**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-cv-01381-MSK-CBS

THE CASCADE FUND, LLLP,
on behalf of itself and a
class of similarly situated persons,

Plaintiff,

v.

ABSOLUTE CAPITAL MANAGEMENT HOLDINGS LIMITED;
ABSOLUTE GENERAL PARTNER LIMITED;
FLORIAN HOMM;
SEAN EWING;
JOHN A. FLEMING;
RONALD E. TOMPKINS;
ULLRICH ANGERSBACH, and
ARGO GROUP LIMITED

Defendants.

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**FIRST AMENDED COMPLAINT AND JURY DEMAND**

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Plaintiff, The Cascade Fund, LLLP, through its attorneys, Sander Ingebretsen & Wake, P.C., and Kohn, Swift & Graf, P.C., on behalf of itself and all others similarly situated states as follows:

## PARTIES

1. Plaintiff, The Cascade Fund, LLLP ("Cascade" or "Plaintiff"), is a limited liability limited partnership organized under the laws of the State of Colorado with its offices in Evergreen, Colorado. As set forth in the Certification previously filed, during the Class Period prescribed herein Cascade purchased securities in Absolute Capital hedge funds sponsored by the

Defendants. This case concerns hedge funds known as the Absolute East West Fund Limited and Absolute East West Fund L.P. (collectively, "East West Fund"), Absolute Return Europe Fund ("Return Europe Fund"), Absolute Octane Fund Limited and Absolute Octane Fund L.P. (collectively "Octane Fund"), European Catalyst Fund Limited ("European Catalyst Fund"), and Absolute Activist Value Fund ("Activist Fund") (collectively, all of the aforementioned funds are referred to as the "Absolute Capital Funds" or the "Funds"). Plaintiff has suffered damages as a result of the wrongful acts of Defendants as alleged herein.

2. Defendant Absolute Capital Management Holdings Limited ("ACM") is a Grand Cayman entity. It was at all relevant times the Investment Manager for the East West Fund, the Return Europe Fund, the Octane Fund, the European Catalyst Fund, the Activist Fund, and other related funds. Defendant ACM is also an affiliate of each Fund.

3. Defendant Absolute General Partner Limited is a Grand Cayman entity and is the general partner of East West Fund L.P. and Octane Fund L.P. ACM and Absolute General Partner Limited may be referred to as "the Absolute Capital Defendants."

4. Defendant Florian Homm ("Homm") is a foreign national who effectively controlled some or all of the Absolute Capital entities. His business card referred to him as "Founder and Director" of ACM, where he was also Chief Investment Officer. Homm is or was a part owner of ACM. Homm was a control person of the Absolute Capital Defendants.

5. Defendant Sean Ewing ("Ewing") is a foreign national who at all relevant times was a founder, chairman, and chief executive officer of ACM. Ewing is or was a part owner of ACM. Ewing was a control person of the Absolute Capital Defendants.

6. Defendant John A. Fleming ("Fleming") is a foreign national who at all relevant times was a director of ACM and a director of one or more Absolute Capital Funds. Fleming signed the annual financial statements of one or more Absolute Capital Funds, which were provided to members of the class.

7. Defendant Ronald Evan Tompkins ("Tompkins") is a foreign national who at all relevant times was a director of ACM and a director of one or more Absolute Capital Funds. Tompkins signed the annual financial statements of one or more Absolute Capital Funds, which were provided to members of the class.

8. Defendant Ullrich Angersbach ("Angersbach") is a German national who at all relevant times was a director of ACM. Angersbach is a control person of the Absolute Capital Defendants.

9. Argo Group Limited ("Argo Group") is a capital management firm based in London, England. Argo Group is a successor to ACM.

10. Collectively, Defendants Homm, Ewing, Fleming, Tompkins and Angersbach are referred to herein as the "Individual Defendants."

## JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa. The claims asserted herein arise under and pursuant to §§ 10(b) and 20(a) of the Securities Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. 240.10b-5.

12. Venue is proper in this District pursuant to § 27 of the Securities Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §§ 1391 (b) and (c) in that many of the acts and transgressions alleged herein occurred in substantial part in this District.

13. In connection with the wrongful acts alleged in this Complaint, Defendants, individually and collectively, both directly and indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephonic communications and interstate electronic communications to (a) sell interests in the Absolute Capital Funds to Plaintiff and the members of the Class; (b) provide investment materials, including the Funds' offering memoranda ("Offering Memoranda") and investment management agreements ("Investment Management Agreements"), to solicit investments in the Absolute Capital Funds from Plaintiff and the members of the Class; and (c) trade in illiquid, speculative "pink sheet" stocks on behalf of the Absolute Capital Funds in which Plaintiff and the members of the Class were invested. More particularly, for purposes of jurisdiction and venue, significant acts and substantial conduct of the Defendants undertaken in the United States are material to Plaintiff's claims and caused the damages suffered by Plaintiff and the members of the Class, such as:

(a) Hunter World Markets, through which Defendant Homm engaged in the illicit transactions described below, is a U.S. brokerage firm.

(b) The transactions with Hunter World Markets described below occurred in the United States.

(c) The illiquid penny stocks purchased through Hunter and held by the Absolute Capital Funds represented shares of ownership in U.S. companies.

(d) Defendant Homm's secret profits through Hunter World Markets, as detailed more fully below, were "earned" or procured in the United States and were conveyed to him from the United States.

(e) As disclosed by ACM itself in September 2007, roughly half a *billion* dollars of the Absolute Capital Funds' assets were affected when the stocks were marked to market price "as reported through the US-based Over the Counter Bulletin Board/Pink Sheets." The affects of this trading were so severe as to prompt ACM to restrict redemptions in the Absolute Capital Funds and to create the "side pockets" discussed below.

(f) The Offering Memoranda for the Absolute Capital Funds that are described herein and that were disseminated by the Defendants to Plaintiff and the members of the Class were distributed to Plaintiff and the class members in the United States, including in this District, and were disseminated using the means and instrumentalities of interstate commerce. Voluminous other materials used by Defendants to solicit investments from members of the Class and thereafter to report to them the supposed progress of the Absolute Capital Funds, as described below, were disseminated to U.S. investors using the means and instrumentalities of interstate commerce.

(g) Plaintiff and the members of the Class purchased their interests in the Absolute Capital Funds in the United States, including in this District, and conveyed payment for the purchase of their interests in the Absolute Capital Funds to Defendants using the means and instrumentalities of interstate commerce.

