

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: INTER-AMERICAN TRUST, ELVIRA 1950 TRUST, :
: CARLOS GAUCH, and BONAIRE LIMITED, on behalf :
: of themselves and all others similarly situated, :
: :
: Plaintiffs, :
: :
: v. :
: :
: FAIRFIELD GREENWICH GROUP, FAIRFIELD :
: GREENWICH (BERMUDA) LTD., FAIRFIELD :
: GREENWICH LIMITED, FAIRFIELD GREENWICH :
: ADVISORS LLC, FAIRFIELD RISK SERVICES LTD. :
: CITCO BANK NEDERLAND N.V. DUBLIN BRANCH, :
: CITCO FUND SERVICES (EUROPE) B.V., WALTER :
: M. NOEL, JR., JEFFREY H. TUCKER, and ANDRES :
: PIEDRAHITA, :
: :
: Defendants. :
: :
: -----X

Civil Action No. 09 CIV 00301

CLASS ACTION

JURY TRIAL DEMANDED

FILED
U.S. DISTRICT COURT
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S.D. OF N.Y.

COMPLAINT

Plaintiffs allege, upon personal knowledge as to themselves and upon information and belief as to all other matters, as follows:

NATURE OF ACTION

1. This is a class action on behalf of investors in Fairfield Sentry Limited ("Fairfield Sentry" or the "Fund") seeking to recoup losses resulting from the Fund's estimated \$7 billion in assets being almost entirely invested in a Ponzi scheme conducted by Bernard Madoff and his firm Bernard L. Madoff Investment Securities ("BMIS"). Plaintiffs' losses resulted from the breach of fiduciary duty and gross negligence of the Fund Investment Manager, Placement Agent, Custodian, and others, as well as the negligent representations made by the Fund Placement Agent and its principals and related entities. In addition, the Fund Administrator,

Investment Manager and Placement Agent, and their principals and related entities, all unjustly enriched themselves by taking fees predicated on the phony profits reported by the Madoff Ponzi scheme. Plaintiffs are entitled to a constructive trust over such fees, and to preliminary and permanent injunctive relief to secure such recovery.

PARTIES

Plaintiffs

2. Plaintiff **Inter-American Trust** is a Cayman Islands settlor-directed trust that invested assets in Fairfield Sentry. Due to the activities alleged herein, Plaintiff has lost all, or substantially all, of its investment in the Fund, and has paid substantial investment advisory fees for illusory services.

3. Plaintiff **Elvira 1950 Trust** is a Cayman Islands settlor-directed trust that invested assets in Fairfield Sentry. Due to the activities alleged herein, Plaintiff has lost all, or substantially all, its investment in the Fund, and has paid substantial investment advisory fees for illusory services.

4. Plaintiff **Carlos Gauch** is an individual residing in Mexico who invested assets in Fairfield Sentry. Due to the activities alleged herein, Plaintiff has lost all, or substantially all, his investment in the Fund, and has paid substantial investment advisory fees for illusory services.

5. Plaintiff **Bonaire Limited** is a Cayman Islands private investment holdings company that invested assets in Fairfield Sentry. Due to the activities alleged herein, Plaintiff has lost all, or substantially all, its investment in the Fund, and has paid substantial investment advisory fees for illusory services.

Defendants

6. Defendant **Fairfield Greenwich Group (“FGG”)** is the marketing name for Defendant Fairfield Greenwich Limited (“FGL”) and its subsidiaries worldwide, including Defendants Fairfield Greenwich (Bermuda) Ltd. (“FGBL”) and Fairfield Greenwich Advisors LLC (“FGA”). Upon information and belief, FGG operates as a *de facto* partnership of the other Fairfield entities and at least three principal partners, Walter Noel, Jeffrey Tucker, and Andres Piedrahita. Founded in 1983, FGG holds itself out as an alternative investment specialist. As of 2006, FGG claimed to have more than \$9.0 billion employed in its various alternative asset management funds. FGG’s principal office is in New York.

7. Defendant **Fairfield Greenwich Limited (“FGL”)**, is incorporated under the laws of the Cayman Islands. FGL is the Placement Agent for Fairfield Sentry, and oversees the marketing of Fairfield Sentry’s shares. FGL previously served as the Investment Manager of Fairfield Sentry. FGL wholly owns Defendant FGBL, the current Investment Manager. Upon information and belief, FGL transacted business related to the Fund in New York, New York and maintains its principal office in New York, New York.

8. Defendant **Fairfield Greenwich (Bermuda) Ltd. (“FGBL”)** is a corporation organized under the laws of Bermuda on June 13, 2003. FGBL is the Investment Manager for Fairfield Sentry. FGBL is a wholly-owned subsidiary of FGL, and also uses the marketing name Fairfield Greenwich Group. As Investment Manager for Fairfield Sentry, FGBL is responsible for the management of the Fund’s investment activities, the selection of the Fund’s investments, monitoring its investments, and maintaining the relationship between the Fund and its custodian, administrator, registrar and transfer agent. FGBL is registered with the SEC as an investment advisor under the Investment Advisers Act of 1940, as amended, effective April 20, 2006. Upon

information and belief, FGBL transacted business related to the Fund as FGG in New York, New York.

9. Defendant **Fairfield Greenwich Advisors LLC (“FGA”)** is a Delaware limited liability company, incorporated on December 12, 2001. FGA is an affiliate of FGG and FGBL and maintains its principal offices at 55 East 52nd Street, New York, New York. FGA provides Fairfield Sentry with administrative services and back-office support, and assists FGBL with its fund manager selection and due diligence process.

10. Defendant **Fairfield Risk Services Ltd. (“FRS”)** is incorporated under the laws of Bermuda. It is a wholly owned subsidiary of FGL and shares office space with FGBL. Along with FGBL, FRS serves on FGG’s Risk Management team. FRS is responsible for analyzing and monitoring FGG’s hedge fund managers, and maintaining a risk infrastructure to support these activities.

11. Defendant **Walter M. Noel, Jr. (“Noel”)** is an American citizen and upon information and belief, maintains residences in Connecticut and New York. Mr. Noel is a Founding Partner of FGG, which he established in 1983. Since founding FGG, Mr. Noel has been a director or general partner for a variety of its funds, including Fairfield Sentry. Mr. Noel is also a principal of FGBL. Upon information and belief, Mr. Noel transacts business related to Fairfield Sentry in New York, New York.

