CONSOLIDATED AMENDED FUND DERIVATIVE COMPLAINT

Plaintiffs Edward Segel, Iris Segel, Donna Alexander, Anil Kapoor, Jack McBride, Robert Rubin, Richard Befort, Janet Befort, Jean Stigas and Lawrence A. Stigas, Virginia Wilcox, Thomas F. Bednarek, Ira Newman, and Raquel Benun, derivatively on behalf of certain of the mutual funds and trusts comprising the Pimco family of mutual funds (the “Funds”), hereby complain against the defendants as follows:

I. SUMMARY OF THE ACTION

1. This derivative action seeks to recover damages for the Funds for harm inflicted upon them by their own fiduciaries, who breached their fiduciary duties to the Funds, including those arising under Sections 36(b) and 36(a) of the Investment Company Act of 1940 (the “ICA”) and Sections 206 and 215 of the Investment Advisers Act of 1940 (the “IAA”), and by those who participated in a manipulative scheme to enrich themselves at the expense of the Funds through rapid in-and-out trading in the Funds, a practice commonly called “market
timing” or “timing,” and trading in shares of the Funds after the close of the financial markets each day, a practice commonly called “late trading.”

2. This Complaint seeks redress for harm caused by the managers and investment advisers of mutual funds who, in order to share in the substantial profits that market timing and late trading generate, combined with the market timers and others, and allowed them to prey upon the Funds to which they owed the highest fiduciary duties of loyalty, candor, and due care. This Complaint also seeks redress for the harm caused by the Trustees of the Funds who failed or refused to perform their fiduciary duties to manage and supervise the Funds and enforce the manager’s duties in the best interests of the Funds.

3. Market timing and late trading have been extremely harmful to the Funds. Market timing and late trading have caused hundreds of millions of dollars of harm to the Funds, primarily by inflating transaction costs and administrative costs, and adding unnecessary marketing and distribution costs, all of which are paid by the Funds. Market timing also causes serious, known disruptions to mutual funds and their operations. Market timing forces portfolio managers to keep excess quantities of cash available in the funds to redeem market timers’ shares when they sell out a position – cash that otherwise should be used to invest. Trading protocols are upset as capital available for investment fluctuates unpredictably, preventing portfolio managers from implementing their investment strategies for the Fund. The effect of this is to reduce the returns earned by the Funds.

4. Market timing and late trading have harmed each and every Fund in the Pimco family of mutual funds, whether or not the particular Fund was the direct victim of market timing or late trading. This is so because some expenses, such as service agent fees, statement costs, transaction costs, and interest charges on borrowing that increase as a result of market timing and
late trading, may be shared among all Funds in the Pimco family, including timed-funds and non-timed funds alike. This is also so because investors have fled all the Funds in the Pimco family of mutual funds, not just the timed funds, following the public disclosure of the market timing and late trading scandal.

5. Because of these and other problems caused by market timers, fund managers for years have had in place policies and practices designed to monitor and deter market timing, including redemption penalties.

6. Conversely, market timing and late trading have been extremely profitable for market timers, and, moreover, impose little risk. Because the price movement of the underlying securities will almost certainly be followed, sometimes within a matter of hours, by a corresponding movement in the price of the funds' shares, the realization of profit on the pricing inefficiency is almost a sure bet. Market timers exploit price inefficiencies inherent in the forward pricing structure of mutual funds.

7. Moreover, timed or late trades cost little or nothing to execute because most timed mutual funds do not charge commissions, or "loads," for trades, thus shifting the transaction costs for market timing from the market timers to the funds themselves. Thus, for example, a one day trade can yield a net gain in excess of 100 percent, while the costs of timing are pushed off on the Funds as the timers move in and out of no-load funds, parking their winnings in liquid cash funds between trades.

8. Market timers and late traders could not reap these profits simply by investing in the securities held in the Funds' portfolios, because (a) the timers would bear significant transaction costs and tax consequences if they bought and sold individual securities, which are foisted upon the Funds under the market timing and late trading scheme, and (b) the underlying
securities trade in the open market and are efficiently priced, as opposed to the inefficient prices of mutual fund shares, which would deny market timers the opportunity to execute trades at unfair prices.

9. In addition to the market timers themselves, who reaped quick and easy profits at the expense of the Funds, the advisers to the Funds and their affiliates also reaped hundreds of millions of dollars in unearned advisory, management, administrative, marketing, and distribution fees from the Funds without disclosing that they permitted, facilitated, encouraged or participated in the improper activity. At a minimum, the advisors failed to detect and/or prevent, market timing and late trading in the Funds – the types of abusive transactions they were obligated to prevent. Simply put, the advisers abandoned their fiduciary duties to the Funds in order to inflate the already huge fees they received from the Funds.

10. Market timing and late trading results from the wholesale abdication of the fiduciary obligations the defendants owed to the Funds. As William H. Donaldson, Chairman of the SEC, recently observed in commenting upon the scandal that has engulfed the entire mutual fund industry:

> The relationship between an investment adviser and its clients is supposed to rest on a bedrock foundation of fiduciary principles. It is extremely troubling that so much of the conduct that led to the scandals in the mutual fund industry was, at its core, a breach of the fiduciary relationship between investment advisers and their advised funds. As fiduciaries, advisers owe their clients more than mere honesty and good faith. Recent experience suggests that all too many advisers were delivering much less.¹

11. The market timing and late trading scandal results from the substantial and unresolved conflicts of interest between mutual funds and the investment advisers who create

and manage the funds. Those conflicts of interest have manifested themselves in widespread instances of improper market timing and late trading in the mutual funds, all to the detriment of the Funds.

12. The nature and extent of those conflicts of interest, the market timing they led to, and the adverse impact they caused to the Funds were not adequately disclosed to or understood by the trustees of the Funds, who approved or ratified the Fund adviser’s management agreements each year despite the harm the adviser caused or permitted to the Funds and who approved or ratified plans permitting the adviser to charge and collect marketing and distribution fees under Rule 12b-1 of the SEC promulgated under the ICA in violation of the trustees’ own duties to the Funds.

13. This action is brought by shareholders of the Funds on behalf of the Funds to recover damages for the Funds from those who are responsible for the wrongdoing and from those who profited, directly or indirectly, from the wrongdoing. These damages include, but are not limited to:

   (a) forfeiture and return of the management, administration, distribution, and marketing fees and all other compensation paid to the investment adviser and its affiliates during the period of market timing and late trading;

   (b) damages to the Funds for profits earned by the Fund Adviser and its affiliates (including officers and employees of the Fund Adviser) from market timing or late trading arrangements;

   (c) damages to the Funds for direct and indirect injury, including increased transaction costs, liquidity costs, tax expenses, and lost investment opportunities, caused by market timing or late trading; and
(d) damages to the Funds for 12b-1 fees paid to the Fund Adviser and its affiliates (including third-parties) in excess of the corresponding economic benefit to the Funds.

14. This action is also brought by shareholders on behalf of the Funds to obtain injunctive relief for the Funds, including but not limited to:

(a) rescission of the adviser's management and other agreements with the Funds;

(b) rescission of the 12b-1 Plans adopted by the Funds;

(c) removal of the Fund adviser and its affiliates that manage and perform other services for the Funds; and

(d) removal of each of the Trustees of the Funds named in this Complaint and replacing them with independent Trustees.

II. JURISDICTION AND VENUE


16. This Court also has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), over the state law claims asserted herein because they arise out of and are part of the same case or controversy as plaintiffs' federal claims.

17. Venue is proper in the transferor districts because some or all of the Defendants are incorporated or conduct business in and/or some of the wrongful acts alleged herein took place or originated in those judicial districts. Venue is also proper in this District of Maryland because some of the wrongful acts alleged herein took place or originated in this judicial district.

