it failed to disclose the following: (a) that defendants had entered into unlawful agreements allowing the Doe Defendants to time its trading of the Scudder Funds shares; (b) that, pursuant to those agreements, the Doe Defendants regularly timed the Scudder Funds; (c) that, contrary to the representations in the Prospectuses, defendants only enforced their policy against frequent traders selectively; (d) that the defendants regularly allowed the Doe Defendants to engage in trades that were disruptive to the efficient management of the Scudder Funds and/or increased the Scudder Funds' costs; thereby reducing the Scudder Funds actual performance; and (e) the Prospectuses failed to disclose that, pursuant to the unlawful agreements, the Doe Defendants benefitted financially at the expense of Scudder Funds' investors including plaintiff and other members of the Class.

### **UNDISCLOSED ADVERSE INFORMATION**

46. The market for the Scudder Funds was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, the Scudder Funds traded at distorted prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired the Scudder Funds relying upon the integrity of the NAV for the Scudder Funds and market information relating to the Scudder Funds, and have been damaged thereby.

47. During the Class Period, defendants materially misled the investing public, thereby distorting the NAV of the Scudder Funds, by allowing the Doe Defendants to time the Scudder Funds.

48. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class.

### **ADDITIONAL SCIENTER ALLEGATIONS**

49. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Scudder Funds were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding the Scudder Funds, their control over, and/or receipt and/or modification of the Scudder Funds allegedly materially misleading misstatements and/or their

associations with the Scudder Funds which made them privy to confidential proprietary information concerning the Scudder Funds, participated in the fraudulent scheme alleged herein.

50. Additionally, the defendants were highly motivated to allow and facilitate the wrongful conduct alleged herein and participated in and/or had actual knowledge of the fraudulent conduct alleged herein. In exchange for allowing the unlawful practices alleged herein, the defendants, among other things, received increased management fees from “sticky assets” as well as an increased number of transactions in and out of the funds, and were able to profit from this illegal activity. In short, defendants siphoned money out of the mutual funds and their own pockets.

51. The defendants were motivated to participate in the wrongful scheme by the enormous profits they derived thereby. They systematically pursued the scheme with full knowledge of its consequences to other investors.

**Applicability Of Presumption Of Reliance:  
Fraud-On-The-Market Doctrine**

52. At all relevant times, the market for the Scudder Funds was an efficient market for the following reasons, among others:

(a) The Scudder Funds met the requirements for listing, and was listed and actively traded on a highly efficient and automated market;

(b) As a regulated issuer, the Scudder Funds filed periodic public reports with the SEC;

(c) The Scudder Funds regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) The Scudder Funds were followed by several mutual fund analysts who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

53. As a result of the foregoing, the market for the Scudder Funds promptly digested current information regarding the Scudder Funds from all publicly available sources and reflected such information in the Scudder Funds' NAV. Under these circumstances, all purchasers of the Scudder Funds during the Class Period suffered similar injury through their purchase of the Scudder Funds' NAV at distorted prices and a presumption of reliance applies.

#### **NO SAFE HARBOR**

54. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of the defendants who knew that those statements were false when made.

**COUNT ONE**  
**AGAINST THE FUND REGISTRANTS FOR VIOLATIONS**  
**OF SECTION 11 OF THE SECURITIES ACT**

55. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein, except that, for purposes of this claim, plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct and otherwise incorporates the allegations contained above.

56. This claim is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of the plaintiff and other members of the Class against the Fund Registrants.

57. The Fund Registrants are the registrants for the Scudder Funds sold to plaintiff and the other members of the Class and are statutorily liable under Section 11. The Fund Registrants issued, caused to be issued and participated in the issuance of the materially false and misleading written statements and/or omissions of material facts that were contained in the Prospectuses.

58. Plaintiff was provided with the Scudder-Dreman High Return Equity Fund Prospectus and, similarly, prior to purchasing units of each of the other Scudder Funds, all Class members likewise received the appropriate prospectus. Plaintiff and other Class members purchased shares of the Scudder Funds traceable to the relevant false and misleading Prospectuses and were damaged thereby.