12. Defendant **Jeffrey H. Tucker** is an American citizen and, upon information and belief, is a resident of New York, New York. Tucker is a Founding Partner of FGG, where he oversees the business and operational activities of several management companies and funds. Mr. Tucker is a principal of FGBL. Upon information and belief, Mr. Tucker resides in New York, New York, and transacts business related to Fairfield Sentry in New York, New York.

13. Defendant **Andres Piedrahita** is Colombian citizen and, upon information and belief, is a resident of London, England and Madrid, Spain. Mr. Piedrahita is a Founding Partner of FGG. Mr. Piedrahita is also Director and President of FGBL, the Fund's Investment Manager. Upon information and belief, Mr. Piedrahita sought out customers for Fairfield Greenwich Group whose capital would then be invested with Bernard Madoff's investment vehicles in New York, New York. Upon information and belief, Mr. Piedrahita transacts business related to Fairfield Sentry in New York, New York.

14. Defendants FGBL, FGL, FGA, FRS, Noel, Tucker, and Piedrahita are collectively referenced herein as the "Fairfield Defendants."

15. Defendant **Citco Bank Nederland, N.V., Dublin Branch ("Citco Bank")**, is incorporated as a *Naamloze Vennootschap* (public limited liability corporation) in the Kingdom of the Netherlands and is registered as a branch of an external company in the Republic of Ireland. Citco Bank maintains Fairfield Sentry's escrow account. In addition, Citco Bank agreed, together with Citco Global Custody, to provide custodial services to the Fund, and in that capacity, was responsible for selecting and monitoring any sub-custodians used by the Fund. Citco Bank selected, engaged with, and transferred Fund assets to Fund sub-custodian BMIS in New York, New York.

16. Defendant **Citco Fund Services (Europe) B.V. ("Citco")**, is incorporated as a *Besloten Vennootschap* (private limited liability corporation) in the Kingdom of the Netherlands. Citco is an affiliate of The Citco Group Ltd., and acts as the administrator, registrar, and transfer agent for Fairfield Sentry. As fund administrator, Citco has the responsibility for furnishing the day-to-day administrative services to the Fund, such as: accounting services; maintaining the Fund's books and records; preparation of reports and accounts; calculation of Net Asset Value and fees; communications with shareholders and/or governmental bodies; paying the Fund's

expenses; providing suitable facilities and procedures for handling dividends and distributions (if any) and the orderly liquidation and dissolution of the Fund, if required. Upon information and belief, as Fund Administrator, Citco received information from, and relayed information to, BMIS in New York, New York.

JURISDICTION AND VENUE

17. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 for all claims brought under the Investment Advisors Act (“IAA”), 15 U.S.C. § 80b-1 *et seq.* This Court has jurisdiction over all remaining state law claims pursuant to 28 U.S.C. § 1367(a).

18. This Court also has jurisdiction over this dispute pursuant to the Class Action Fairness Act of 2005, *codified at* 28 U.S.C. § 1332(d)(2)(B). The amount in controversy in this action exceeds \$5,000,000. Plaintiffs’ class consists of more than 100 individuals; at least one Plaintiff is a citizen of a foreign state and one Defendant is a citizen of New York.

19. This Court has personal jurisdiction over all Defendants because all Defendants have maintained minimum contacts with the United States related to Plaintiffs’ claims and the following contacts with New York:

a. FGL and FGA are foreign corporations registered to do business in the State of New York;

b. FGBL, Citco Bank, Walter Noel, and Andres Piedrahita Piedrahita have transacted business in New York related to Plaintiffs’ claims; and

c. Jeffrey Tucker is a New York domiciliary.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(3), as one or more of the individual Defendants reside in this District and the principal place of business of one or more Defendants is in this District.

FACTUAL ALLEGATIONS

21. Madoff founded Bernard L. Madoff Investment Securities LLC (“BMIS”) in 1960, and eventually expanded the firm to a worldwide client base.

22. The investment advisor services of BMIS, which falsely reported steady returns for decades, was in reality a giant Ponzi scheme whereby Madoff and BMIS fraudulently distributed new investors’ assets to prior investors to create the illusion of profits. BMIS’s account statements setting forth gains and securities holdings were fictitious. Upon information and belief, substantially all of the assets given to BMIS’s investment advisor services for management have been stolen through this scheme.

23. Each member of the Plaintiff Class invested in Fairfield Sentry, which in turn handed substantially all of its assets – at least 95 percent – over to BMIS. (Ex. 1, Fairfield Sentry Fund Private Placement Memorandum, August 14, 2006 (“PPM”), at 9.) Most of such investments in the Fund were made outside of New York. Reportedly, over \$7.5 billion was invested in Fairfield Sentry, and 95% or more of those assets was, in turn, handed over to BMIS.

24. According to its Private Placement Memorandum and periodic updates to investors, Fairfield Sentry used a “nontraditional options trading strategy described as ‘split strike conversion’” to obtain capital appreciation of its assets. (Ex. 1, PPM, at 9; Ex. 2, Fairfield Sentry Limited Semi-Annual Update, August 8, 2008, at 1; Ex. 3, Fairfield Sentry Limited Month Strategy Review, October 2008.) This strategy was “implemented by Bernard L. Madoff Investment Securities LLC,” making BMIS the “execution agent of the split strike conversion strategy.” (Ex. 1, PPM, at 9,16.)

25. In addition to serving as the Fund’s execution agent, Madoff was selected by the Fund custodian, Citco Bank, to serve as “sub-custodian of the Fund.” (Ex. 1, PPM, at 16.) This

meant that “substantially all of the Fund’s assets” were purportedly “held in segregated accounts at BLM [BMIS].” (Id.)

26. Madoff’s fraudulent scheme unraveled in December 2008 when BMIS did not have sufficient funds to cover investors’ redemption requests. According to the SEC, Madoff ultimately confessed to two senior employees that he was “finished,” that he had “absolutely nothing,” that “it’s all just one big lie,” and that the investment advisor services was “basically, a giant Ponzi scheme.” Madoff explained to these senior employees that he had for years been paying returns to certain investors out of the principal received from other, different 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.