18. In connection with the acts and practices alleged herein, defendants directly or indirectly used the instrumentalities of interstate commerce, including, but not limited to, the
mails, interstate telephone communications, and the facilities of the national securities markets and national securities exchanges.

19. This is a consolidated amended complaint filed pursuant to an Order of the Judicial Panel on Multidistrict Litigation, captioned *In re Mutual Fund Investment Litigation*, MDL Docket No. 1586, centralizing pretrial proceedings in these actions in this Court. To preserve the filing dates of the original complaints for purposes of any applicable statutes of limitation and all other defenses based upon the passage of time, the plaintiffs herein expressly reserve the right to seek transfer of these actions back to the transferor courts at the conclusion of pretrial proceedings.

III. PARTIES

20. The Plaintiffs are as follows:

(a) Plaintiff Edward Segel has, at relevant times, owned and still owns shares of the PIMCO Low Duration Fund and the PIMCO Real Return Fund.

(b) Plaintiff Iris Segel has, at relevant times, owned and still owns shares of the PIMCO Total Return Fund, the PIMCO Foreign Bond Fund, the PIMCO Real Return Fund and the PIMCO Commodity Real Return Strategy Fund.

(c) Plaintiff Donna Alexander has, at relevant times, owned and still owns shares of the PIMCO High Yield Fund.

(d) Plaintiff Anil Kapoor has, at relevant times, owned and still owns shares of the PIMCO Money Market Fund.

(e) Plaintiff Jack McBride has, at relevant times, owned and still owns shares of the PIMCO Total Return Fund.
(f) Plaintiff Robert Rubin has, at relevant times, owned and still owns shares of the PIMCO High Yield Fund, PIMCO PEA Growth and Income Fund and PIMCO Commodity Real Return Fund.

(g) Plaintiff Richard Befort has, at relevant times, owned and still owns shares of the PIMCO PEA Target Fund, the PIMCO PEA Renaissance Fund and the PIMCO PEA Growth Fund.

(h) Plaintiff Janet Befort has, at relevant times, owned and still owns shares of the PIMCO PEA Target Fund, the PIMCO PEA Growth Fund and the PIMCO RCM International Growth Equity Fund.

(i) Plaintiffs Jean Stigas and Lawrence A. Stigas have, at relevant times, owned and still own shares of the PIMCO Total Return Fund.

(j) Plaintiff Virginia Wilcox has, at relevant times, owned and still owns shares of the PIMCO Small Cap Value Fund.

(k) Plaintiff Thomas F. Bednarek has, at relevant times, owned and still owns shares of the PIMCO PEA Renaissance Fund and the PIMCO High Yield Fund.

(l) Plaintiff Ira Newman has, at relevant times, owned and still owns shares of the PIMCO NFJ Small Cap Value Fund.

(m) Plaintiff Raquel Benun has, at relevant times, owned and still owns shares of the PIMCO PEA Innovation Fund.

21. The Parent Company Defendant. Defendant Allianz Dresdner Asset Management of America L.P. ("ADAM") is a Delaware limited partnership with its principal place of business at 888 San Clemente Drive, Suite 100, Newport Beach, CA 92660. ADAM is a controlled
subsidiary of Allianz AG, a European-based, multinational insurance and financial services company. No claims are asserted against ADAM relating to the PIM Funds.

22. The Advisers are as follows:

**PIM Adviser**

(a) Non-party Pacific Investment Management Company LLC ("PIM Company") is a Delaware limited liability company with its principal place of business at 840 Newport Center Drive, Newport Beach, California 92660. At all relevant times, PIM Company has been the investment adviser for all the PIM mutual funds, including the High Yield Fund and the Real Return Fund, which were market timed. PIM Company is a subsidiary of ADAM. PIM Company had approximately $348.8 billion of assets under management as of June 30, 2003. No claims are asserted against PIM Company pursuant to a tolling agreement between PIM Company and the plaintiffs.

**MMS Adviser**

(b) Prior to October 1, 2002, the PIMCO Advisers Division of defendant ADAM was the investment adviser for all the mutual funds within MMS.

(c) Defendant PA Fund Management LLC ("PAFM"),\(^2\) is believed to be a Delaware limited liability company with its principal place of business at 1345 Avenue of the Americas, 50th Floor, New York, NY 10105. Since October 1, 2002, defendant PAFM has been the investment adviser for all the mutual funds within MMS. PAFM is a wholly owned indirect subsidiary of defendant ADAM. PAFM and its investment manager affiliates had approximately $445 billion of assets under management as of September 30, 2003.

\(^2\) Prior to May 3, 2004, PAFM was known as PIMCO Fund Management LLC.
(d) Except with regard to certain Excepted Funds, PAFM has engaged affiliates to serve as Sub-Advisers for the MMS Funds.

**Sub-Advisers**

(e) Defendant PAFM employs sub-advisers for the funds in MMS though sub-advisory agreements called “Portfolio Management Agreements.”

(f) Defendant PEA Capital LLC (“PEA”), is a Delaware limited liability company with its principal place of business at 1345 Avenue of the Americas, 50th Floor, New York, NY 10105. PEA is an indirect wholly-owned subsidiary of ADAM. At all relevant times, PEA was and is the Sub-Adviser for four of the Funds in MMS that have been market timed through negotiation with management: the PEA Growth Fund, the PEA Innovation Fund, the PEA Opportunity Fund, and the PEA Target Fund. PEA was formerly known as PIMCO Equity Advisors LLC until on or about February 6, 2004. Accounts managed by PEA had combined assets as of September 30, 2003 of approximately $9.1 billion.

(g) Defendant Cadence Capital Management LLC (“Cadence”), is an investment management firm organized as a Delaware limited liability company with its principal place of business at 265 Franklin Street, Boston, Massachusetts. Cadence is the successor to Cadence Capital Management Corporation. Accounts managed by Cadence had combined assets as of September 30, 2003, of approximately $5.0 billion.

(h) Defendant NFJ Investment Group L.P. (“NFJ”) is an investment management firm organized as a Delaware limited partnership with its principal place of

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3 The funds that are part of the MMS series but are not managed by sub-advisers are Large-Cap Value, International Value, Balanced Value, Core Equity, the Small-Cap Value, the Disciplined Value, the Mid-Cap Value, and the NFJ International Value Funds (the “Excepted Funds”).
business at 2121 San Jacinto, Suite 1840, Dallas, Texas. Accounts managed by NFJ had combined assets as of September 30, 2003, of approximately $3.8 billion.

(i) Defendant Nicholas-Applegate Capital Management LLC ("Nicholas-Applegate") is an investment management firm organized as a Delaware limited liability company with its principal place of business at 600 W. Broadway, San Diego, California. Accounts managed by Nicholas-Applegate had combined assets as of September 30, 2003, of approximately $18.3 billion.

(j) Non-party PIM Company. PIM Company had approximately $356.5 billion of assets under management as of September 30, 2003.

(k) Defendant RCM Capital Management LLC ("RCM"), is a Delaware limited liability company. RCM is a subsidiary of Allianz AG and an affiliate of PAFM, and is the sub-adviser for the PIMCO RCM funds of MMS. RCM was formerly known as Dresdner RCM Global Investors LLC. Accounts managed by RCM had combined assets as of September 30, 2003, of approximately $30.8 billion.

(l) Defendant Parametric Portfolio Associates ("Parametric"), is an investment management firm organized as a Delaware limited liability company with its principal place of business at 1151 Fairview Avenue N., Seattle, Washington. Parametric is a sub-adviser and a former affiliate of PAFM. Accounts managed by Parametric had combined assets as of September 30, 2003, of approximately $155 million.

23. The Administrator Defendants are as follows:

(a) In addition to serving as the adviser to the MMS Funds, defendant PAFM also serves as the Administrator for those funds, providing or procuring administrative services to the Funds, including clerical help, accounting, bookkeeping, internal audit services,
preparation of reports to the Funds’ shareholders, and regulatory filings. PAFM has retained PIM Company as sub-administrator to provide such services to the MMF Funds. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that defendant PAFM provides such services pursuant to an Administration Agreement.