59. As set forth herein, the statements contained in the Prospectuses, when they became effective, were materially false and misleading for a number of reasons, including that they stated that it was the practice of the Scudder Funds to monitor and take steps to prevent timed trading because of its adverse effect on fund investors, and that the trading price was determined as of 4 p.m. each trading day with respect to all investors when, in fact, select investors (the Does named as

defendants herein) were allowed to engage in timed trading. The Prospectuses failed to disclose and misrepresented, *inter alia*, the following material and adverse facts: (a) that defendants had entered into unlawful agreements allowing the Doe Defendants to time its trading of the Scudder Funds shares; (b) that, pursuant to those agreements, the Doe Defendants regularly timed the Scudder Funds; (c) that, contrary to the representations in the Prospectuses, the Scudder Funds only enforced their policy against frequent traders selectively; (d) that the defendants regularly allowed the Doe Defendants to engage in trades that were disruptive to the efficient management of the Scudder Funds and/or increased the Scudder Funds' costs; thereby reducing the Scudder Funds actual performance; and (e) the Prospectuses failed to disclose that, pursuant to the unlawful agreements, the Doe Defendants benefitted financially at the expense of Scudder Funds' investors including plaintiff and other members of the Class.

60. At the time they purchased the Scudder Funds' shares traceable to the defective Prospectuses, plaintiff and Class members were without knowledge of the facts concerning the false and misleading statements or omission alleged herein and could not reasonably have possessed such knowledge. This claim was brought within the applicable statute of limitations.

**COUNT TWO**  
**AGAINST DEUTSCHE BANK, SCUDDER INVESTMENTS AND DB ADVISORS, AS**  
**CONTROL PERSONS FOR VIOLATIONS OF SECTION 15 OF THE SECURITIES**  
**ACT**

61. Plaintiff repeats and realleges each and every allegation contained above, except that for purposes of this claim, plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional reckless misconduct and otherwise incorporates the allegations contained above.

62. This Claim is brought pursuant to Section 15 of the Securities Act against Deutsche Bank, Scudder Investments, and DB Advisors as a control persons of the Fund Registrants. It is appropriate to treat these defendants as a group for pleading purposes and to presume that the false, misleading, and incomplete information conveyed in the Scudder Funds' public filings, press releases and other publications are the actions of Deutsche Bank, Scudder Investments, and DB Advisors

63. The Fund Registrants are liable under Section 11 of the Securities Act as set forth herein.

64. Deutsche Bank, Scudder Investments, and DB Advisors are a "control person" of the Fund Registrants within the meaning of Section 15 of the Securities Act, by virtue of its position of operational control and/or ownership. At the time plaintiff and other members of the Class purchased shares of the Scudder Funds, by virtue of their positions of control and authority over the Fund Registrants directly and indirectly, had the power and authority, and exercised the same, to cause the Fund Registrants to engage in the wrongful conduct complained of herein. The Fund Registrants issued, caused to be issued, and participated in the issuance of materially false and misleading statements in the Prospectuses.

65. Pursuant to Section 15 of the Securities Act, by reason of the foregoing, Deutsche Bank, Scudder Investments, and DB Advisors are liable to plaintiff and the other members of the Class for the Fund Registrants' primary violations of Section 11 of the Securities Act.

66. By virtue of the foregoing, plaintiff and the other members of the Class are entitled to damages against Deutsche Bank, Scudder Investments, and DB Advisors.

**COUNT THREE**  
**VIOLATION OF SECTION 10(b) OF**  
**THE EXCHANGE ACT AGAINST AND RULE 10b-5**  
**PROMULGATED THEREUNDER AGAINST ALL DEFENDANTS**

67. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein except for Claims brought pursuant to the Securities Act.