## BACKGROUND FACTS PERTINENT TO PLAINTIFF'S CLAIMS

14. This case concerns an international fraudulent securities scheme based on the illicit purchases of hundreds of millions of dollars of securities in illiquid U.S. penny stocks in the names of multiple Absolute Capital hedge funds. When the truth about these purchases was revealed in September 2007, the value of the hedge funds promptly plunged by up to 40%, or by hundreds of millions of dollars in the aggregate.

15. The Return Europe Fund, East West Fund, European Catalyst Fund, Octane Fund, and Activist Fund are all entities that were formed and operated by the Individual Defendants to perform as hedge funds. In general, each fund solicited and received funds from investor shareholders for the purpose of investing those funds for profit.

(a) The Return Europe Fund is a company incorporated under the laws of the Cayman Islands. It has filed various reports with the United States Securities and Exchange Commission ("SEC") since 2005.

(b) The Absolute East West Fund Limited and Absolute East West Fund L.P. are companies incorporated under the laws of the Cayman Islands. Both funds invest shareholder funds through a "master-feeder" fund structure in Absolute East West Master Fund Limited, a Cayman Islands company. Both funds filed a notice of sale of securities with the SEC in July 2007.

(c) The European Catalyst Fund is a company incorporated under the laws of the Cayman Islands.

(d) The Absolute Octane Fund Limited and Absolute Octane Fund L.P. are companies incorporated under the laws of the Cayman Islands. Both funds invest shareholder funds through a "master-feeder" fund structure in Absolute Octane Master Fund Limited, a Cayman Islands company. Both funds filed a notice of sale of securities with the SEC in July 2007.

(e) The Activist Fund is a company incorporated under the laws of the Cayman Islands. It filed certain reports with the SEC in 2007.

16. The terms and conditions under which the Funds operated, including the investment policies and objectives of the Funds and the manner by which the Funds' assets would be valued, were communicated to Plaintiff and the members of the Class through Offering Memoranda that were prepared collectively by Defendants.

17. Each of the Absolute Capital Funds, acting through the Individual Defendants, engaged ACM to act as its "Investment Manager." Each Fund engaged its affiliate, ACM, pursuant to a written Investment Management Agreement prepared and/or reviewed by the Individual Defendants and made available to prospective investors. Pursuant to these agreements, ACM was obligated to "comply with any restrictions contained in the … Offering Memorandum issued by the Fund, and shall comply with such investment policies as may be set out in the Offering Memorandum … ." These agreements further assigned ACM specific duties in connection with determining the Net Asset Value of each fund, as further discussed below.

18. ACM typically charged each fund a Management Fee based on the particular Fund's net asset value, *i.e.*, an annual fee equal to 2% of the Fund's net asset value. In addition, ACM also charged a Performance Fee of 20% per annum of the Fund's net profits. In the aggregate, ACM and the Absolute Capital hedge funds had roughly two *billion* dollars under management, and each of the Individual Defendants profited personally from the fees collected via ACM's management of the assets of the Funds.

19. More than any other single person, Florian Homm controlled and directed the activities of ACM. ACM aggressively touted Homm's purported investment acumen, and particularly touted his expertise in European investments and European companies. Homm was the high-profile Chief Investment Officer of ACM at all relevant times between 2004 and September 2007 while ACM managed the assets of the Funds. Homm's prior work experience included employment with Merrill Lynch and Fidelity Management and Research in New York and Boston, respectively.

20. In September 2007, Homm suddenly and unexpectedly resigned as Chief Investment Officer of Return Europe Fund, East West Fund, European Catalyst Fund, Octane Fund, Activist Fund, and other funds within the Absolute Capital family of funds in the aftermath of disclosures concerning Homm's investment activities with the Funds' assets. Similarly, Ewing suddenly resigned as Chairman and CEO of ACM. As reported in the press, "many Absolute investors found themselves looking at big losses after it emerged in the days after Mr. Homm's disappearance that a substantial amount of his holdings had been in bulletin board, or 'pink' sheet stocks." Stocks known as "bulletin board" stocks or "pink sheet" stocks are stocks in companies that cannot meet the requirements to be listed on a national securities

exchange. Such stocks are universally recognized in the securities industry to be illiquid, thinly-traded, and speculative. They are often stocks in start-up companies. Such stocks are far more susceptible to market manipulation than stocks traded on a national exchange.

21. The "big losses" initially reported in the press were an understatement. In a September 19, 2007 press release by ACM, ACM revealed that the Absolute Capital Funds' investments in illiquid "US-based Over the Counter Bulletin Board/Pink Sheet" stocks were "approximately $440 million to $530 million of the equity funds' assets." ACM revealed that some of the funds had large percentages of their entire portfolios invested in such illiquid positions, including the following:

| Fund | Illiquid positions % of assets |
|---|---|
| Absolute Return Europe | 35-40% |
| Absolute European Catalyst | 25-30% |
| Absolute East West | 15-20% |
| Absolute Octane | 40-45% |
| Absolute Activist Value | 10-15% |

22. The sudden revelation that, over a period of time that extended through several years including the Class Period (as described in this First Amended Complaint), Homm had invested roughly half a *billion* dollars in illiquid penny stocks, contrary to the provisions contained in the Funds' Offering Memoranda and Investment Management Agreements, caused the value of investments in the Absolute Capital Funds to plunge and to put ACM in a financial crisis.

23. Promptly upon disclosure of these enormous illiquid positions in Funds that had been under Homm's immediate control, many investors sought to redeem their shares in the Funds. ACM responded by freezing redemptions and undertaking to "restructure" the Funds. This restructuring including the transfer of the enormous illiquid positions held by the Funds into "side pockets" to be maintained and managed separately from the other assets within each Fund.

24. Despite the European focus of the Absolute Capital funds and of Homm himself, as depicted in the Offering Memoranda, ACM's disastrous investments were made largely in illiquid stocks of speculative *American* companies that were traded, if at all, over the counter in the United States. Worse still, as discussed below, many were acquired through a penny stock brokerage firm in the United States in which Homm was secretly a half-owner.

25. Shortly after the September 2007 disclosures concerning Homm's investment activities and the collapse of the Absolute Capital Funds, the Funds' auditors (Ernst & Young) resigned from their engagement with Absolute Capital. To date, ACM has not released audited financial statements for the Funds for 2007 or any period thereafter.

26. Shortly after the September 2007 disclosures and the collapse of the Absolute Capital Funds, the Administrator for the Funds (Fortis Prime Fund Solutions IOM Limited) resigned from its engagement with Absolute Capital.