(b) In addition to serving as adviser to the PIM funds, plaintiffs believe that PIM Company also serves as the administrator of the PIM Funds, providing or procuring administrative services to the Funds, including clerical help, accounting, bookkeeping, internal audit services, preparation of reports to the Funds’ shareholders, and regulatory filings. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that PIM Company provides such services pursuant to an Administration Agreement.

24. The Distributor Defendant. Defendant PIMCO Advisors Distributors LLC ("PAD"), which changed its name to PA Distributors LLC effective May 3, 2004, is a Delaware limited liability company with its principal place of business at 2187 Atlantic Street, Stamford, Connecticut 06902. At all relevant times, PAD was and still is the distributor for each and every Pimco Fund. PAD is believed to be an indirect subsidiary of ADAM.

25. The MMS Trustee Defendants are as follows:

(a) Defendant Stephen J. Treadway, age 56, was a Trustee for five years and Chairman of the Board of Trustees of the MMS Trust, and oversaw 45 portfolios in the PIMCO family of mutual funds. However, Treadway was forced to resign as Chairman of the Board of Trustees pursuant to a Consent Order with the New Jersey Attorney General dated June 1, 2004. Treadway later resigned his positions with the PIMCO family.

(b) Treadway’s principal occupations during the five years prior to his resignations were: Trustee of thirteen other registered investment companies in the Pimco family
of mutual funds; Member, Board of Management of Allianz Dresdner Asset Management GmbH (an affiliate of ADAM, and a wholly owned subsidiary of Allianz AG); Managing Director of ADAM; Managing Director and CEO of PAD; Managing Director of PAFM.

(c) Defendant E. Philip Cannon, age 63, has been a Trustee for seven years, and he oversees approximately 112 portfolios in the PIMCO family of mutual funds. Cannon’s principal occupations during the past five years have been: Trustee of PIM; Trustee of the Mortgage Securities Trust; Trustee of the Variable Insurance Trust; President, Houston Zoo, Inc; Proprietor, Cannon & Company, an affiliate of Inverness Management LLC, a private equity investment firm.

(d) Defendant Donald P. Carter, age 76, has been a Trustee for six years, and he oversees 45 portfolios in the PIMCO family of mutual funds. He is retired. He was formerly Chairman, Executive Vice President, and Director of Cunningham & Walsh, Inc., an advertising agency, and Chairman and Director, Moduline Industries, Inc., a manufacturer of commercial windows and curtain walls.

(e) Defendant Gary A. Childress, age 69, has been a Trustee for six years, and he oversees 45 portfolios in the PIMCO family of mutual funds. Childress is a private investor. He was formerly Chairman and Director of Bellefonte Lime Company, Inc., a calcite lime producer, and a partner in GemLime, L.P.

(f) Defendant Theodore J. Coburn, age 50, has been a Trustee for two years, and he oversees 45 portfolios in the PIMCO family of mutual funds. His principal occupation during the past five years has been: Director of Nicholas-Applegate, one of the MMS sub-advisers and an affiliate of ADAM. Coburn was formerly Senior Vice President, Corporate
Client Group, of the NASDAQ Stock Market, President of Coburn Group (a consulting firm), and a partner of Brown Coburn & Co. (an investment banking firm).

(g) Defendant W. Bryant Stooks, age 63, has been a Trustee for six years, and he oversees 45 portfolios in the PIMCO family of mutual funds. His principal occupations during the past five years have been: President, Bryant Investments, Ltd.; President, Ocotillo at Price LLC; and Director, American Agritec LLC, a manufacturer of hydrophonics products. He was formerly President, Senior Vice President, and Chief Executive Officer of Archirodon Group Inc., an international construction firm, and a partner in Arthur Andersen & Co.

(h) Defendant Gerald M. Thorne, age 65, has been a Trustee for six years, and he oversees 45 portfolios in the PIMCO family of mutual funds. His principal occupations during the past five years have been: Director, VPI Inc., a plastics company, and American Orthodontics Corp., an orthodontics manufacturer. He was formerly Director, Kaytee, Inc., a bird seed company; President and Director, Firstar National Bank of Milwaukee and Firstar National Bank of Sheboygan; and Director, Bando-McGlocklin, a small business investment company.

26. The PIM Trustees are as follows:

(a) Non-party Brent R. Harris, age 44, has been a Trustee since February, 1992, and is Chairman of the Board. He oversees 79 portfolios in the PIMCO family of mutual funds. His principal occupations during the past five years have been: Managing Director, PIM Company; Chairman and Director, PIMCO Commercial Mortgage Securities Trust, Inc.; Chairman and Trustee, PIMCO Variable Insurance Trust; Chairman, Director and President, PIMCO Strategic Global Government Fund, Inc.; Director, PIMCO Luxembourg S.A.; and Board of Governors and Executive Committee, Investment Company Institute.
(b) Non-party R. Wesley Burns, age 44, has been a Trustee since November, 1997 and is President of PIM Company. He oversees 78 funds in the PIMCO family of mutual funds. His principal occupations during the past five years have been: Director, PIM Company; President and Director, PIMCO Commercial Mortgage Securities Trust, Inc.; President and Trustee, PIMCO Variable Insurance Trust; Senior Vice President, PIMCO Strategic Global Government Fund, Inc.; Director, PIMCO Funds Global Investors Series plc; and Director, PIMCO Global Advisors (Ireland) Limited. He was formerly Managing Director of PIM Company and Executive Vice President of MMS.

(c) Cannon also has been a Trustee of PIM since March, 2000.

(d) Non-party Vern O. Curtis, age 70, has been a Trustee since February, 1995, and he oversees 78 portfolios in the PIMCO family of mutual funds. His principal occupations during the past five years have been: Private Investor; Director, PIMCO Commercial Real Estate Trust, Inc.; and Trustee, PIMCO Variable Insurance Trust. He is also Director, Public Storage Business Parks, Inc. (a Real Estate Investment Trust); and Director, Fresh Choice, Inc. (a restaurant company).

(e) Non-party J. Michael Hagan, age 64, has been a Trustee since March, 2000, and he oversees 78 portfolios in the PIMCO family of mutual funds. Hagan’s principal occupations during the past five years have been: Private Investor and Business Consultant; Director, PIMCO Commercial Mortgage Securities Trust, Inc.; Trustee, PIMCO Variable Insurance Trust; Director, Freedom Communications; Director, Remedy Temp (staffing); Director, Saint Gobain Corporation (manufacturing); Member of the Board of Regents at Santa Clara University; Member of the Board, Taller San Jose; and Trustee, South Coast Repertory Theater. He is formerly Chairman and CEO, Furon Company (manufacturing). He is also
Director of Ameron International (manufacturing) and Director of Fleetwood Enterprises (manufacturer of housing and recreational vehicles).

(f) Non-party William J. Popejoy, age 66, has been a Trustee since 1993, and oversees 78 portfolios in the PIMCO family of mutual funds. Popejoy’s principal occupations during the past five years have been: Managing Member, Pacific Capital Investors; Trustee, PIMCO Variable Insurance Trust; and Director, PIMCO Commercial Mortgage Securities Trust, Inc. He is formerly Director, California State Lottery. He is also Director of New Century Financial Corporation (mortgage banking).

27. Pimco Insiders

(a) Defendant Treadway held numerous executive positions with the PIMCO fund family, including CEO and Managing Director of PAD and CEO and Managing Director of PAFM. He was an active participant in the improper market timing of the PEA funds described below.

(b) Defendant Kenneth W. Corba was, at all relevant times, the individual portfolio manager for the PEA Growth Fund and the PEA Select Growth Fund. He was also CEO, Chief Investment Officer, and Managing Director of PEA and a member of the Management Board of ADAM. Corba was replaced as portfolio manager of the PEA Growth Fund and PEA Growth and Income Fund some time on or around April 13, 2004. Corba was an active participant in the improper market timing of the PEA funds described below.