68. During the Class Period, each of the defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did deceive the investing public, including plaintiff and the other Class members, as alleged herein and cause plaintiff and other members of the Class to purchase Scudder Funds shares or interests at distorted prices and otherwise suffered damages. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

69. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Scudder Funds, including plaintiff and other members of the Class, in an effort to enrich themselves through undisclosed manipulative trading tactics by which they wrongfully appropriated Scudder Funds' assets and otherwise distorted the pricing of their securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued as primary participants in the wrongful and illegal conduct and scheme charged herein.

70. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the Scudder Funds' operations, as specified herein.

71. These defendants employed devices, schemes and artifices to defraud and a course of conduct and scheme as alleged herein to unlawfully manipulate and profit from secretly timed trading and thereby engaged in transactions, practices and a course of business which operated as a fraud and deceit upon plaintiff and members of the Class.

72. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing the truth.

73. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of the Scudder Funds were distorted during the Class Period such that they did not reflect the risks and costs of the continuing course of conduct alleged herein. In ignorance of these facts, the market prices of the shares were distorted, and relying directly or indirectly on the false and misleading statements made by the defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired the shares or interests in the Scudder Funds during the Class Period at distorted prices and were damaged thereby.

74. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the truth concerning the Scudder Funds'

operations, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their shares or, if they had acquired such shares or other interests during the Class Period, they would not have done so at the distorted prices which they paid.

75. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

76. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Scudder Funds shares during the Class Period.

**COUNT FOUR**  
**AGAINST DEUTSCHE BANK, SCUDDER INVESTMENTS, DB ADVISORS, AND THE**  
**FUND REGISTRANTS AS A CONTROL PERSON FOR VIOLATIONS OF SECTION**  
**20(a) OF THE EXCHANGE ACT**

77. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein except for Claims brought pursuant to the Securities Act.

78. This Claim is brought pursuant to Section 20(a) of the Exchange Act against Deutsche Bank as a control person of Scudder Investments, DB Advisors, Fund Registrants, and the Scudder Funds; Scudder Investments as control person of DB Advisors, Fund Registrants, and the Scudder Funds; DB Advisors as control person of the Fund Registrants and the Scudder Funds; and the Fund Registrants as control person of the Scudder Funds.

79. It is appropriate to treat these defendants as a group for pleading purposes and to presume that the materially false, misleading, and incomplete information conveyed in the Scudder Funds' public filings, press releases and other publications are the collective actions of Deutsche Banks, Scudder Investments, DB Advisors, and the Fund Registrants.

80. Deutsche Banks, Scudder Investments, DB Advisors, and the Fund Registrants are controlling persons of the Scudder Funds within the meaning of Section 20(a) of the Exchange Act for the reasons alleged herein. By virtue of their operational and management control of the Scudder Funds' respective businesses and systematic involvement in the fraudulent scheme alleged herein, Deutsche Banks, Scudder Investments, DB Advisors, and the Fund Registrants each had the power to influence and control and did influence and control, directly or indirectly, the decision-making and actions of the Scudder Funds, including the content and dissemination of the various statements which plaintiff contends are false and misleading. Deutsche Banks, Scudder Investments, DB Advisors, and the Fund Registrants had the ability to prevent the issuance of the statements alleged to be false and misleading or cause such statements to be corrected.

81. In particular, Deutsche Banks, Scudder Investments, DB Advisors, and the Fund Registrants had direct and supervisory involvement in the operations of the Scudder Funds and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

82. As set forth above, Deutsche Banks, Scudder Investments, DB Advisors, and the Fund Registrants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this complaint. By virtue of their positions as controlling persons, Deutsche Banks, Scudder Investments, DB Advisors, and the Fund Registrants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of Scudder Funds securities during the Class Period.

**COUNT FIVE**  
**VIOLATION OF SECTION 34(b) OF THE INVESTMENT COMPANY ACT OF 1940**  
**AGAINST ALL DEFENDANTS**

83. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

84. This claim for relief is brought pursuant to Section 34(b) of the Investment Company Act of 1940 against defendants.

85. Under Section 34(b) of the Investment Company Act of 1940, it shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this title or the keeping of which is required pursuant to section 31(a) [15 USCS § 80a-30(a)]. It shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

86. Here, defendants have made untrue statements of a material fact in its registration statement, application, report, account, record, and/or other document filed or transmitted pursuant to this title or the keeping of which is required pursuant to section 31(a) [15 USCS § 80a-30(a)].