27. Shortly after the collapse of the Absolute Capital Funds and the September 2007 disclosures concerning Homm's investment activites, ACM announced that it had engaged an outside auditor to investigate the reasons for the collapse. Although ACM initially announced that the investigation would be completed by April 2008, the auditing firm of Price Waterhouse

did not complete its investigation until September 2008. ACM has not publicly disclosed the results of this investigation.

## ABSOLUTE CAPITAL AND HOMM AGGRESSIVELY SOLICITED INVESTMENTS FROM UNITED STATES INVESTORS AND UNITED STATES INVESTMENT MANAGERS OR ADVISORS

28. Although many investors in the Absolute Capital Funds reside outside the United States, primarily in Europe, numerous investors, including Plaintiff and the members of the Class, are residents of the United States and/or are controlled and managed by residents of the United States.

29. ACM maintained marketing or distribution agreements with various persons in the United States to promote and sell shares of the Absolute Capital Funds to investors in the United States and elsewhere. ACM or its affiliates have one or more employees who reside in the United States who participated in the marketing and distribution of Absolute Capital investments in the United States. These marketing and distribution activities included providing Plaintiff and the other members of the Class with the written Offering Memoranda and other Fund investment materials in an effort to induce investment in the Funds.

30. ACM provided the Funds' written Offering Memoranda, which it had participated in preparing, to Plaintiff and the other members of the Class as part of its solicitation of investments from United States investors and from investors who were controlled or managed by United States residents. Some, but not all, Offering Memoranda stated without equivocation that U.S. residents were not "Eligible Investors" and could not become shareholders. For example, the Offering Memorandum for the European Catalyst Fund stated that "Participating Shares are

not available for subscription . . . by U.S. Persons." The Offering Memoranda for East West Fund and Return Europe Fund contained the same restriction.

31. Despite these written representations, Defendants aggressively solicited and accepted millions of dollars of investments from U.S. investors or investors controlled or managed by U.S. residents. To that end, Defendants caused the Offering Memoranda to be delivered to U.S. investors, including Plaintiff and the Class members, using the means and instrumentalities of interstate commerce. In addition to Offering Memoranda, Defendants sent prospective and actual U. S. investors colorful presentations identifying ACM's investment team, describing their supposed "Objectives," "Strength," "Competitive Advantage," "Research Philosophy," "Company Assessment," "Short Portfolio Characteristics," "Long Portfolio Characteristics," "Portfolio Construction" (none of which ever disclosed Homm's investment philosophy of buying hundreds of millions of dollars of U.S. speculative penny stocks through an unknown brokerage firm half-owned by him), "Risk Management," "Investment Awards" and "Investment Distinctions."

32. In addition, ACM and Homm solicited investments from U.S. investors via email and other direct communications directed at Plaintiff and the members of the Class in the United States, including in this District. Many of these solicitations were made personally by Defendant Homm. In connection with soliciting investments from United States investors, Defendants sent prospective investors in the United States numerous curriculum vitae of ACM personnel, including Florian Homm and Ullrich Angersbach. Similarly, ACM sent Plaintiff and other members of the class "Due Diligence" reports that purported to describe the Funds' facts, structure, investment philosophy, objectives, and other information about the Funds.

33. ACM and the Individual Defendants periodically sent portfolio managers or other investment professionals to the United States to meet with U.S. investors and U.S. investment advisors. These visits continue to this day. As recently as May 2008, ACM sent fund managers to New York to conduct meetings with investors.

34. In 2006, ACM altered its strategy for soliciting investments from U.S. residents by establishing parallel funds designed specifically for U.S. investors. For example, ACM established Absolute East West Fund L.P. to be marketed in tandem with Absolute East West Fund Limited. The only significant difference between the two was that the "L.P." could be sold to U.S. investors but the "Limited" was restricted to foreign investors. All assets of the two funds together would be invested together through a "master-feeder" fund structure. A similar master-feeder structure was established for the Octane Fund. ACM established the master-feeder structure in order to promote these two funds, in particular, to U.S. investors. The Offering Memoranda for the L.P. funds specifically noted that Absolute Capital had retained a New York law firm to be "Legal Advisers as to matters of U.S. law."

35. Upon obtaining an investment from Plaintiff or any other member of the Class, Defendants thereafter sent the investor (in the United States) frequent reports purporting to describe the Funds' performance, net asset values, performance relative to other funds and to industry benchmarks, and other information.

36. The Offering Memoranda prepared by Defendants and distributed to U.S. investors and to U.S. residents who controlled or managed foreign investors contained numerous fraudulent misrepresentations and omissions. The scheme at the heart of the material misrepresentations and omissions was a secret business venture by Homm to use the enormous

funds under ACM's supervision to generate illicit personal profit for Homm, and the continuing efforts to hide the scheme from investors.

## HOMM'S SECRET SCHEME WITH HUNTER WORLD MARKETS AND TODD FICETO

37. Though never disclosed in the Offering Memoranda or in any other communication between Defendants and the members of the Class, Defendant Homm had a business relationship with a penny stock brokerage firm in California called Hunter World Markets, Inc. ("Hunter"). Homm owned 50% of Hunter.

38. Homm's only partner in Hunter World Markets was Todd M. Ficeto, with whom Homm had a lengthy history. Hunter formerly was called VMR Capital Markets US, and was so named because of its partial ownership by VMR Germany, a German company controlled by Florian Homm.

39. Ficeto, as Homm knew, had a substantial disciplinary history in the securities industry. Ficeto's securities industry history included the following:

> In 1996, Ficeto was suspended by the National Association of Securities Dealers from recommending any transactions in penny stocks for two years for violating the NASD Rules of Fair Practice;
>
> In 1997, the State of Ohio rejected Ficeto's application for an Ohio securities salesman license;
>
> In 2002, the NASD censured and fined Ficeto and VMR Capital Markets for failing to report customer complaints and for Ficeto executing securities transactions without being properly registered with the NASD; and
>
> In 2003, Ficeto was fined and suspended by the NASD from all supervisory capacities for "serious" and "reckless" supervisory failures.