[28 THROUGH 30 ARE INTENTIONALLY LEFT BLANK]

31. Additional defendants are as follows:
(a) Defendant Aurum Securities Corp. ("Aurum"), a California corporation, is a registered investment advisor and Broker-Dealer, with offices at 120 Montgomery Street, San Francisco, California. Aurum was an active participant in the unlawful scheme alleged herein.

(b) Defendant Aurum Capital Management Corp. ("Aurum Capital"), a California corporation, is a registered investment advisory firm headquartered at 84 West Santa Clara Street, Suite 690, San Jose, California. Aurum Capital is an affiliate of Aurum. Aurum Capital was an active participant in the unlawful scheme alleged herein.

(c) Defendant Golden Gate Financial Group, LLC ("Golden Gate"), a Delaware limited liability company, is a registered investment advisor and Broker-Dealer founded in May 2002. It is located at 900 North Point, Suite D-405, San Francisco, California. Its principals have been providing investment management services to high net worth individuals and institutions since 1991. Two of the principals formerly were executives of Aurum and Aurum Capital. Golden Gate was an active participant in the unlawful scheme alleged herein. Because Aurum, Aurum Capital, and Golden Gate are affiliated and collectively participated in the late trading and timing scheme alleged here, they are referred to as the "Aurum Defendants."

(d) Defendant Bank of America Corp. ("BOA") is a Delaware corporation with its headquarters at Bank of America Corporate Center, 100 N. Tryon Street, Charlotte, North Carolina. BOA is a bank holding company and a financial holding company that provides a diversified range of banking and non-banking financial services and products. BOA is the indirect parent of Banc of America Securities LLC.

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4 Effective April 1, 2004, FleetBoston Financial Corporation ("Fleet"), a Rhode Island corporation, merged with and into BOA pursuant to an Agreement and Plan of Merger, dated as of October 27, 2003.
(e) Defendant Banc of America Securities LLC ("BAS"), a Delaware limited liability company, is a wholly-owned subsidiary of NationsBanc Montgomery Holdings Corporation, which is itself a wholly owned subsidiary of NB Holdings Corporation. NB Holdings Corporation is wholly owned by BOA. BAS, a registered broker-dealer, is a full-service United States investment bank and brokerage firm with principal offices in San Francisco, California; New York, New York; and Charlotte, North Carolina. BAS is also registered as an investment adviser pursuant to the Investment Advisers Act of 1940. In its capacity as broker-dealer, BAS accepts, executes and clears orders for hundreds of mutual funds, including the Funds.

(f) Defendant Bank of America, N.A. ("BOA N.A.") is a wholly-owned subsidiary of defendant BOA headquartered at 100 North Tryon Street, Charlotte, North Carolina.

(g) Defendant Bear Stearns & Co. Inc. ("Bear Stearns") is a global investment bank and securities trading and brokerage firm, incorporated in Delaware with its principal Worldwide Headquarters at 383 Madison Avenue, New York, New York. Bear Stearns knowingly participated in Canary’s timing, acted as clearing broker for Brean Murray and Kaplan, and made late trades possible through its acceptance of trades between 4:30 and 5:30.

(h) Non-party Brean Murray, Inc. ("Brean Murray"), a Delaware corporation, is a registered investment adviser and broker-dealer headquartered at 570 Lexington Avenue, New York, New York. Among other things, Brean Murray is a retailer of mutual funds and variable life insurance or annuities. Brean Murray introduced timers, including Canary, to various mutual fund complexes, including the Funds, for the purpose of establishing market timing arrangements, including those that permitted Canary’s market timing activity in the
Funds. Brean Murray further engaged in the market timing scheme by executing timed trades on behalf of Canary and other timers. In addition, Brean Murray sold “under the radar” timing to various brokers and hedge funds involved in market timing.

(i) Defendant Ryan Goldberg ("Goldberg") is a registered broker-dealer who was employed by Brean Murray, Inc. Goldberg introduced timers, including Canary, to various mutual fund complexes, including the Funds, for the purpose of establishing market timing arrangements, including those that permitted Canary’s market timing activity in the Funds. Goldberg further engaged in the market timing scheme by arranging for the execution of timing trades on behalf of Canary and other timers. In addition, Goldberg sold “under the radar” timing to various brokers and hedge funds involved in market timing.

(j) Defendant Michael Grady ("Grady") is a registered broker-dealer who was employed by Brean Murray, Inc. Grady introduced timers, including Canary, to various mutual fund complexes, including the Funds, for the purpose of establishing market timing arrangements, including those that permitted Canary’s market timing activity in the Funds. Grady further engaged in the market timing scheme by arranging for the execution of timing trades on behalf of Canary and other timers. In addition, Grady sold “under the radar” timing to various brokers and hedge funds involved in market timing.

(k) Defendant David Byck, a resident of the state of New York, was a market timing capacity consultant who negotiated market timing relationships at various mutual fund complexes, including Invesco, on behalf of Canary.

(l) Defendant Canary Capital Partners, LLC ("Canary"), is a New Jersey limited liability company with its principal offices in Secaucus, New Jersey. At all relevant times, Canary was a hedge fund engaged in the business of late trading and timing mutual funds.
Canary Capital Partners, Ltd. ("CCP Ltd."), is a Bermuda limited liability company. At all relevant times, CCP Ltd. was also a hedge fund engaged in the business of timing mutual funds. Canary Investment Management, LLC ("CIM"), is a New Jersey limited liability company with its principal offices in Secaucus, New Jersey. At all relevant times, CIM managed the assets of Canary and CCP Ltd. in exchange for a fee equal to 1.5 percent of the assets of Canary plus 25 percent of the profits above a certain threshold. As of July 2003, CIM had received approximately $40 million in Canary management and incentive fees. The size of these fees reflects the phenomenal success Canary enjoyed both in terms of its trading results and the amount of capital it was able to gather in the fund.

(m) Defendant Edward J. Stern ("Stern") is a resident of New York County, New York and at all relevant times was the Managing Principal of Canary, CCP Ltd. and CIM. Noah Lerner ("Lerner") was at all relevant times an employee of Canary. Andrew Goodwin ("Goodwin") was at all relevant times up to 2001 an employee of Canary.

(n) Defendant Canary, CCP Ltd., CIM, and Stern are collectively referred to herein sometimes as "Canary." In September 2003, Canary reached a settlement of charges filed against it by the Attorney General of the State of New York.

(o) Defendant Circle Trust Company is an investment management company chartered by the state of Connecticut with its principal offices at Metro Center, One Station Place, Suite 30, Stamford, CT, 06908. Circle Trust cleared timing transactions in Pimco funds.

(p) Defendant Davidson Companies is a financial services holding company with principal offices at 8 Third Street North, Great Falls, Montana, 59401. Through one of its subsidiaries (D.A. Davidson & Co. or Davidson Trust Co., each of which incorporated in Montana, with its principal offices at 8 Third Street North, Great Falls, Montana, 59401),
Davidson Companies provided timing capacity in at least one Pimco mutual fund to a Canary entity.

(q) Defendant Deutsche Bank AG ("Deutsche Bank") is a global bank offering investment banking and asset management services, based in Germany, with its primary offices at Taunusanlage 12 D-60325, Frankfurt Am Main GE. It maintains offices in the United States at 51 W 52nd Street, New York, NY 10019.