27. Upon information and belief, most, if not all, of the assets the Plaintiff Class had invested with Defendants were stolen through the Madoff Ponzi scheme. These losses could have been avoided if Defendants had fulfilled their duties to the Plaintiff Class, if they had lived up to their own representations, and if they had adequately investigated and monitored Madoff and BMIS. In failing to do so, Defendants breached their legal duties to the Plaintiff Class, and effectively wiped out Plaintiffs’ investments. At the same time, Defendants paid themselves what is believed to be in excess of \$500 million in fees predicated on the phony profits.

28. Defendants’ lack of scrutiny into Madoff and BMIS and their carelessness with Plaintiffs’ assets falls far short of both the representations they made to the Plaintiff Class to induce their investment in Fairfield Sentry, and their legal duties to the Plaintiff Class.

29. The Fairfield Defendants provided assurances to the Plaintiff Class, and the Plaintiff Class reasonably and foreseeably relied on those assurances when deciding to invest in the Fund. The August 14, 2006 Private Placement Memorandum (the “PPM”) (attached hereto as Exhibit 1) exemplifies the representations made to the Plaintiff Class. In violation of the

Fairfield Defendants' duties to Plaintiffs, the PPM made false representations regarding how assets in the Fund were invested, where the assets would be held, the due diligence and monitoring undertaken with respect to those assets, and FGBL's commitment to fulfilling its fiduciary duties to the Plaintiff Class. Defendants knew or should have known these representations were false.

30. The PPM represented that assets in the Fund would be in legitimate investments, subject to strict Fund guidelines. Specifically, the PPM stated:

a. "The Fund seeks to obtain capital appreciation of its assets principally through the utilization of a nontraditional options trading strategy described as 'split strike conversion', to which the Fund allocates the predominant portion of its assets."

b. "The Split Strike Conversion strategy is implemented by Bernard L. Madoff Investment Securities LLC ("BLM"), a broker-dealer registered with the Securities and Exchange Commission, through accounts maintained by the Fund at that firm. The accounts are subject to certain guidelines which, among other things, impose limitations on the minimum number of stocks in the basket, the minimum market capitalization of the equities in the basket, the minimum correlation of the basket against the S&P 100 Index, and the permissible range of option strike prices." (Ex. 1, PPM, at 9-10.)

31. The PPM also reassured investors that their assets in the Fund would be safe, and held only by responsible, qualified entities.

a. The PPM represented that "[a]ll proceeds from the sale of Shares will be received by the Fund in trust and will be deposited by the Fund into a segregated interest bearing account in the Fund's name at the Fund's Bank, Citco Bank Nederland N.V. Dublin Branch." (Ex. 1, PPM, at 11.)

b. In addition, the PPM represented that the Fund’s custodian, Citco Bank Nederland N.V. Dublin Branch (“Citco Bank”), would “exercise reasonable skill, care and diligence in the selection of a suitable sub-custodian” for the Fund, and that Citco Bank “shall be responsible to the Fund for the duration of the sub-custody arrangement for satisfying itself as to the ongoing suitability of the sub-custodian to provide custodial services to the Fund.” (Ex. 1, PPM, at 16.)

c. Furthermore, the PPM assured that “Citco Bank will maintain an appropriate level of supervision over the sub-custodian(s) and make appropriate enquiries, periodically, to confirm that the obligations of the sub-custodian(s) continue to be competently discharged.” (Id.)

32. The PPM further reassured investors about the care that would be taken in selecting and monitoring the Fund managers, the transparency to those managers, and the oversight that would be maintained over the “split strike conversion strategy.” For instance, the PPM stated:

a. “FGBL’s core product business model is the investment management and oversight of the split strike conversion strategy Working with one of its affiliates [FGA] ..., FGBL conducts a detailed manager selection and due diligence process, analyzing such important issues as liquidity management, market and credit risks, management quality (which includes on-site visit(s), background, and reference checks), and operational, compliance, and regulatory risks.” (Ex. 1, PPM, Appendix A, Item 4.C.(7).)

b. “FRS primarily conducts both the pre- and post-investment quantitative analyses of hedge fund managers, monitors the market risk and provides the quantitative analyses supporting the asset allocation decisions across the firm’s multi-strategy funds

.... An important component of the FGG product platform is the position level transparency that we receive from all single managers which are included in our multi-strategy funds.” (Ex. 1, PPM, Appendix A, Items 4.A.(5) and 4.B.(8).)

33. The PPM also touted FGBL’s Code of Ethics, and recognized that the purpose of the rule requiring such a code was “to prevent fraud by reinforcing fiduciary principles that must govern the conduct of advisory firms and their personnel.” (Ex. 1, PPM, Appendix A, Item 9.E.) The Code, as set forth in the PPM, recognizes that FGBL must act as a fiduciary to its clients, the investors.

34. The PPM further established the fee schedule by which FGL, FGBL, certain Directors, and Citco Fund Services would be compensated for their services:

a. “Placement fees charged directly by FGL will not exceed 3%” (PPM, at 2, 8).

b. “In consideration of its [administrative] services, Citco [Fund Services] receives a monthly fee based on the Net Asset Value of the Fund as of the last business day of each month at a commercially reasonable rate.” (PPM, at 17).

c. “FGL will receive for each month a management fee (the “Management Fee”) in an amount equal to one-twelfth of one percent (0.0833%) (approximately 1% per annum) of the Net Asset Value of the Fund before Performance Fees FGL may pay a portion of the Management Fee to an affiliate of FGL and the Investment Manager....” (PPM, at 4, 15).

d. “FGL will pay the Investment Manager [FGBL] a fixed fee for providing certain managerial services to the Fund....” (PPM, at 4, 14).

e. “FGBL generally is paid by the Onshore Funds (i) an annual management fee of up to 1% of net assets, payable quarterly, and (ii) an incentive allocation of 20% of net profits....” (PPM, Appendix A, Items 1.D. and 2.G.).

f. “FGL will receive, for each calendar quarter, a performance fee (the “Performance Fee”) in an amount equal to 20% of the net realized and net unrealized appreciation in the Net Asset Value of each Share in such calendar quarter (“Net Profits”).” (PPM, at 4, 15).

g. “Since the [performance] fee is calculated on a basis that includes unrealized appreciation of assets, such fee may be greater than if it were based solely on realized gains. (PPM, at 18).