40. ACM and Homm never disclosed Homm's partnership with Ficeto and Hunter to Plaintiff or the other members of the Class. Instead, Homm, acting in his capacity as Chief Investment Officer of ACM, secretly steered hundreds of millions of dollars of the Absolute Capital investor funds managed by ACM and Homm, in which Plaintiff and the members of the Class had invested, into the purchase of wildly speculative penny stocks from Hunter in direct contravention of the Funds' investment policies and objectives, as described in the Funds' Offering Memoranda. Homm's transactions generated huge profits for Hunter in a variety of ways, which in turn generated secret profits for Homm. Homm never disclosed to Plaintiff or the other members of the Class that he diverted their funds to Hunter in order to generate profits for himself. Homm's self-serving investments included the following:

(a) In May 2004, Homm spent $1.5 million of Absolute Capital Funds investor funds to acquire 2.5 million shares of stock in Universal Guardian Holdings, Inc., a California penny stock company. As part of that transaction, Universal issued stock purchase warrants *to Hunter* – not to the Absolute Capital Funds – with a value of $883,298. Instead of the warrants being delivered to the Absolute Capital Funds, Defendant Homm kept the warrants for his firm and thus for himself. Homm did not disclose his conflict of interest or his secret profit to Plaintiff or the other members of the Class. The investment of the Absolute Capital Funds in Universal Guardian Holdings was virtually completely lost.

(b) By March 2005, Return Europe Fund and European Catalyst Fund each had large investments in a California penny stock called Logistical Support, Inc. Hunter itself had a large direct investment in Logistical Support. Thus, Homm, listed in Logistical Support's Form 10-K as the person who controlled the European Return Fund, used investor money to prop up a penny stock in which he was beneficially a large personal shareholder. Homm did not disclose his conflict of interest in using investor money to prop up a personal investment. The investment of the Absolute Capital Funds in Logistical Support was virtually completely lost.

(c) In August 2005, Defendant Homm, acting as Investment Advisor for the Absolute Capital Funds, caused the Return Europe Fund, European Catalyst Fund, and Octane Fund to collectively invest $4 million in a penny stock company called Micromed Cardiovascular Inc. As a result of Homm's investment of Absolute Capital Funds' investor funds, warrants to purchase about 1.8 million shares of

Micromed stock were issued *in the name of Hunter*. Instead of retaining those warrants for his investors, Homm specifically caused the Absolute Capital Funds to assign those warrants to Hunter – and thus derivatively to himself. In contrast, others who invested in Micromed at the same time kept the warrants for themselves. The investment of the Absolute Capital Funds in Micromed was virtually completely lost.

(d) In May 2007, Homm, acting as Chief Investment Officer for Return Europe Fund, European Catalyst Fund, and East West Fund, bought large blocks of stock in a U.S. penny stock called Quest Group International, in which Hunter was a large shareholder. Within months, Hunter apparently sold *its* stock for huge profits. Thus, Homm helped promote a classic "pump and dump" of a penny stock for the benefit of Hunter and, thus, of himself. Defendant Homm did not disclose his conflict of interest in using investor money to prop up a personal investment.

(e) In late 2006, Homm and others caused several Absolute Capital Funds to acquire stock in Java Detours, Inc., a California fast food and beverage company. In the aggregate, about 41% of Java Detours stock, at a price in excess of $10 million, was acquired by various Absolute Capital Funds and was held "c/o Hunter World Markets, Inc." in Beverly Hills, California. Hunter received $1 million in cash, plus warrants for placing the stock with its affiliate, ACM. Homm did not disclose his conflict of interest in using investor money to generate large profits for Hunter, and derivatively for himself.

(f) In October 2006, Defendant Homm caused several of the Absolute Capital Funds to purchase an aggregate of $10 million of stock in a U.S. penny stock company called Pro Elite, Inc., which promoted mixed martial arts matches. The stock was marketed by and acquired through Hunter World Markets, which was paid more than $1 million for placing the stock with its affiliate, ACM. Thereafter, in July 2007, Hunter World Markets received another $2.5 million in commissions and more than 3 million warrants when Absolute Capital Funds purchased another $20 million of Pro Elite stock.

(g) In June 2005, Homm caused the Return Europe Fund to acquire approximately $3.6 million shares of stock in a U.S. penny stock company called Berman Center, Inc., which operated a women's sexual health clinic in Chicago, Illinois. The stock was marketed by and acquired through Hunter World Markets.

(h) In May through June of 2007, Homm caused several Absolute Capital Funds, including Return Europe Fund, European Catalyst Fund, and Activist Value Fund, to purchase more than $20 million in stock of NuRx Pharmaceuticals, Inc., through Hunter World Markets. Hunter received more than $2 million in cash, more than 12 million shares and in excess of 10 million warrants as compensation for placing the stock in the Absolute Capital Funds.

(i) In May 2004, certain Absolute Capital Funds, including Return Europe Fund and European Catalyst Fund, acquired through Hunter World Markets more than $3 million in stock of Novint Technologies, Inc. Hunter was paid half a million dollars in cash, more than 260,000 shares and in excess of 1.5 million warrants from Novint Technologies.

(j) In December 2006, Hunter World Markets placed more than $10 million of stock in Lucy's Café, Inc., through Homm into various Absolute Capital Funds, including Return Europe Fund, European Catalyst Fund, East West Fund, Octane Fund, and Activist Value Fund. In return for this placement, Hunter World Markets received more than $1 million in cash, 4 million shares of stock and warrants.

Standing alone, the sheer volume of transactions between the Absolute Capital Funds and Hunter, the little-known penny stock firm in California, served as a red flag that should have alerted all of ACM's officers, directors, and control persons to a substantial risk of illegal activity between Homm and Hunter.

41. The Offering Memoranda prepared by Defendants and distributed by ACM to Plaintiff and the members of the Class contain only generic, boilerplate disclosures of potential conflicts of interest on the part of Absolute Capital and its directors, generally phrased in hypothetical terms that posited only that conflicts "may" arise. For example, the Offering Memoranda for the East West Fund, European Catalyst Fund, Return Europe Fund, Activist Fund, and Octane Fund contain such generic disclosures about possible conflicts of interest in the following terms:

> The Directors, Investment Manager, the Investment Advisors, Prime Broker, and the Administrator (each an "Interested Party") and, in respect to each of them (where relevant), its holding company, its holding company's shareholders, any subsidiaries of its holding company and any of its directors, officers, employees, agents, and affiliates and any investment company or account advised or managed by any of them *may* be involved in other financial, investment or other professional activities which *may* on occasion give rise to conflicts of interest with the Fund. The

> Directors, the Investment Manager and the Investment Advisors *may* provide services similar to those provided to the Fund and shall not be liable to account for any profit earned from any such services. Where a conflict arises, the Directors, the Investment Manager, and the Investment Advisors will endeavour to ensure that it is resolved fairly. (Emphasis added.)