(r) Defendant Kaplan & Co. Securities, Inc. ("Kaplan"), a Florida corporation, is a registered investment adviser and broker-dealer headquartered at 150 East Palmetto Park Road, Suite 150, Boca Raton, Florida, 33432. Among other things, Kaplan is a retailer of mutual funds and variable life insurance or annuities. Kaplan introduced timers, including Canary, to various mutual fund complexes, including the Funds, for the purpose of establishing market timing arrangements, including those that permitted Canary’s market timing activity in the Funds. Kaplan further engaged in the market timing scheme by executing timed trades on behalf of Canary and other timers. In addition, Kaplan sold “under the radar” timing to various brokers and hedge funds involved in market timing. In addition, Kaplan offered, through its various clearers, late trading capacity both for negotiated and “under the radar timing.”

(s) Defendant Pritchard Capital Partners LLC ("Pritchard"), a Louisiana limited liability company, is a registered investment advisor and Broker-Dealer headquartered at 2001 Lakeshore Drive, Mandeville, Louisiana. Pritchard was an active participant in the unlawful scheme alleged herein.

(t) Defendant Trautman Wasserman & Company, Inc. ("Trautman"), a Delaware corporation, is a registered investment advisor and Broker-Dealer headquartered at 500
Fifth Avenue, Suite 1440, New York, New York. Trautman was an active participant in the unlawful scheme alleged herein.

(u) Defendant UBS AG is a global firm providing services in wealth management, investment banking, asset management and other financial services, which merged with PaineWebber in 2000. Its headquarters are in Switzerland. UBS AG has significant principal offices in the United States at 299 Park Avenue, New York, NY 10171.

(v) Defendant UBS Financial Services Inc. is a New York corporation with its principal place of business at 1285 Avenue of the Americas, New York, NY 10019, and is the successor to UBS PaineWebber Inc. (collectively, “UBS”). UBS is a subsidiary of UBS AG.

32. Nominal defendants are as follows:

(a) The PIMCO family of mutual funds consists of approximately 114 individual mutual funds comprising four domestic trusts: (i) PIMCO Funds: Pacific Investment Management Series (“PIM”); (ii) PIMCO Funds: Multi-Manager Series (“MMS”); (iii) PIMCO Commercial Mortgage Securities Trust, Inc.; and (iv) PIMCO Variable Insurance Trust. It also includes certain foreign mutual funds operated under the “PIMCO” name.

(b) Nominal defendant PIM consists of approximately forty-four mutual funds. Through numerous prospectuses, PIM offers up to ten classes of shares (A, B, C, D, R, Institutional, Administrative, Advisor, J, and K) for each such fund. Generally, the funds in PIM are bond or money market funds. Class J and K shares are offered solely to non-U.S. investors outside the United States.

(c) Nominal defendant MMS is an open-end management investment company that currently consists of forty-five separate mutual funds (which are referred to in certain PIMCO documents as “investment series,” “funds,” or “portfolios”), though not all of
them currently offer shares to the public. Through seventeen prospectuses, MMS offers up to seven classes of shares (A, B, C, D, R, Institutional, and Administrative) for each active fund. Generally, the funds in MMS are equity stock funds. Typically, the Class A, B and C shares for groups of funds within MMS will be offered in a single prospectus, and Class R shares for groups of funds will be offered in a separate prospectus. Such prospectuses for the A, B, C and R shares are generally referred to in PIMCO literature as “Retail Prospectuses.”

(d) MMS is a Massachusetts business trust established under an Agreement and Declaration of Trust as amended and restated on January 14, 1997. The business of MMS is managed under the direction of its Board of Trustees.

(e) As detailed below, several funds within MMS – including at least the PEA Growth Fund, PEA Target Fund, PEA Opportunity Fund, PEA Select Growth Fund\(^5\) and PEA Innovation Fund – were improperly market timed pursuant to negotiated agreements with Fund managers.

(f) Nominal defendant PIM consists of approximately forty-four mutual funds. Through numerous prospectuses, PIM offers up to ten classes of shares (A, B, C, D, R, Institutional, Administrative, Advisor, J, and K) for each such fund. Generally, the funds in PIM are bond or money market funds. Class J and K shares are offered solely to non-U.S. investors outside the United States.

(g) PIM is a Massachusetts business trust. The business of PIM is managed under the direction of its Board of Trustees.

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\(^5\) The Select Growth Fund was merged into the Growth Fund in October, 2002.
(h) As alleged below, at least two funds within PIM – the PIMCO Real Return Fund and the PIMCO High Yield Fund – were improperly market timed pursuant to negotiated agreements with Fund managers.

(i) In addition to issuing prospectuses, as referred to above, to market their shares, MMS and the PIM have from time to time issued a joint “PIMCO Funds Shareholders’ Guide for Class A, B, C and R Shares.”

IV. STATEMENT OF FACTS

A. General Factual Allegations

(1) Introduction

33. Mutual funds enable small investors to invest long-term capital in the stock and bond markets. Specifically, mutual funds were intended to enable small investors to (a) accumulate diversified stock portfolios for retirement or other long-term investing with smaller amounts of capital than otherwise would be required for such investing, (b) avoid the transaction costs that ordinarily accompany stock and bond trades, and (c) utilize the services of professional investment advisers whose services otherwise would not be available at affordable prices.

34. Investors contribute cash, buying shares in the mutual fund, the number of which is directly proportionate to the amount of the investment. Mutual fund shares are issued pursuant to prospectuses that must comply with the Securities Act of 1933 and the Investment Company Act. The investor’s cash is then used by the mutual fund to purchase such securities as are consistent with the stated investment goals and objectives of the mutual fund in the Prospectus.

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6 The primary difference among the A, B, C, and R classes of shares for any one fund is that the fees, or “loads,” they charge in connection with purchases and sales vary.
35. Mutual funds typically hold no assets other than cash and the securities purchased for the benefit of their shareholders and engage in no investment activities of their own.

36. Mutual funds typically have no employees. Although funds may have officers, the portfolio managers and all of the officers are employees of the investment adviser. The adviser "sponsors" the funds and as a practical matter is responsible for the initial creation of the funds and creating new funds in the series.

37. Whether corporation or trust, typically all of the trustees are the same individuals and have the same responsibilities, the only difference between trustees being the form of entity they serve. Trustees have ultimate responsibility for the funds.

38. Each of the funds is created and sponsored by the adviser and is managed under the supervision of a number of trustees. The same trustees have supervised all the funds at all times relevant hereto, and their meetings for all the Funds occur at or about the same time. Each of the funds has the same adviser, who in turn appoints the same trustees, the same distributor, the same custodian, and the same transfer agent for all the funds, all of whom serve indefinite terms. The agreements between the funds and each of these entities are substantially identical form agreements, with minor differences only in fee percentages. In many instances, the funds share costs among themselves. In substance, all the funds are operated as a single *de facto* entity. Plaintiffs therefore bring this action as a derivative action on behalf of the entire Pimco family of funds, as well as on behalf of the particular Funds in which they invested.

39. The trust or corporation contracts with an adviser or manager to handle the day-to-day operations of the fund including making investment decisions, although the trustees retain ultimate responsibility for the fund. The adviser or the trust will enter into contracts with other entities, which in almost all instances are affiliates of the adviser, for investment advisory
servicing (adviser, sub-adviser), selling or underwriting (distributors), shareholder relations and other back-office services (administrator). Each of these affiliates typically will be paid a percentage of the adviser’s fee, a percentage of the assets under management, or a transaction fee from the Net Asset Value of the fund.

40. Mutual fund advisers charge and collect substantial management, administration, marketing and distribution, and other fees and compensation from the funds as a percentage of assets under management. Mutual fund advisers have a direct economic incentive to increase the amount of assets in the funds, and thus their own fees and compensation.

(2) NAV Pricing

41. Mutual fund shares are priced once each day, usually following the close of financial markets in New York at 4:00 p.m. Eastern Time. The price, known as the Net Asset Value (“NAV”), reflects the closing prices of the securities in a particular fund’s portfolio, plus the value of any uninvested cash that the fund manager maintains for the fund and minus any expenses accrued that day. Although mutual fund shares are bought and sold all day long, the price at which the shares trade does not change during the course of the day. Orders placed any time up to 4:00 p.m. are priced at that day’s NAV, and orders placed after 4:00 p.m. are priced at the next day’s NAV. This practice is known as “forward pricing” and has been required by law since 1968.