35. The Fairfield Defendants repeatedly emphasized the supposedly “rigorous” and “multi-faceted” due diligence on Fund managers:

a. FGG would seek “to dissect a candidate manager’s investment performance, how they generate alpha, and what risks are taken in doing so”;

b. FGG would seek “a sound understanding of whether a hedge fund possesses key controls in the areas of portfolio management, conflicts of interest, segregation of duties, and compliance”;

c. FGG would “carefully” assess “the controls and procedures that managers have in place,” and would seek “to determine actual compliance with those procedures, often suggesting modifications, separation of responsibilities, and remedial service provider, technology, or staff additions”; and

d. FGG would examine “[i]ndependent prime broker trading records” – a “key aspect” to transparency. (Ex. 4, The Firm and Its Capabilities, at 15-16; Ex. 5, Due

Diligence and Risk Monitoring: FGG's Value-Added Investment Process, at 4; Ex. 6, Hedge Funds: An Alternative Investor's Primer, at 33.)

36. The Fairfield Defendants further represented that, after manager selection, FGG would maintain "deep, ongoing joint venture relationships" with its Fund managers, and FGG would review for each Fund manager, on an ongoing basis:

- a. "audited financials and auditor's management letter comments";
- b. "accounting controls: from trade execution; to trade capture; to trade reconciliation with the Street, administrator, and fund; to fund's books and records";
- c. "bank reconciliations for irregular or outstanding items"; and
- d. "broker reconciliations to ensure completeness and existence of all securities." (Ex. 5, Due Diligence and Risk Monitoring: FGG's Value-Added Investment Process, at 7; Ex. 4, The Firm and Its Capabilities, at 18.)

37. The Fairfield Defendants also sent periodic updates to the Plaintiff Class regarding the purported performance of Fairfield Sentry, representing in such updates:

- a. "[s]ince its inception in December 1990, the Fund has consistently returned strong low volatility risk-adjusted returns";
- b. over the Fund's seventeen year track record, it had "15 down months" and had "superior risk adjusted returns";
- c. the Fund's "overall performance for the first six months [of 2008] has been positive"; and
- d. the Fund's "split-strike conversion ... was able to substantially avoid this deep [market] decline and protect investors' capital by remaining invested for the entire month in a laddered portfolio of short-dated U.S. Treasury Bills." (Ex. 2, Fairfield Sentry

Limited Semi-Annual Update, August 8, 2008, at 1; Ex. 3, Fairfield Sentry Limited Month Strategy Review, October 2008.)

38. Importantly, the Fairfield Defendants recognized and represented that their skill and due diligence and monitoring procedures were essential to protecting their investors' assets from a fraud like that perpetrated by Madoff.

a. For example, the Fairfield Defendants represented that FGG examines a manager's "operational risk," because "[o]perational failures, *including misrepresentation of valuations and outright fraud*, constitute a majority of instances where massive investor losses occur." (Ex. 4, The Firm and Its Capabilities, at 16.) (Emphasis added.)

b. The Fairfield Defendants advised Plaintiff Investors that a "key aspect" to transparency, and the ability to conduct adequate due diligence, was whether information was "provided by an independent third party – such as a broker dealer – or by the manager, *where it might be subject to manipulation*." (Ex. 6, Hedge Funds: An Alternative Investor's Primer, at 33.) (Emphasis added.)

c. The Fairfield Defendants also warned: "Only by receiving full transparency from its managers can FGG assure itself and its clients that every FGG fund continues to act according to the principles, agreements, and strategies that are specified to FGG and investors." (Ex. 5, Due Diligence and Risk Monitoring: FGG's Value-Added Investment Process, at 2.)

CLASS ACTION ALLEGATIONS

39. Plaintiffs bring this action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the following:

a. All shareholders in the Fairfield Sentry Fund, as of December 11, 2008, excluding Defendants, all officers, directors, affiliates, agents, heirs, successors, assigns, immediate family members or legal representatives of Defendants, BMIS, or Madoff, and any entity in which the Defendants, BMIS, or Madoff have a controlling interest.

40. The Class satisfies the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:

a. *Numerosity.* During the Class Period, numerous different securities were sold to hundreds of investors. The membership of the Class is so voluminous as to render joinder impracticable. The precise number of Class members remains indeterminate and can only be ascertained through discovery. Through information and belief, the Plaintiff Class numbers in the thousands.

b. *Typicality.* The losses to the named Plaintiffs were caused by the same events, patterns of practice, and courses of conduct that give rise to the claims of the other members of the Class. The named Plaintiffs are members of the class and the losses to the named Plaintiffs are based on the same legal theories.

c. *Common Questions.* Among the questions of law and fact common to the Class are:

- i. Whether the Fairfield Defendants breached their fiduciary duty by
 1. publishing and releasing materials to Plaintiffs that contained false and misleading descriptions of the care taken by the Fairfield Defendants with respect to all Plaintiffs' assets, of the manner in which Plaintiffs' assets were being invested, and of the appreciation of Plaintiffs' assets;

2. failing to act with reasonable care in ascertaining that the information set forth in the written materials provided to Plaintiffs was accurate and did not contain misleading statements or omissions of material facts;
 3. failing to perform adequate due diligence, or to follow their own internal due diligence protocols, before selecting BMIS as the Fund's execution agent for its split-strike conversion method, and before allowing BMIS to serve as sub-custodian for the Fund;
 4. investing Plaintiffs' assets in the Madoff Ponzi scheme with inadequate diligence or monitoring;
 5. failing to monitor Madoff and BMIS on an ongoing basis to any reasonable degree, or to comply with their own internal protocols for monitoring the assets entrusted to Madoff and BMIS; and
 6. failing to take adequate steps to confirm BMIS's purported account statements, transactions and holdings of Fund assets;
- ii. Whether and to what extent Plaintiffs were damaged by the Fairfield Defendants' breaches of fiduciary duty.
 - iii. Whether the Fairfield Defendants were grossly negligent in
 1. failing to perform adequate due diligence before selecting BMIS as the Fund's execution agent for its split-strike