42. The Offering Memoranda prepared by Defendants and distributed by ACM to Plaintiff and the members of the Class:

(a) Never disclosed that Defendant Homm, who was specifically identified in certain Offering Memoranda as an "Investment Advisor" to the Funds, had a secret large stake in Hunter World Markets;

(b) Never disclosed that Defendant Homm caused ACM to engage in substantial wildly speculative transactions with Hunter;

(c) Never disclosed that Defendant Homm generated large secret profits for himself by steering suspect investments to Hunter;

(d) Never disclosed that Defendant Homm caused ACM to assign valuable rights (such as warrants) to Hunter;

(e) Never disclosed that Homm intended to continue using investor funds as a vehicle to secretly enrich himself through Hunter; and

(f) Never disclosed that Homm's partner in Hunter World Markets was Ficeto and never disclosed Ficeto's dubious regulatory history.

43. Any reasonable investor would have considered Homm's secret relationship with Hunter, and with Ficeto, to be material considerations in deciding whether to invest in the Absolute Capital Funds.

44. The sudden collapse of the Absolute Capital Funds and of ACM in September 2007 was primarily attributable to Homm's investments in U.S. stocks acquired through his U.S. penny stock broker-dealer. As noted, ACM, itself, in September 2007 press releases disseminated to the public, attributed the collapse to holdings of illiquid "US-based Over the Counter Bulletin Board/Pink Sheet" stocks. According to ACM, even funds in the Absolute

Capital family of funds that had few of the illiquid stocks were "caught in the downdraft brought on by the sudden and unexpected resignation of Florian Homm."

45. The United States Securities and Exchange Commission ("SEC") is actively investigating the transactions and the relationship between Florian Homm, Absolute Capital, and Hunter World Markets. The Los Angeles Regional Office of the SEC has contacted various investors in the Absolute Capital Funds in connection with its investigation of Hunter's involvement with the Absolute Capital Funds.

## ABSOLUTE CAPITAL REPEATEDLY VIOLATED ITS INVESTMENT POLICIES AND RESTRICIONS AS REPRESENTED TO PLAINTIFF AND THE CLASS MEMBERS IN THE OFFERING MEMORANDA DISTRIBUTED BY DEFENDANTS

46. Defendant Homm's enormous investments in speculative U.S. penny stocks were directly contrary to numerous representations appearing in the Offering Memoranda for the Absolute Capital Funds prepared by Defendants and distributed to Plaintiff and the members of the Class for the purpose of inducing their investment in the Absolute Capital Funds.

The Funds' Investment Restrictions were Misrepresented.

47. The Offering Memorandum for the Return Europe Fund described certain "Investment Restrictions" applicable to the Fund, including the following: "unlisted securities will be a maximum of 10% of the Net Asset Value of the Fund at the time of making the investment." The Offering Memoranda for the East West Fund, the European Catalyst Fund, and the Octane Fund contained the same Investment Restriction.

48. These representations regarding the composition of the Funds' investments were false and misleading. Defendant Homm's huge investments in thinly traded, illiquid U.S. penny stocks that traded over the counter in the U.S. comprised substantially more than 10% of the Net

Asset Values of the Funds at all times during the Class Period, and were investments in unlisted securities as that term is commonly understood in the hedge fund industry. These investments posed precisely the risks carried by stocks not listed on an exchange – they were thinly traded, highly illiquid, subject to manipulation, difficult to price, and difficult to value for balance sheet purposes. These risks were evidenced when the value of the Funds plunged immediately upon disclosure of Defendant Homm's huge wagers on such stocks.

49. ACM confirmed the distinction between stocks listed on an exchange and stocks traded over the counter, the latter of which it represented would not exceed 10% of the Net Asset Value of each fund. In its discussion in the Offering Memoranda of how Net Asset Value would be determined for each fund, ACM expressly differentiated between "investments that are listed on an exchange" and "investments traded over the counter." The collapse of the Absolute Capital Funds and of ACM was caused in large part by the investments in unlisted U.S. stocks that were directly contrary to the Funds' Investment Restrictions.

The Funds' Net Asset Values were Misrepresented.

50. Accurate representations of Net Asset Values are particularly critical for hedge fund investors because such funds typically invest in alternative, derivative, and other investments that may be difficult to evaluate. The Offering Memorandum for the Return Europe Fund represented how ACM, as Investment Manager, would make its "Determination of Net Asset Value" on behalf of that Fund. The Offering Memorandum represented that investments traded over the counter, such as the U.S. penny stocks described above, "shall be valued at the last traded price on the date of determination . . . or at a price received from the counterparty to the over the counter trade." Under any circumstance, ACM represented that such stocks would

be valued "at a fair price" so as to "reflect the fair value" of such investment. The Offering Memoranda for the East West Fund, the European Catalyst Fund, the Octane Fund, and the Activist Fund contained the same representations regarding the Determination of Net Asset Value.

51. The Investment Management Agreement between each fund and ACM similarly obligated ACM to determine accurately the Net Asset Value of each fund, typically on a monthly basis.

52. The statements in the Offering Memoranda regarding the determination of Net Asset Value were false and misleading. Defendants egregiously and systematically inflated the Net Asset Value of Defendant Homm's many self-interested U.S. penny stock investments by carrying those investments on the Funds' balance sheets at their *cost* instead of their *fair value*, which was often far below their cost. Moreover, to the extent those "costs" represented prices received from Hunter with respect to Homm's trades, those "costs," and the corresponding prices charged by Hunter, were grossly inflated, which had the dual effect of (a) increasing the Net Asset Values of the Funds (producing inflated management fees to ACM from which all the Individual Defendants benefited) and (b) increasing the commissions received by Hunter (from which Homm directly benefited by virtue of his undisclosed ownership interest in Hunter). The misrepresentations of the Net Asset Values of the Funds were continuously repeated in Defendants' public statements regarding the Funds' performance, in account statements prepared by, or at the direction of Defendants, and delivered to Plaintiff and members of the Class, and on ACM's web site which was available for public access. In this manner, Defendants Homm and

ACM concealed the Funds' losses in U.S. penny stocks for years, the disclosure of which would have halted further subscriptions to the Funds.

53. The extent of the deception in this regard, and its impact on the Funds' investors, are reflected in the steep drop in the Funds' values immediately after ACM's practice of carrying the U.S. penny stocks at grossly inflated valuations was revealed in September 2007. When the unlisted stocks were re-valued to their market value, the funds plunged by 30% or more – causing hundreds of millions of dollars in losses virtually overnight. The collapse of the Absolute Capital Funds and of Defendant ACM was attributable in significant part to ACM's inflated determination of the fair values of the U.S. penny stocks.

The Funds' Investment Objectives and Policies were Misrepresented.

54. The Offering Memorandum prepared by Defendants for the Return Europe Fund described that Fund's "Investment Objective and Policies" as follows: "the Fund currently intends to invest principally in long and short positions in European equities and securities." This representation of the Return Europe Fund's investment objective was material to investors and was consistent with the purported European expertise of Defendant Homm and the other European founders and directors of ACM.