42. Because NAV is set just once at 4:00 p.m. every day under the forward pricing rule, each day’s NAV is inefficient. This is because the NAV has not incorporated the material information affecting the prices at which the underlying securities will trade by 4:00 p.m. Thus, the prices at which mutual funds trade are often “stale.” In addition, mutual fund prices do not always reflect the true value of the stocks or bonds, especially thinly-traded securities or
securities with high price volatility, but low trading volume, such as especially mid-cap, small-cap, and sector stocks, or high-yield and municipal bonds.

43. Forward pricing gives rise to a number of manipulative practices, all of which may be characterized as “market timing.” These manipulative practices exploit the inefficiency of forward pricing in a number of ways involving short-term “in-and-out” purchases and redemptions of mutual fund shares that are “timed” to precede small movements in the market prices of the securities in which a fund invests before the NAV reacts to the price changes.

(3) Market Timing Transactions

44. Market timing transactions are frequently referred to as “round trips,” because market timing involves a purchase made in anticipation of a near-term price increase that will trigger a quick sale. For example, in the case of international funds that are inefficiently priced because, as a result of domestic and foreign markets operating at different times, the last-trade prices in the foreign markets have not yet incorporated movements in the United States markets, the round trips will occur within a short time frame, often within one or two days. In other cases, such as bond funds – where the price inefficiency lasts longer because the information that causes the security to be re-valued takes longer to be disseminated by the financial markets – the duration of the round trip will be slightly longer.

45. Market timing frequently includes or consists of “late trading,” in which market timers are permitted to purchase or sell mutual fund shares after the close of trading but at the same prices as other investors who must trade the shares during the day to get that day’s NAV.

46. Market timers employ a variety of trading strategies to profit from small increases in the market prices for stocks and bonds in which the mutual funds invest by purchasing mutual fund shares before increases in the underlying securities affect the fund’s NAV and redeeming fund shares after the NAV has risen.
47. Many market timers purchase mutual funds when trading models analyzing performance trends indicate that prices of the underlying securities (and consequently the fund’s NAV) will rise in the short-term. For example, when a market timer’s trading model indicates that the stocks of companies with small market capitalization will rise in the short term, the trader acquires small cap mutual fund shares in order to capture the benefit of the price rise. The market timer who purchases small cap fund shares then redeems those shares once the predicted rise occurs.

48. By purchasing and selling mutual fund shares, rather than the underlying small cap stocks, market timers avoid transaction costs such as commissions on each purchase and sale of stock, which costs are borne by the fund itself.

49. Another market timing scheme is designed to take advantage of the fact that some NAVs are calculated using “stale” prices for the securities in the Fund’s portfolio. These prices are “stale” because they do not necessarily reflect the “fair value” of such securities as of the time the NAV is calculated.

50. One type of stale price market timing is “time zone arbitrage,” which takes advantage of the fact that funds consisting primarily of foreign securities may calculate NAV based on stale prices. A typical example is a U.S. mutual fund that invests in Japanese securities. Because of the time zone difference, the Japanese market closes at 2:00 a.m. New York time. When the NAV is calculated at 4:00 p.m. in New York, it is based upon market information that is fourteen hours old. If there have been positive market moves during the New York trading day that will cause the Japanese market to rise when it opens later, the stale Japanese prices will not reflect the price change and the fund’s NAV will be artificially low. A trader who buys the
Japanese fund at the "stale" price is virtually assured of a profit that can be realized the next day by selling those same shares once the NAV is adjusted to reflect the price increase.

51. Predictable next-day price changes in foreign securities are not exploitable by trading in the securities themselves because those shares tend to re-price as soon as trading resumes the next day. By the time a trader can buy the securities, the market price has risen to reflect the new information. However, market timers can exploit the pricing of mutual fund shares because the funds are not re-priced in response to information that becomes available while the foreign market is closed until the following day, effectively allowing market timers to buy stock at yesterday's prices.

52. Another market timing scheme seeks to take advantage of inefficiency in the pricing of certain municipal, corporate, and mortgage bonds. These bonds are not efficiently priced by the market, and consequently their prices tend to lag the prices at which more efficiently priced bond futures trade. Market timers exploit this phenomenon by purchasing (or selling) shares of a municipal bond fund that invests in such bonds on days when the prices for bond futures rise (or fall), and do so at "stale" prices. Market timers employing this trading scheme sell (or purchase) these mutual fund shares a day or two later once the prices of the bonds have "caught up" to the prices of the bond futures, thus earning huge profits with little or no corresponding risk.

53. Yet another market timing scheme is "liquidity arbitrage." Under this scheme, a trader seeks to take advantage of stale prices in certain infrequently traded investments, such as high-yield bonds or the stock of small capitalization companies. The fact that such securities may not have traded for hours before the 4:00 p.m. closing time can render the fund’s NAV stale, and thus open it to being timed.
(4) **Late Trading**

54. Because of forward pricing, mutual funds are also susceptible to a manipulative practice known as “late trading.” Late trading, either in conjunction with market timing or as a separate manipulative trading scheme, is the unlawful practice of allowing some investors to purchase or redeem mutual fund shares *after* 4:00 p.m. at that day’s NAV, even though such after-hours trades should be priced at the next day’s NAV.

55. Late traders seek to take advantage of events that occur after the close of trading, such as earnings announcements, by purchasing shares of mutual funds on good news or redeeming shares on bad news at prices that do not reflect those events and are therefore under- or over-valued, respectively. “Late trading can be analogized to betting today on yesterday’s horse races.”\(^7\) The manipulative device virtually eliminates investment risk.

56. The late trader’s arbitrage profit comes dollar-for-dollar out of the mutual fund that the late trader buys or redeems. When the late trader redeems his shares and claims his profit, the mutual fund manager has to either sell stock or use cash on hand – stock and cash that belong to the fund and its shareholders and would otherwise remain invested – to give the late trader his gain. The late trader’s profit is revenue withheld from the mutual fund. The forward pricing rule was enacted to prevent precisely this kind of abuse. *See* 17 C.F.R. §270.22c-1(a).

57. Late trading can be accomplished in at least two different ways. The first way market timers are able to trade late is by making arrangements with a mutual fund adviser or a third-party intermediary who has made arrangements with a mutual fund adviser to have access to a trading terminal after the close of trading at 4:00 p.m. each day. Defendant BAS provided trading terminals to at least three broker-dealers that engaged in market timing and Canary--

effect, making them branch offices of BAS, but unencumbered by BAS’s obligation to adhere to the forward pricing rule – giving them the ability to place orders for mutual fund shares as late as 6:30 p.m. Pacific Time, more than five hours after the financial markets closed in New York each day.

58. Market timers are also able to trade late by making arrangements with intermediaries, such as broker-dealers, trust companies, and other clearing agents, to combine the market timers’ trades with other mutual fund purchases or redemptions each day, which are processed as batch orders. These intermediaries net purchases against redemptions, and submit the net orders to a mutual fund’s transfer agent through the Mutual Fund Settlement, Entry and Verification Service (“FundSERV”), an automated system operated by the National Securities Clearing Corporation (“NSCC”), the only registered clearing agency that operates an automated system for processing mutual fund orders.

59. Although orders must be submitted to the intermediary broker-dealers, banks, and retirement plans before 4:00 p.m. eastern time, SEC rules permit those intermediaries to forward the order information to FundSERV or transfers agents at a later time. Often intermediaries process orders in the early evening. The entire process, ending in processing of orders by the transfer agent, is typically completed in the middle of the night.