87. As such, Plaintiffs and other class members have been injured as a result of defendants' untrue statements and have violated Section 34(b) of the Investment Act of 1940.

**COUNT SIX**  
**VIOLATION OF SECTION 36(a) OF THE INVESTMENT COMPANY ACT OF 1940**  
**AGAINST ALL DEFENDANTS**

88. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

89. This claim for relief is brought pursuant to Section 36(a) of the Investment Company Act of 1940 against defendants. Under Section 36(a), an implied private right of action exists. See McLachlan v. Simon, 31 F. Supp.2d 731 (N.D. Cal. 1998).

90. Under Section 36(a) of the Investment Company Act, defendants shall be deemed to owe a fiduciary duty to plaintiff and other class members with respect to the receipt of fees and compensation that defendants receive for services of a material nature.

91. Here, defendants have devised and implemented a scheme to obtain substantial fees and other income for themselves and their affiliates by allowing the Doe Defendants to engage in timing of the Scudder Funds throughout the Class Period and in violation of their fiduciary duties to their customers, i.e., plaintiff and class members.

92. Defendants engaged in such scheme to only benefit itself and their affiliates by allowing the Doe Defendants to engage in timing of the Scudder Funds named herein in return for substantial fees and other income.

93. Defendants have breached the fiduciary duties it owes to plaintiff and other class members by, among other things, devising this plan and scheme solely for its own benefit and by failing to reveal to them material facts which would allow them to make informed decisions about the true value and performance of the Fund.

94. Plaintiffs and other class members have been injured as a result of defendants' breach of fiduciary duty and violation of Section 36(a) of the Investment Act of 1940.

**COUNT SEVEN**  
**AGAINST ALL DEFENDANTS**  
**FOR BREACH OF FIDUCIARY DUTIES**

95. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

96. Plaintiff and the Class placed their trust and confidence in defendants to manage the assets they invested in the Scudder Funds.

97. Plaintiff and the Class reasonably expected that the defendants would honor its obligations to them by, among other things, observing the securities laws and honoring the representations made in the Scudder Funds' prospectuses.

98. The defendants aided and abetted by the other Defendants, who are co-conspirators, breached its fiduciary duties to the Plaintiff and the Class by violating the securities laws and breaching express and implied representations contained in the Scudder Funds' prospectuses for the benefit of the Scudder Funds and each of the other defendants.

99. Each of the Defendants was an active participant in the breach of fiduciary duty and participated in the breach for the purpose of advancing their own interests.

100. Plaintiff and the Class have been specially injured by defendants' wrongdoing. For example, those class members who redeemed their shares during the Class Period received less than what they would have been entitled to had certain individuals not engaged in illegal market timing. Additionally, certain members of the Class (i.e., those who purchased their mutual fund shares legally), were treated differently than those purchasers that were market timers.

101. The defendants aided and abetted by the other defendants, who are also co-conspirators, acted in bad-faith, for personal gain and in furtherance of his, her or its own financial advantage in connection with the wrongful conduct complained of in this complaint.

102. As a direct and proximate result of the defendants' foregoing breaches of fiduciary duties, plaintiff and the members of the Class have suffered damages.

103. The defendants, as aiders, abettors, and co-conspirators, are each jointly and severally liable for an amount to be determined at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff on behalf of himself and of the Class pray for relief and judgment, as follows:

- (a) Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;
- (b) Awarding plaintiffs and the members of the Class damages in an amount which may be proven at trial, together with interest thereon;
- (c) Awarding plaintiffs and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- (d) Awarding such other and further relief as this Court may deem just and proper including any extraordinary equitable and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict the defendants' assets to assure plaintiffs have an effective remedy; and
- (e) Such other relief as this Court deems appropriate.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Date: January 26, 2004

Respectfully submitted,

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