55. Similarly, the Offering Memorandum for the East West Fund prepared by Defendants described that Fund's "Investment Objective and Policies" to include the following: "The Fund intends to focus principally on the old and new European Union members as well as potential EU candidates and their neighbors." This representation of the East West Fund's investment objective was material to investors and was consistent with the purported European expertise of Defendant Homm and the other European founders and directors of ACM.

56. Likewise, the Offering Memorandum for the European Catalyst Fund described that Fund's "Investment Objective and Policies" to include the following: "the Fund currently intends to invest principally in under and overvalued long and short positions in European equities and securities." This representation of the East West Fund's investment objective was material to investors and was consistent with the purported European expertise of Homm and the other European founders and directors of ACM.

57. These statements of "Investment Objectives and Policies" in the Funds' Offering Memoranda prepared by Defendants were false and misleading. As Defendants then knew, or recklessly disregarded, defendant Homm's huge investments in U.S. penny stock companies purchased through a U.S. penny stock brokerage firm had little or nothing to do with European equities or with old and new European Union members as represented in the Offering Memoranda. The collapse of the Absolute Capital Funds and of ACM was caused primarily by the disclosure that, contrary to the representations contained in the Offering Memoranda regarding the Funds' Investment Objectives and Policies and their focus on European equities and securities and European countries, the Funds, at the direction of Defendants, had made large investments in speculative and thinly-traded U.S. penny stocks.

58. Each of these misrepresentations appearing in the Offering Memoranda was perpetuated by defendant ACM and by the Individual Defendants from the inception of the Class Period until September 2007. Throughout years of soliciting investments and of reporting the Funds' investment activities to shareholders like Plaintiff and the members of the Class, Defendants perpetuated their misrepresentations regarding the Funds' investment restrictions, net asset values, and policies and objectives.

**ACM TRANSFERRED NEARLY ALL OF ITS ASSETS TO DEFENDANT ARGO GROUP LIMITED TO TRY TO INSULATE THOSE ASSETS FROM CREDITORS, INCLUDING MEMBERS OF THE CLASS**

59. In January 2007, ACM acquired and merged with Argo Capital Management and other entities within the Argo family of businesses for approximately $100 million. The Argo businesses that ACM acquired managed certain hedge funds that focused on debt securities, with a further focus on emerging market debt. The Argo businesses acquired by ACM managed approximately $900 million of assets in various funds.

60. ACM and Argo merged for the purpose of combining ACM's equity hedge fund business with Argo's debt hedge fund business. Argo's largest shareholders were Andreas and Kyriakos Riales, who became ACM's largest individual shareholders after the merger. As part of the merger, Andreas Riales became "Co-chief Investment Officer" of the Absolute Capital Funds at issue in this case. The other Co-chief Investment Officer of the Absolute Capital Funds was Florian Homm.

61. After the September 2007 disclosure of ACM's fraudulent scheme described above, which had continued throughout 2007, the Argo businesses became ACM's most valuable assets. As a result, ACM undertook to shield its assets from investors in the Absolute Capital Funds. In February 2008 – a few months after Homm and ACM's fraudulent investment scheme became public – a new entity called Argo Group Limited ("Argo Group") was formed in the Isle of Man. Argo Group was formed for the sole purpose of divesting ACM of its most valuable remaining assets – the Argo businesses. In April 2008, ACM and Argo Group entered into an agreement under which ACM transferred its ownership of Argo Capital and the related Argo

entities to the new entity, Argo Group. In return, ACM received stock in Argo Group with a stated value of 21,453,289 euros.

62. In May 2008, ACM agreed to pay a dividend to its shareholders consisting of ACM's stock in the new Argo Group entity. Together, these transactions are referred to as "the Argo Spinoff." In June 2008, the Argo Spinoff was approved by ACM's shareholders.

63. As of June 2008, ACM's ownership of Argo Capital and the related Argo entities was far and away ACM's most valuable asset. The intent behind, and the consequence of, the Argo Spinoff was to shield ACM's largest asset from the exposure ACM faced as a result of the fraudulent penny stock scheme described above. The market price of ACM stock collapsed promptly upon shareholder approval of the Argo Spinoff, **falling more than 80%, and reflecting the investment public's understanding that the value of ACM resided principally in the assets transferred to Argo Group in the Argo Spinoff.** The vast majority of ACM's revenue-generating assets were transferred to Argo Group via the Argo Spinoff and, as a direct result of the Argo Spinoff, ACM virtually became a penny stock itself.

64. The Argo Spinoff altered the form of ownership of Argo Capital and the related Argo entities, but not its substance. ACM shareholders received stock in Argo Group in direct proportion to their ownership of ACM. As a result of the Argo Spinoff, ACM's shareholders owned two nominally separate entities instead of one, but they beneficially owned the exact same aggregate ACM/Argo assets after the Argo Spinoff as they owned before it. In short, ACM split itself into two in 2008 *after* it incurred liability to Plaintiff and the members of the Class for securities fraud that was exposed in late 2007.

65. ACM and Argo Group knew that the Argo Spinoff would dramatically remove value from ACM and transfer that value to Argo Group. As a direct result of the Argo Spinoff, ACM's Abbreviated Consolidated Interim Financial Statements for the period ended June 30, 2008 (*i.e.,* the period ending immediately after approval of the Argo Spinoff) questioned whether ACM would continue to be a going concern.

66. Similarly, ACM and Argo Group were fully aware that investors in the Absolute Capital Funds would see the Argo Spinoff for what it is – an attempt to shield ACM's biggest asset from the claims of investors who were defrauded by ACM. In Argo Group's formal application to have its stock traded on the London Stock Exchange, Argo Group acknowledged that it "could become involved in disputes and/or claims . . . arising out of its historic connection with Absolute Capital."

67. Despite ACM's attempt to shield its assets from its defrauded investors, including Plaintiff and the members of the Class, Argo Group is the successor in liability to ACM, from which it spawned.

68. When Argo Group received 80% or more of ACM's net worth in the form of ACM's ownership of Argo Capital and related Argo entities, Argo Group was the recipient of a fraudulent transfer of ACM's assets undertaken to shield ACM's assets from the victims of Defendants' fraudulent penny stock scheme.