60. Late traders have found numerous ways to exploit the forward-pricing regime to their advantage. For example, some intermediaries allowed certain preferred investors to place orders after the 4:00 p.m. cutoff, but before orders were submitted to transfer agents. These intermediaries sometimes blended late trades with legitimate trades in the net order information submitted to FundSERV in order to conceal the late trading. In other cases, late traders placed orders before the 4:00 p.m. cutoff, but were permitted to cancel or retract the orders after 4:00
p.m. Similarly, some intermediaries have permitted late traders to alter orders after 4:00 p.m. Finally, some late traders were given trading platforms, integrated hardware-software systems that allowed them to trade mutual fund shares directly without using an intermediary to submit orders to FundSERV. In some cases fund managers themselves permitted and aided late trading by fund investors.

61. Late traders were not necessarily restricted to trading in any single fund family through these schemes. Often intermediary broker-dealers sell shares of many different fund families through “Supermarkets.” It is not unusual for a single Supermarket to offer thousands of mutual funds. By gaining access to the trading platform of a fund Supermarket, a market timer could late trade all of the funds in that Supermarket. Likewise, a market timer could late trade many different mutual funds through agreements with broker-dealers who operate a fund Supermarket.

62. Market timing was not limited to third parties who acted either alone or in complicity with intermediaries to time mutual funds. Fund insiders, like advisers, managers, and portfolio managers, sometimes unfairly availed themselves of the opportunity that market timing provided for quick profits at the expense of the mutual funds.

(5) Mutual Fund “Short Selling” Strategy

63. A corollary to market timing used by some investors pursuing market timing strategies involved shorting the underlying securities that make up a fund portfolio. Using this technique timers were able to profit in both rising and falling markets. Generally, fund managers do not disclose the portfolio holding information of the funds they manage. Although this information is disclosed in semi-annual and annual reports, the information is not current when it becomes publicly available. In fact, portfolio managers are generally protective of this information and will not disclose it to individual investors and fund trackers like Morningstar.
However, some fund insiders provided detailed information regarding the portfolio holdings of funds to market timers. The market timers could then buy the fund and simultaneously sell short\(^8\) a basket of stocks that mirrored the fund's holdings, leaving the timer overall market neutral. If the value of the underlying securities increased, the timer would sell the shares of the fund earning a quick profit. When the value of the underlying securities decreased the timer would close out the short position, again earning a quick profit. By working with derivative dealers to create “equity baskets” of short positions that mimicked the effect of shorting every stock in the mutual fund, a timer can reduce transaction costs associated with this strategy. Often the derivative dealers who assisted timers in creating short baskets were affiliates of banks that were loaning money to timers for timing purposes.

(6) Market Timing Is Easy to Detect and Has Been Well-Known Since 1997

64. Market timing in mutual funds has occurred at least since the late 1980s. During the 1980s and 1990s, a number of papers and reports were published by the media, by scholars, and by market timers themselves that described various market timing schemes and discussed the adverse impact of market timing on mutual funds. The mutual fund industry became aware of potential problems from stale prices as early as 1981 by virtue of the Putnam International Equities Fund No Action Letter, Fed. Sec. L. Rep. ¶ 76,816, 1981 WL 25522 (Feb. 23, 1981), which explicitly discussed the question of whether pricing methods used by United States international funds properly could reflect the “fair value” of underlying assets given that different nations’ markets close at different times.

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8 Short selling involves selling a security that the seller borrows on the assumption that the value of the security will drop and the short seller will be able to replace the borrowed security at a lower price than the price the short seller sold it for.
65. Prior to September 3, 2003, market timing and late trading had become common practice. For example, a website called www.hedgefund.net listed hedge funds whose trading strategy was mutual fund market timing.

66. In 2000, the Society of Asset Allocators and Fund Timers, Inc. ("SAAFTI") held a conference in Chicago attended by brokers and capacity consultants who secured and offered negotiated timing capacity in mutual funds and in annuities that held mutual funds. The meeting was attended by the investment advisers of many mutual fund families who were there for the specific purpose of soliciting timing business from the brokers and consultants.

67. Mutual fund managers, including investment advisers and portfolio managers, were at all relevant times aware of market timing (including late trading) and the deleterious impact of market timing (including late trading) on mutual funds and fund performance. Some mutual fund managers adopted measures ostensibly to prevent or deter market timing and late trading, such as redemption penalties.

68. Fund managers were able to detect timing transactions in their funds through well-developed mechanisms, such as tracking the number of buy-sell orders, or "round trips," in a single account or monitoring the size of transactions to determine if a trader was a timer. The fund manager could then exercise discretion to refuse to execute trades on that account, forcing the timer to resort to the subterfuge of multiple accounts or multiple brokers. These subterfuges frequently required the assistance of third party intermediaries to execute trades for the timer in such a fashion that the timing might go undetected.

69. However, mutual fund managers, including investment advisers and portfolio managers, permitted or encouraged market timing and late trading, notwithstanding the deleterious impact of market timing and late trading on mutual funds and fund performance, and
despite the measures they adopted ostensibly to prevent or deter market timing and late trading, including redemption penalties, because they profited handsomely from market timing and late trading and the arrangements they made with market timers and late traders.

70. Market timing is easy to detect through shareholder turnover data. A ratio of the number of shares redeemed to the number of shares outstanding is a useful means of detecting and identifying market timing in mutual funds. Because timers make frequent "round trips," when a timer is active in the fund, the number of shares redeemed greatly exceeds the number of shares that ordinarily would be redeemed in the absence of market timing.

71. A fund that has not been timed will have a low ratio of redemptions-to-shares outstanding, whereas a fund that has been timed will have a much higher ratio of redemptions-to-shares outstanding. Timed funds have redemption ratios as many as five, ten, or even 100 or more times higher than the redemption ratios for funds that are not timed.

72. Mutual fund managers, including advisers and portfolio managers, routinely monitored mutual fund redemption rates using a variety of mechanisms of detection that were well-developed, and thus were aware of, or recklessly disregarded indications of, market timing in the form of higher than normal redemption rates.

73. By 1997, market timing in mutual funds was well-known and well-documented. During October, 1997, Asian markets were experiencing severe volatility. On Tuesday October 28, 1997, the Hong Kong market index declined approximately fourteen percent, following the previous day's decline on the New York stock market. Later on Tuesday the 28th, the New York markets rallied. Knowing that the Hong Kong market would rebound the next day, U.S. mutual funds invested in Hong Kong securities were faced with the dilemma whether to calculate NAV based on Tuesday's depressed closing prices in Hong Kong, or whether to calculate their NAV
based on another method. Several mutual fund companies determined that the closing prices in Hong Kong did not represent “fair value” and used an alternate method to calculate NAV. Some investors (presumably market timers) who had expected to profit from the large price swings went so far as to complain to the SEC when Fidelity used fair value pricing.

74. On November 5, 1997 the Wall Street Journal published an article by Vanessa O’Connell describing some of the responses by mutual funds to the October market turmoil. See Mutual Funds Fight the ‘Market Timers,’ Wall St. J., 11/5/97, C1. For example, the article described a “stock-market correction trading activity” policy announced by the Dreyfus mutual funds immediately following the drop and subsequent rebound of stock prices on October 28, 1997, which permitted Dreyfus to take an additional day to complete exchanges placed by telephone during a “severe market correction” in order to prevent harm to those funds from market timing.

75. The SEC’s investigation of fund companies’ responses to the October, 1997 turmoil revealed that funds that used fair value pricing experienced less dilution than those that used market quotations. Further, the number of investors who attempted to take advantage of the arbitrage opportunity was “fairly large.” See Barry P. Barbash, Remembering the Past: Mutual Funds and the Lesson of the Wonder Years, 1997 ICI Securities Law Procedures Conference (Dec. 4, 1997).