- conversion method, and before allowing BMIS to serve as sub-custodian for the Fund;
2. failing to monitor Madoff and BMIS on an ongoing basis to any reasonable degree; and
 3. failing to take adequate steps to confirm BMIS's purported account statements, transactions and holdings of Fund assets;
- iv. Whether the Plaintiffs are entitled to the imposition of a constructive trust on the amount of all monies and other property in the possession of the Fairfield Defendants which relate to their compensation in the form of management and performance fees, the amount of which is yet to be determined.
 - v. Whether Plaintiffs are entitled to an accounting of (1) the actual investments and transactions done on Plaintiffs behalf, (2) the actual calculation used to determine each management and performance fee, and (3) the amounts taken in management and performance fees.
 - vi. Whether Plaintiffs are entitled to rescission of all contractual relationships between Plaintiffs and the Fairfield Defendants as well as a return of all principal payments made by Plaintiffs to the Fairfield Defendants due to mutual mistake.
 - vii. Whether the Fairfield Defendants negligently misrepresented, *inter alia*, the investment services that would be provided by the Fairfield Defendants; the extent and quality of the due diligence,

ongoing risk monitoring, and transaction verification that would be performed by the Fairfield Defendants on Madoff and BMIS; the Fairfield Defendants' transparency to Madoff and BMIS; the split-strike conversion method ostensibly used by Madoff and BMIS to appreciate Fund assets; the Fund's appreciation; and BMIS's qualifications to serve as a sub-custodian to Fairfield Sentry.

- viii. Whether Citco Bank breached its fiduciary duty by
1. failing to exercise due care and diligence in the selection and supervision of BMIS as a Fund sub-custodian;
 2. failing to make appropriate enquiries to confirm BMIS's obligations were being competently discharged;
 3. failing to take proper steps to confirm information received from Madoff and BMIS;
 4. misrepresenting that BMIS was a qualified sub-custodian and misrepresenting the care Citco Bank had taken with respect to BMIS's selection and supervision;
 5. permitting the Fund's execution agent to serve as sub-custodian;
 6. carelessly entrusting Plaintiffs' assets to BMIS; and
 7. profiting at Plaintiffs' expense.

d. *Adequate Representation.* The representative Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained experienced counsel qualified in class action litigation that is competent to assert the interests of the Class.

e. *Superiority.* A class action in superior to other methods for the fair and efficient adjudication of this controversy involving thousands of similarly situated investors.

CLAIMS

FIRST COUNT

Rescission under the Investment Advisers Act, 15 U.S.C. § 80b-1 *et seq.* (Against Fairfield Defendants)

41. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.
42. The Fairfield Defendants acted as “investment advisers” to Plaintiffs’ class pursuant to the Investment Advisers Act (“IAA”).
43. By executing individual subscriptions, fully incorporating the terms of the PPM, Plaintiffs and the Fairfield Defendants executed “investment adviser agreements” under the IAA.
44. As investment advisers, the Fairfield Defendants were responsible for serving Plaintiffs’ class in accordance with the statutory standards found in 15 U.S.C. § 80b-6(2). Specifically, the Fairfield Defendants were required not to “engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” 15 U.S.C. § 80b-6(2).
45. The Fairfield Defendants breached their duties to Plaintiffs’ class by engaging in a course of conduct in which they recklessly engaged in acts, transactions, and business which allowed a fraud to be operated on Plaintiffs’ class. The Fairfield Defendants breached their duties by, among other acts:
 - a. Publishing and releasing materials to Plaintiffs that contained false and misleading descriptions of the manner in which Plaintiffs’ assets were being invested and of the appreciation of Plaintiffs assets;

b. Failing to act with reasonable care in ascertaining that the information set forth in the written materials provided to Plaintiffs was accurate and did not contain misleading statements or omissions of material facts;

c. Failing to perform adequate due diligence, or to follow their own internal due diligence protocols, before selecting BMIS as the Fund's execution agent for its split-strike conversion method, and before allowing BMIS to serve as sub-custodian for the Fund;

d. Investing Plaintiffs' assets in the Madoff Ponzi scheme with inadequate diligence or monitoring;

e. Failing to monitor Madoff and BMIS on an ongoing basis to any reasonable degree, or to comply with their own internal protocols for monitoring the assets entrusted to Madoff and BMIS;

f. Failing to take adequate steps to confirm BMIS's purported account statements, transactions and holdings of Fund assets; and

g. Profiting at the expense of Plaintiffs.

46. The Fairfield Defendants are liable as direct participants in the wrongs listed above. The purpose of the Fairfield Defendants' conduct was to enrich themselves at Plaintiffs' expense. The aforementioned conduct by the Fairfield Defendants was so reckless as to constitute a deceit and/or fraud upon Plaintiffs.

47. Plaintiffs have been damaged as a result of the Fairfield Defendants' breach of their duties under the IAA.

48. As a result, Plaintiffs are entitled to rescission of their investment adviser agreements with the Fairfield Defendants and to recover all fees and commissions paid in connection to Plaintiffs' investments in the Fund.

SECOND COUNT

Breach of Fiduciary Duty (Against Fairfield Defendants)

49. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

50. Plaintiffs entrusted their assets to the Fairfield Defendants by investing in Fairfield Sentry, and reposed confidence in the Fairfield Defendants with respect to the management of those assets. The Fairfield Defendants' superior position as to the management and control of those assets, as well as their superior access to confidential information about the investment of the assets and about Madoff and BMIS, required Plaintiffs to repose trust and confidence in the Fairfield Defendants. Moreover, the Fairfield Defendants held themselves out as providing superior client investment services and as having policies and procedures in place to ensure that Fund managers and execution agents would follow Fund policies, to confirm that sufficient operational controls were in place to safeguard Plaintiffs' assets, and to establish that transactions would be properly conducted. They furthermore evinced an understanding that they were the fiduciaries of the investors. Plaintiffs reasonably and foreseeably relied on such representations, and trusted in the Fairfield Defendants' purported expertise and skill. The Fairfield Defendants therefore owed a fiduciary duty to Plaintiffs with respect to their management and protection of Plaintiffs' assets invested in Fairfield Sentry.

51. The Fairfield Defendants were obligated to deal fairly and honestly with the Plaintiffs; to act with loyalty and good faith towards Plaintiffs; to avoid placing themselves in situations involving a conflict of interest with Plaintiffs; to manage and operate each Plaintiff's investments exclusively for the best interest of the Plaintiffs; to make recommendations and execute transactions in accordance with the goals, investment objectives, and permissible degree

of risk; and to oversee the investment of Plaintiffs' assets to confirm they were maintained in a prudent and professional manner.