## ALLEGATIONS OF SCIENTER

69. As alleged herein, ACM, AGP and the Individual Defendants acted with scienter in that they participated in the preparation and review of the Offering Memoranda, including the statements concerning the investment restrictions, objectives, and net asset valuations of the

Funds as contained in those Offering Memoranda and described herein, and which were issued or disseminated in the name of the Absolute Capital Funds. ACM, ACP, and the Individual Defendants knew that those above-described statements were materially false, incomplete, or misleading because they knew about the fraudulent penny stock scheme orchestrated and implemented by defendant Homm which continued throughout the Class Period. Moreover, ACM, AGP, and the Individual Defendants knew that such deceptive and misleading statements and documents, including the Offering Memoranda, would be issued to the investing public, and knowingly and substantially participated or acquiesced in the preparation, issuance or dissemination of such statements as primary violators of the federal securities laws.

70. As alleged herein, ACM, AGP, and the Individual Defendants, by virtue of their knowledge of the true facts concerning the investment practices of the Funds as orchestrated by defendant Homm, and by their preparation and control over the materially misleading statements made in the Offering Memoranda concerning the investment restrictions, objectives, and valuation of the Funds, participated in the fraudulent scheme described herein. Defendants knew, or recklessly disregarded, the false and misleading nature of the information which they had prepared and subsequently caused to be disseminated to Plaintiff and the members of the Class.

71. ACM, AGP, and the Individual Defendants acted with scienter in that they knew of defendant Homm's dealings with Hunter World Markets, they knew of defendant Homm's trading activities with Hunter, they knew of the substantial revenue generated by ACM for Hunter, they knew that the prices charged by Hunter inflated the Net Asset Value of the Funds and, correspondingly, the management fees by which they all profited, they knew of Homm's

ownership in Hunter, and they knew of Homm's enormous conflict of interest in using the assets of the Funds for his personal financial gain.

72. ACM, AGP, and the Individual Defendants had the motive and opportunity to perpetrate the fraudulent scheme described herein because the Individual Defendants were the officers, directors, and/or general partners of defendants ACM, AGP, and also of the Funds. They had exclusive authority to manage the business affairs of the Funds, and were directly responsible for the investment activities conducted by the Funds. Consequently, each of these defendants knew that the assets held by the Funds were not invested in accordance with the representations contained in the Offering Memoranda and were not carried at fair value for purposes of determining the Funds' Net Asset Values. ACM's Management Fees and Performance Fees were continuously overstated by these defendants' systematic exaggeration of the Net Asset Values of the Funds. Homm "earned" substantial personal income through these secret and fraudulent dealings with Hunter World Markets, and these remaining defendants profited from the excessive fees generated by the falsely inflated Net Asset Values produced by Homm's fraudulent trades with Hunter.

73. As senior controlling officers and directors of ACM and AGP, the scienter of the Individual Defendants is properly attributed to ACM and AGP.

74. In conjunction with the public disclosure of the fraudulent penny stock scheme in September 2007, and the immediate collapse of the value of the Funds' assets, defendant Homm suddenly and unexpectedly resigned his position with ACM and the Funds. Homm disappeared and his whereabouts remain unknown and subject to speculation.

## LOSS CAUSATION

75. During the Class Period as detailed herein, Defendants engaged in a scheme to deceive investors in the Funds that operated as a fraud or deceit on investors who purchased interests in the Funds by misrepresenting the investment restrictions, objectives, and net asset valuations of the Funds.

76. The decline in the value of the assets of the Funds resulted directly from the disclosure that a substantial amount of the assets of the Funds had not been invested in the manner represented in the Offering Memoranda but, instead, had been invested in thinly traded, illiquid U.S. penny stocks that traded over the counter in the U.S. and that had been grossly overvalued by Defendants in computing the Net Asset Values of the Funds.

77. The decline in the value of the assets of the Funds was a direct result of Defendants' fraudulent conduct alleged herein finally being disclosed to the Funds' investors and to the market.

78. The resulting decline in the value of the assets of the Funds was foreseeable to Defendants at the time of Defendants' misrepresentations and omissions of material facts.

79. The totality of the circumstances surrounding the decline in the value of the assets of the Funds negates any inference that the economic loss suffered by Plaintiff and the other members of the Class was caused by any factors unrelated to Defendants' fraudulent conduct.

80. The economic loss sustained by Plaintiff and the members of the Class was the direct and proximate result of Defendants' fraudulent scheme and course of conduct in investing the assets of the Funds into thinly traded, illiquid U.S. penny stocks that traded over the counter

in the U.S. and in repeatedly grossly overstating the Net Asset Value of the Funds' investments to mislead investors as to the value of the assets of the Funds.

## NO SAFE HARBOR

81. 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. None of the specific statements pleaded herein were 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, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by a Defendant who knew that those statements were false when made.

## CLASS ACTION ALLEGATIONS

82. Plaintiff brings this action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of:

> All United States investors and foreign investors controlled or advised by United States residents who purchased shares or limited partnership interests in the Absolute Return Fund, the East West Fund, the European Catalyst Fund, the Octane Fund or the Activist Fund within three (3) years prior to the filing of this Complaint and who held their investments on September 18, 2007 (the "Class Period"); excluding, however, defendants or any members of their immediate families, or their heirs, successors, and assigns, and also excluding the officers, directors, agents, partners, employees or predecessors or successors in interest of any defendant.

83. 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, Plaintiff believes that the members of the Class are geographically dispersed throughout the United States. The precise number of Class members can be ascertained through discovery of the books and records of the Funds that are maintained by Defendants.

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

(a) Whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) Whether Defendants disseminated false and misleading statements in the Offering Memoranda concerning the investment restrictions and objectives of the Funds and the manner by which the Net Asset Value of the Funds would be determined;

(c) Whether the Defendants violated (i) the Investment Restrictions contained in the Offering Memoranda, (ii) the Investment Objectives and Policies contained in the Offering Memoranda; or (iii) the Determination of Net Asset Value as described in the Offering Memoranda;

(d) Whether the Defendants omitted material facts by failing to disclose Defendant Homm's relationship with Hunter World Markets and Ficeto, and by not disclosing Homm's use of Plaintiffs' funds to generate secret profits for Hunter and himself;

(e) Whether Defendants employed a device, scheme, or artifice to defraud by using the funds invested by Plaintiff and the Class members to generate secret profits for Hunter World Markets and for Defendant Homm;

(f) Whether Defendants acted knowingly or recklessly in issuing the Offering Memoranda that contained material misrepresentations of fact and omitted facts material to an investment in the Funds;

(g) Whether the members of the Class have sustained damages and, if so, the proper measure of damages; and

(h) Whether the large investments by the Funds in thinly traded, illiquid U.S. penny stocks caused losses to Plaintiff and the Class.