52. The Fairfield Defendants breached their fiduciary duties to Plaintiffs, and acted in reckless disregard of those duties:

a. by publishing and releasing materials to Plaintiffs that contained false and misleading descriptions of the care taken by the Fairfield Defendants with respect to all Plaintiffs' assets, of the manner in which Plaintiffs' assets were being invested, and of the appreciation of Plaintiffs' assets;

b. by failing to act with reasonable care in ascertaining that the information set forth in the written materials provided to Plaintiffs was accurate and did not contain misleading statements or omissions of material facts;

c. by failing to perform adequate due diligence, or to follow their own internal due diligence protocols, before selecting BMIS as the Fund's execution agent for its split-strike conversion method, and before allowing BMIS to serve as sub-custodian for the Fund;

d. by investing Plaintiffs' assets in the Madoff Ponzi scheme with inadequate diligence or monitoring;

e. by failing to monitor Madoff and BMIS on an ongoing basis to any reasonable degree, or to comply with their own internal protocols for monitoring the assets entrusted to Madoff and BMIS; and

f. by failing to take adequate steps to confirm BMIS's purported account statements, transactions and holdings of Fund assets.

53. As a result of the Fairfield Defendants' breaches of their fiduciary duties, the Plaintiffs have lost all, or substantially all, of their respective investments in the Fund, and have

been forced to pay excessive investment and management fees in exchange for investment services that were promised but never provided.

54. By reason of the foregoing, the Fairfield Defendants are jointly and severally liable to Plaintiffs.

55. Because the Fairfield Defendants willfully and wantonly disregarded Plaintiffs' rights in breaching their fiduciary duties, Plaintiffs are entitled to punitive damages.

THIRD COUNT

Gross Negligence (Against Fairfield Defendants)

56. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

57. The Fairfield Defendants, as investment advisors, managers, and placement agents with discretionary control over Fund assets, had a special relationship with Plaintiffs that gave rise to a duty to exercise due care in the management of Plaintiffs' assets invested in the Fund, and in the selection and monitoring of Fund managers and sub-custodians. The Fairfield Defendants knew or should have known that Plaintiffs were relying on the Fairfield Defendants to manage the investments entrusted to the Fund with reasonable care, and Plaintiffs did reasonably and foreseeably rely on the Fairfield Defendants to exercise such care by entrusting their assets to their Fund.

58. The Fairfield Defendants grossly failed to exercise due care, and acted in reckless disregard of their duties, and thereby injured Plaintiffs. The Fairfield Defendants failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable investment professional. The Fairfield Defendants failed to perform adequate due diligence before selecting BMIS as the Fund's execution agent for its split-strike conversion method, and before allowing BMIS to serve as sub-custodian for the Fund; failed to monitor

Madoff and BMIS on an ongoing basis to any reasonable degree; failed to take adequate steps to confirm BMIS's purported account statements, transactions and holdings of Fund assets.

59. If the Fairfield Defendants had not been grossly negligent with respect to Plaintiffs' assets invested in Fairfield Sentry, they would have discovered that Madoff was a fraud, and not entrusted Plaintiffs' assets invested in the Fund to BMIS.

60. As a direct and proximate result of the Fairfield's Defendants' gross negligence with respect to Plaintiffs' assets invested in Fairfield Sentry, Plaintiffs have lost all, or substantially all, their investment in the Fund.

61. By reason of the foregoing, the Fairfield Defendants are jointly and severally liable to the Plaintiff Class.

62. Because of the outrageous nature of the Fairfield Defendants' willful and wanton conduct, Plaintiffs are entitled to punitive damages.

FOURTH COUNT

Unjust Enrichment (Against Fairfield Defendants)

63. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

64. Plaintiffs had a contractual or quasi-contractual relationship with the Fairfield Defendants by virtue of their investment in Fairfield Sentry.

65. The Fairfield Defendants were enriched at the expense of Plaintiffs by taking Plaintiffs' monies in the form of commissions and other fees for the management of Plaintiffs' investment, and the purported, but in fact non-existent, capital appreciation of such assets.

66. The Fairfield Defendants' performance was so far below the fiduciary and business standards that Plaintiffs involuntarily conferred a benefit upon Defendants without

Plaintiffs receiving adequate benefit or compensation in return. In so doing, the Fairfield Defendants acted in reckless disregard of their duties to Plaintiffs.

67. Equity and good conscience require Defendants to refund all monies paid to Defendants for any services rendered on Plaintiffs' behalf.

FIFTH COUNT

Imposition of Constructive Trust (Against Fairfield Defendants)

68. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

69. Fairfield Defendants had a fiduciary relationship with Plaintiffs which included an obligation to invest Plaintiffs' assets in legitimate investments, and perform adequate due diligence and monitoring as set forth in the Private Placement Memorandum.

70. Fairfield Defendants were compensated by Plaintiffs with management and performance fees that were calculated based on the "Net Profits" and current state of the fund.

71. Fairfield Defendants were unjustly enriched by the retention of management and performance fees that were predicated on fictitious profits.

72. Plaintiffs are entitled to have a constructive trust imposed on the amount of all monies and other property in the possession of the Fairfield Defendants which relate to their compensation in the form of management and performance fees, the amount of which is yet to be determined.

SIXTH COUNT

Accounting (Against All Defendants)

73. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

74. Plaintiffs and Fairfield Defendants and Citco Defendants had a fiduciary relationship which resulted in Plaintiffs entrusting their assets to the Fairfield Defendants and Citco Defendants for investment in Fairfield Sentry.

75. All Defendants had a duty to document and keep records of the investments and transactions made on Plaintiffs behalf.

76. Fairfield Defendants breached their fiduciary duty by failing to perform adequate due diligence and monitoring over the fund, sending false account statements to Plaintiffs, and subsequently taking management and performance fees based on the false account statements.

77. Defendant Citco Bank breached its fiduciary duty by failing to exercise due care in the selection and monitoring of Fund sub-custodian BMIS and sending false account statements to Plaintiffs.

78. Defendant Citco Fund Services breached its fiduciary duty by providing Plaintiffs with inaccurate NAV statements and collecting fees based on the false NAV statements.

79. The amount of money due from Defendants to Plaintiffs is unknown to Plaintiffs and cannot be ascertained without an accounting of (1) the actual investments and transactions done on Plaintiffs behalf, (2) the actual calculation used to determine each management and performance fee, and (3) the amounts taken in management and performance fees.