85. Plaintiff is a member of the Class and Plaintiff's claims are typical of the claims of the members of the Class as Plaintiff and the Class members have sustained damages arising out of Defendants' wrongful conduct in violation of federal law as complained of herein. Plaintiff and the members of the Class received similar misrepresentations and omissions during the Class Period, and all were injured by ACM's and Homm's accumulation of investments in U.S. penny stocks and the collapse in Fund prices that occurred when Defendant Homm suddenly resigned in September 2007 at the time that the Funds' heavy concentration in illiquid U.S. stocks was first disclosed. Upon information and belief, Plaintiff is subject to no unique defenses not otherwise applicable to the members of the Class.

86. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class actions and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

87. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable and questions of law or fact common to Class members predominate over any questions affecting only individual members. Furthermore, because the damages suffered by individual Class members may be relatively small compared to the cost of complex litigation, the expense and burden of individual litigation makes it impracticable for the Class members individually to redress the wrongs done to them. Upon information and belief, no member of the proposed Class has maintained litigation concerning the controversy that is the subject of this Action and judicial efficiency is best served by concentrating the litigation of these claims in this forum.

88. No unusual difficulties are likely to be encountered in the management of this class action.

## CLAIMS FOR RELIEF

### COUNT I
### (Violations of Section 10 (b) of the Securities Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

89. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

90. During the Class Period, Defendants carried out a plan, scheme, and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate the Net Asset Value of the Funds; and (iii) cause Plaintiff and other members of the Class to purchase their investments in the Funds at artificially inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct, Defendants took the actions set forth herein.

91. 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 made not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of interests in the Funds in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

92. Defendants, 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 misrepresent and to not disclose material facts concerning the investment practices and objectives of the Funds and the manner in which the Net Asset Value of the Funds was

determined as specified herein. In particular, Defendants' material misrepresentations and omissions, which were included in the Offering Memoranda and in other investment materials disseminated to Plaintiff and the Class for the purpose of inducing their investments into the Funds, include the following:

(a) Defendants failed to disclose Defendant Homm's relationship with Hunter World Markets and with Ficeto;

(b) Defendants failed to disclose that Defendant Homm continuously used the assets of the Funds to purchase securities through Hunter World Markets that generated huge secret self-dealing profits for Hunter and for Homm;

(c) Defendants misrepresented that "unlisted securities will be a maximum of 10% of the Net Asset Value of the Fund at the time of making the investment;"

(d) Defendants misrepresented that, for purposes of determining Net Asset Value, stocks would be valued "at a fair price" so as to "reflect the fair value" of such investment;

(e) Defendants repeatedly and systematically misrepresented the Net Asset Value of the Funds; and

(f) Defendants misrepresented the Investment Objectives and Policies for the Return Europe Fund, the East West Fund, and the European Catalyst Fund.

93. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts in the Offering Memoranda and other investment materials as described herein, as set forth above, the values of the investments in the Funds held by Plaintiff and the Class were artificially inflated during the Class Period. In ignorance of the fraudulent scheme orchestrated by Defendants and the fact that that scheme caused the values of the assets held by the Funds to be artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants in the Offering Memoranda and other investment materials described herein, Plaintiff and the other members of the Class purchased

94. At the time of said misrepresentations and omissions contained in the Offering Memoranda and other investment materials described herein, 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 known of the fraudulent scheme orchestrated by Defendants and of the true financial condition of the Funds, Plaintiff and other members of the Class would not have purchased or otherwise acquired their interests in the Funds, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

96. 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 of interests in the Funds during the Class Period.

**COUNT II**
**(Violations of Section 20(a) of the Securities Exchange Act (15 U.S.C. § 78t) Against Homm, Ewing and Angersbach**

97. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

98. Defendants Homm, Ewing, and Angsbacher are liable as control persons of ACM pursuant to section 20(a) of the Exchange Act, 15 U.S.C. § 78t. Defendants Homm and Ewing were founders, directors, and senior officials of ACM with Defendant Homm serving as ACM's

Chief Investment Officer, and Defendant Ewing serving as ACM's chairman of the board. Through these positions of virtually unfettered managerial control, Defendants Homm and Ewing exercised control over Defendant ACM's investments, on behalf of the Funds, in illiquid U.S. penny stocks in violation of the specific trading practices outlined in the Offering Memoranda for the Funds. Defendant Angsbacher was a director of ACM and, in that position, had access to the investment portfolios of each of the Funds managed by Defendant ACM and knew or should have known of the large concentrations of illiquid U.S. penny stocks acquired by Defendant ACM on behalf of the Funds in violation of the specific trading practices outlined in the Offering Memoranda for the Funds.

99. But for the deceptive conduct and the misrepresentations and omissions of material facts described above, Plaintiff and the members of the Class would not have invested in the East West Fund, European Catalyst Fund, Return Europe Fund, Activist Fund, or Octane Fund. The conduct described above directly caused the losses suffered by Plaintiff and the Class members as a result of the September 2007 disclosure that the deceptive and wrongful trading practices of Defendants had caused the Absolute Capital Funds to lose hundreds of millions of dollars through their wrongful investment in U.S. penny stocks which, in turn, had been wrongfully concealed from Plaintiff and the Class members by Defendants' knowing use of deceptive and inflated Net Asset Values of the Funds and communicating those inflated Net Asset Values to Plaintiff and the Class.

**COUNT III**
**(Successor Liability of Argo Group Limited)**

100. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

101. The Argo Spinoff resulted in a new entity, Argo Group Limited, that was merely a continuation of the debt and real estate fund business of ACM. The same persons responsible for ACM's debt and real estate fund management before the Argo Spinoff continued to manage the debt and real estate funds after the Spinoff, for the benefit of the exact same shareholders of ACM who had become shareholders of Argo Group.

102. The Argo Spinoff was fraudulent diversion of ACM's most valuable assets to shield those assets from ACM's liability for fraud based upon the fraudulent penny stock investment scheme described herein.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

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

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against the Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including prejudgment and post-judgment interest thereon;

C. Enforcing judgment against ACM by executing upon the assets of ACM that were transferred to Argo Group, including but not limited to ACM's stock in Argo Capital Management and related Argo entities;

D. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

E. Directing that the clerk enter judgment on behalf of Plaintiff and the Class in accordance with the relief requested herein; and

F. Such other and further relief as the Court may deem just and proper.

**Demand For Trial By Jury**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury of all issues that may be so tried.

Dated: February 25, 2009.

Respectfully submitted,

**SANDER INGEBRETSEN & WAKE, P.C.**

*Original signature on file*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of February 2009, I electronically filed the foregoing **FIRST AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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