SEVENTH COUNT

Rescission (Against Fairfield Defendants)

80. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

81. Plaintiffs had a contractual or quasi-contractual relationship with the Fairfield Defendants by virtue of their investment in Fairfield Sentry.

82. Per the contractual relationship between the parties, the Fairfield Defendants represented to Plaintiffs that Plaintiffs' monies would be invested in legitimate enterprises with a potential for capital appreciation. This representation was a fundamental assumption of the agreement embraced by both Plaintiffs and the Fairfield Defendants, and Plaintiffs and the Fairfield Defendants shared the belief that all investments of Plaintiffs' monies would be legal and legitimate.

83. Plaintiffs' assets, however, were invested in BMIS's fraudulent Ponzi scheme. Any "appreciation" in value was entirely fictitious and based on an illegitimate and illegal investment scheme. By investing Plaintiffs' monies with BMIS, the mutual intent of the parties to invest in legitimate enterprises was not accomplished.

84. The failure of the contractual agreement to accord the real understanding of the parties was due to mutual mistake, in that both Plaintiffs and the Fairfield Defendants believed that Plaintiffs' monies would be placed into legitimate and legal investments. Plaintiffs and the Fairfield Defendants did not intend to invest in a fraudulent Ponzi scheme. This mistake was not a result of Plaintiffs' negligence.

85. Because of this fundamental misassumption in the contractual relationship between Plaintiffs and the Fairfield Defendants, Plaintiffs are entitled to rescission of all contractual relationships between Plaintiffs and the Fairfield Defendants as well as restitution of all principal payments made by Plaintiffs to the Fairfield Defendants, and the restitution of all fees paid by the Investors predicated on the fictitious profits of the Ponzi scheme.

EIGHTH COUNT

Negligent Misrepresentation (Against Fairfield Defendants)

86. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

87. The Fairfield Defendants made verbal representations and issued written marketing material, private placement memoranda, and periodic updates regarding their management of Fairfield Sentry, and the asset appreciation experienced by Fairfield Sentry. These materials relayed that the Fairfield Defendants would provide superior investment services to their clients, the Plaintiffs; that they would use their extensive skill and experience in selecting proficient and qualified managers for their funds; that they would conduct extensive due diligence on fund managers before selecting them, engage in ongoing monitoring of such managers after selection, and regularly verify Fund transactions; and the Fund performance had been positive. The Fairfield Defendants also specifically represented that clients were better served by investing through their funds, because the Fairfield Defendants had greater transparency to Madoff and BMIS than other companies.

88. The Fairfield Defendants further represented that Fairfield Sentry was using a split-strike conversion method, executed by Madoff and BMIS, to obtain capital appreciation of assets, and that assets invested in Fairfield Sentry were held by BMIS, which the Fairfield Defendants represented was a qualified custodian.

89. The Fairfield Defendants, as investment advisors, managers, and placement agents, had a special relationship with Plaintiffs that gave rise to a duty to provide Plaintiffs with correct information. Defendants knew or should have known that Plaintiffs desired the information that the Fairfield Defendants were providing for a serious purpose – namely, for deciding whether to invest their assets in Fairfield Sentry and keep their assets invested in Fairfield Sentry. The Fairfield Defendants provided their representations to Plaintiffs, either directly or through their website, and the materials evinced an understanding that the Fairfield Defendants would serve the interests of Plaintiffs, as investors in the Fund.

90. Plaintiffs intended to rely on the representations by the Fairfield Defendants in making their investment decision, and did reasonably and foreseeably rely on such representations when investing their assets in Fairfield Sentry.

91. In violation of their duties, the Fairfield Defendants materially misrepresented: the investment services that would be provided by the Fairfield Defendants; the extent and quality of the due diligence, ongoing risk monitoring, and transaction verification that would be performed by the Fairfield Defendants on Madoff and BMIS; the Fairfield Defendants' transparency to Madoff and BMIS; the split-strike conversion method ostensibly used by Madoff and BMIS to appreciate Fund assets; the Fund's appreciation; and BMIS's qualifications to serve as a sub-custodian to Fairfield Sentry.

92. These representations were materially false because the Fairfield Defendants, as fund manager, were not performing the due diligence, ongoing risk monitoring, and transaction verification on Madoff and BMIS that they represented, and they did not have transparency to Madoff and BMIS. Moreover, Madoff and BMIS were not using a split-strike conversion method or appreciating Fund assets, and BMIS was not a qualified sub-custodian, as represented; rather, Madoff was conducting a massive Ponzi scheme through BMIS.

93. The Fairfield Defendants made these representations negligently without due care to determine the truth of these statements.

94. On the basis of such representations, Plaintiffs invested substantial assets in Fairfield Sentry, and kept said investments in the Fund due to Defendants' continued misrepresentations.

95. As a result of such misrepresentations, Plaintiffs have lost all, or substantially all, of such assets.

96. By reason of the foregoing, the Fairfield Defendants are jointly and severally liable to Plaintiffs.

NINTH COUNT

Third Party Beneficiary Claim for Breach of Contract (Against the Fairfield Defendants)

97. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

98. This Count is asserted upon behalf of Plaintiffs as third-party beneficiaries to the contractual relationship existing between and among all Fairfield defendants.

99. Fairfield Sentry Limited entered into an investment management contract with Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Limited, Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd, and Fairfield Greenwich Group as a whole (the Fairfield Defendants)..

100. Pursuant to this agreement, the Fairfield Defendants each assumed the responsibility to fulfill certain due diligence and investment advisor monitoring obligations for the intended immediate benefit of Plaintiff Investors.

101. The Fairfield Defendants breached this duty in committing the above-alleged actions and omissions.

102. Defendants' actions and omissions resulted in significant losses to the Fund and the Fund's investors, as described throughout this complaint.

103. By failing to properly fulfill their due diligence and monitoring duties, the Fairfield Defendants breached their contract with the Plaintiff investors, thereby injuring Plaintiffs as third-party beneficiaries to the agreement.

TENTH COUNT

Breach of Fiduciary Duty (Against Citco Bank)

104. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

105. Plaintiffs entrusted their assets to Citco Bank as Fund custodian, and reposed confidence in Citco Bank with respect to its handling of those assets, including the selection and supervision of any Fund sub-custodians. Citco Bank's superior position as to the handling of those assets and the selection and supervision of any Fund sub-custodians, as well as its superior access to confidential information about BMIS as sub-custodian, required Plaintiffs to repose such trust and confidence in Citco Bank. Moreover, Citco Bank held itself out as providing skilled and diligent custodial services, and as having policies and procedures in place to ensure that Fund assets were only entrusted to qualified sub-custodians. Plaintiffs reasonably and foreseeably relied on such representations, and trusted in Citco Bank's purported expertise and skill. Citco Bank therefore owed a fiduciary duty to Plaintiffs with respect to the provision of custodial services and the handling of Plaintiffs' assets invested in Fairfield Sentry.

106. Citco Bank was obligated to deal fairly and honestly with Plaintiffs; to act with loyalty and good faith towards Plaintiffs; to avoid placing itself in situations involving a conflict of interest with Plaintiffs; to handle Plaintiffs' investment assets exclusively for the best interest of Plaintiffs; to select only Fund sub-custodians who were qualified; and to supervise such sub-custodians selected by it in a prudent and professional manner.

107. Citco Bank breached its fiduciary duties to Plaintiffs by failing to exercise due care and diligence in the selection and supervision of BMIS as a Fund sub-custodian; by failing to make appropriate enquiries to confirm BMIS's obligations were being competently discharged; by failing to take proper steps to confirm information received from Madoff and

BMIS; by misrepresenting that BMIS was a qualified sub-custodian and misrepresenting the care Citco Bank had taken with respect to BMIS's selection and supervision; by permitting the Fund's execution agent to serve as sub-custodian; by carelessly entrusting Plaintiffs' assets to BMIS; and by profiting at Plaintiffs' expense.

108. As a result of Citco Bank's breaches of its fiduciary duties, Plaintiffs have lost all, or substantially all, of their respective investments in the Fund.

109. By reason of the foregoing, Citco Bank is jointly and severally liable to Plaintiffs.

110. Because the Citco Bank willfully and wantonly disregarded Plaintiffs' rights in breaching their fiduciary duties, Plaintiffs are entitled to punitive damages.

ELEVENTH COUNT

Negligence (Against Citco Bank)

111. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

112. Citco Bank, as Fund custodian with discretionary control over the selection and retention of Fund sub-custodians, had a special relationship with Plaintiffs that gave rise to a duty to exercise due care. Citco Bank knew or should have known that Plaintiffs were relying on the Fairfield Defendants to fulfill its obligations with reasonable care, and Plaintiffs did reasonably and foreseeably rely on Citco Bank to exercise such care by entrusting their assets to the Fund through Citco Bank as custodian.

113. Citco Bank failed to exercise due care, and thereby injured Plaintiffs. Citco Bank failed to exercise skill, care and diligence in the selection and retention of BMIS as sub-custodian; failed to maintain appropriate supervision over BMIS as sub-custodian; failed to make reasonable enquiries to confirm that BMIS's obligations were being competently discharged; and failed to take proper steps to confirm information received from Madoff and BMIS.

114. It was in part BMIS's dual role as execution agent and Fund sub-custodian that enabled Madoff and BMIS to perpetrate the fraud. If Citco Bank had not been negligent with respect to the selection and retention of a Fund sub-custodian, Plaintiffs' assets in the Fund would not have been stolen by the sub-custodian.

115. Because of Citco Bank's negligence with respect to Plaintiffs' assets invested in Fairfield Sentry, Plaintiffs have lost all, or substantially all, their investment in the Fund.

TWELFTH COUNT

Unjust Enrichment (Against Citco Fund Services)

116. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

117. Plaintiffs had a contractual or quasi-contractual relationship with Citco Fund Services by virtue of Citco Fund Services' status as administrator, registrar, and transfer agent of Fairfield Sentry.

118. Citco Fund Services was enriched at the expense of Plaintiffs by taking Plaintiffs' monies in the form of fees calculated based on false and fraudulent Net Asset Value calculations.

119. Plaintiffs conferred a benefit upon Citco Fund Services in the form of such monthly without Plaintiffs receiving adequate benefit or compensation in return.

120. Equity and good conscience require Citco Fund Services to refund all monies paid to Citco Fund Services for any services rendered on Plaintiffs' behalf.

THIRTEENTH COUNT

Imposition of Constructive Trust (Against Citco Fund Services)

121. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

122. Defendant Citco Fund Services promised to serve as administrator of the Fund, creating a confidential and/or fiduciary relationship, which included providing accounting

services, preparing reports and accounts, and accurately calculating the Net Asset Value of the Fund, as set forth in the Private Placement Memorandum.

123. In reliance on these promises, Plaintiffs entrusted Defendant Citco Fund Services with their investment assets.

124. Defendant Citco Fund Services was compensated by Plaintiffs with a monthly fee based on the Net Asset Value of the Fund as of the last business day of each month.

125. Defendant Citco Fund Services was unjustly enriched by the retention of said fees, which were calculated and paid based on inaccurate and false Net Asset Value statements.

126. Plaintiffs are entitled to have a constructive trust imposed on the amount of all monies and other property in the possession of the Defendant Citco Fund Services which relates to its compensation in the form of the above-referenced fees, the amount of which is yet to be determined.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial.

PRAYER

WHEREFORE, Plaintiffs request the following:

- a) Certification of this class action as proper and maintainable pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaration of the proposed named Plaintiffs as proper Class representatives;
- b) Such preliminary and permanent injunctive relief, including imposition of a constructive trust, as is appropriate to preserve the assets paid by Plaintiffs;
- c) Compensatory, consequential, and general damages in an amount to be determined at trial;

- d) Disgorgement and restitution of all earnings, profits, compensation and benefits received by Defendants as a result of their unlawful acts and practices;
- e) Rescission of all contractual relationships between Plaintiffs and Defendants and a return of all principal payments made by Plaintiffs to Defendants;
- f) Punitive damages on account of Defendants' willful and wanton disregard of Plaintiffs' rights;
- g) Costs and disbursements of the action;
- h) Pre- and post-judgment interest;
- i) Reasonable attorneys' fees; and
- j) Such other and further relief as this Court may deem just and proper.

Dated: January 10, 2009

Respectfully submitted,

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