78. By 2002 specialty firms began marketing fair value pricing programs to assist mutual fund companies in reducing arbitrage opportunity in international funds. These firms provide programs to mutual funds that eliminate arbitrage opportunity by bringing stale prices in international securities up to date as of the time when NAV is calculated. One firm, ITG, now offers a Fair Value Model providing “fair value adjustment factors for over 34,000 stocks in 43 markets outside the U.S.” See [http://www.itginc.com/research/fvm.html](http://www.itginc.com/research/fvm.html).

(7) Market Timing Arrangements

79. Most market timing (including substantially all late trading) in mutual funds took place through negotiated written or oral agreements giving market timers authority to trade certain amounts within a given mutual fund family or a number of fund families. The authority to time mutual funds is known as “capacity.” Market timing became so widespread that many mutual fund advisers operated “timing desks” to service market timers.

80. Timers, the intermediaries, and the Funds’ managers and advisers entered into specific negotiated agreements to permit timing of certain funds in a fund family, often with prominent financial institutions lending money to timers to effect the trading and monitoring the trades. Through the misuse of sophisticated computer equipment used for clearing mutual fund trades, market timing soon morphed into late trading, a practice which guarantees profits.

81. Mutual fund advisers, distributors, and their affiliates, whose fees are a percentage of fund assets, profited from capacity arrangements that encouraged market timing, as well as from timing “under the radar,” by charging and collecting fees on the money deposited by market timers in the mutual funds.
82. Market timers frequently offered mutual fund advisers, distributors, and their affiliates static, non-trading assets, called “sticky assets,” in exchange for the right to time. In other cases, timers simply moved their money between timed mutual funds and money market funds in the same fund family, thereby earning additional fees for the mutual advisers, distributors, and their affiliates.

83. As Stephen M. Cutler, the Director of the SEC’s Division of Enforcement, testified on November 3, 2003 before the Senate Subcommittee on Financial Management, the Budget, and International Security, Committee on Government Affairs:9

About half of the fund groups appear to have some kind of agreement or arrangement with frequent traders: 50% of responding fund groups appear to have one or more arrangements with certain shareholders that allow these shareholders to engage in market timing - i.e., these shareholders have been given “market timing capacity.” The market timing of persons with these arrangements appears to be inconsistent with the groups’ policies, and in some cases, the fund groups’ prospectus disclosures and/or fiduciary obligations. We are aggressively following up on these arrangements.

Quid pro quo arrangements: Although the information provided in this area is limited, it appears that many of the persons proposing a special arrangements to get market timing space offered to invest so-called “sticky” or long-term assets in one or more funds in the complex. In most of the situations where sticky assts were discussed, the funds in which these assets were to be invested were not the same funds to be market timed by the person involved in the arrangement.

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84. Market timers obtained capacity either directly through mutual fund advisers, distributors, and their affiliates, or indirectly through broker-dealers or other timers. Many fund families had “Anchor Brokers” or “Anchor Timers,” who were designated broker-dealers or timers who had timing capacity agreements with a fund's adviser or its affiliates, and who doled out market timing “capacity” to timers.

85. Negotiated market timing arrangements often involved other financial institutions as participants in the timing schemes, and those financial institutions (such as banks and brokerage firms) had other business relationships with the mutual funds that encouraged the funds to accommodate the other financial institutions as well as the market timers.

86. Banks who financed market timing negotiated loans and swaps that provided market timers with leverage at exorbitant rates to time and late trade mutual fund shares as well as short equity baskets. The banks entered these financing arrangements knowing that the loans would be used for market timing, late trading, and short baskets. The financing consisted of loans for market timing and late trading, and swaps for shorting. The collateral for the loans were mutual fund shares, so the banks followed trading closely to ensure that their loans were fully secured. Under swap arrangements, the swaps are in the bank's name as account holder, in which event the market timer manages the money, pays interest to the bank, and keeps the profit.

87. Broker-dealers and other intermediaries who offered timing capacity received remuneration from both the mutual funds themselves and the market timers to whom they allocated capacity.

88. Distributors and other service agents who permitted timing also benefited by receiving increased fees based on the money deposited into the mutual funds for market timing purposes. Distributors often receive fees based on assets under management and may earn
commissions on sales of fund shares. Such fees, known as “12b-1 Fees,” are paid pursuant to a plan adopted by mutual funds under Rule 12b-1 promulgated by the SEC under the ICA for marketing and distributing mutual fund shares. Rule 12b-1 permits a mutual fund to pay distribution-related costs out of fund assets, provided that the fund adopts “a written plan describing all material aspects of the proposed financing of distribution,” which must include an express finding that the fees paid will result in a net economic benefit to the funds. 17 C.F.R. ¶ 240.12b-1.

89. Intermediaries who facilitated market timing also received “wrap fees” from market timers. Wrap fees are customarily charged to investors as a single fee for a variety of investment services, such as commission trading costs and fees of an outside money manager. Wrap fees are charged as a flat percentage of assets rather than on a transaction-by-transaction basis. The name refers to the fact that these charges usually “wrap” a variety of investment services into a single fee – usually from 1 to 3 percent of assets. Broker-dealers who offered timing capacity to market timers often charged a percentage of assets that they termed a “wrap fee,” even though the brokers did not generally give investment advice.

90. Typically, 12b-1 Fees are deducted from fund assets and paid to the fund’s primary distributor, usually an affiliate of the adviser. Distributors usually pay a portion of those 12b-1 Fees to the broker-dealers who sell fund shares. The broker-dealers continue to receive 12b-1 fees for as long as their client’s money is invested in the funds. However, broker-dealers who offered timing capacity often received 12b-1 Fees directly from the funds themselves, which were paid in addition to the 12b-1 fees paid to the mutual fund distributors.

91. Negotiated capacity arrangements by market timers also facilitated late trading through a variety of manipulative schemes. For example, market timers frequently traded
through third parties, \textit{i.e.}, broker-dealers or other intermediaries who processed large numbers of mutual fund trades every day through omnibus accounts where net trades are submitted to mutual fund companies \textit{en masse}. By trading this way, market timers evaded detection of their activity amid the other trades in the omnibus accounts. This is one example of market timing “under the radar.”

92. Timing under the radar is intended to avoid the “market timing police,” a colloquial term used by market participants to describe persons employed by mutual funds ostensibly to detect and prevent market timing. Market timing police often ignored or did not prohibit negotiated market timing, or were instructed by their superiors that certain favored investors were exempt from the restrictions.

93. Brokers who assisted in timing under the radar employed a number of tactics to avoid detection and to continue their illicit activities if a fund took steps to prevent their timing activity. These tactics included: (a) using multiple account numbers, registered representative numbers, and branch numbers to conduct market timing trades; (b) creating and using two or more affiliated broker dealers; (c) using different clearing firms to clear trades; and (d) switching between mutual fund families. Some market timers employed these tactics directly, without relying on an intermediary broker.

\textbf{Banc of America Securities LLC}

94. Some time prior to late 1999, in order to facilitate late trading and timing of mutual funds by brokers and timers through BAS, BAS, in conjunction with ADP, which operates its “back office,” created a special electronic trading system called “RJE” (“Remote Job Entry”), and colloquially referred to as “the box,” which it provided to certain market timers and broker-dealers who acted as intermediaries for a large number of market timers.
95. RJE is an electronic mutual fund entry order system that could be installed in different locations and was directly hooked up to ADP through a modem. In effect, those who had the box became branches of BAS.

96. Those market timers and broker-dealers who received the box could enter mutual fund orders at 5:30 p.m., 7:00 p.m., or 7:30 p.m. Eastern Time directly into ADP’s clearing system, and therefore had the capability to buy and sell mutual fund shares at the 4:00 p.m. closing price up to 3-1/2 hours later. BAS’s standard system, called “MFRS,” allowed trades to be entered as late as 5:30 p.m., but only if trade tickets were time stamped prior to 4:00 p.m.

97. The box allowed broker-dealers and others to circumvent BAS’s standard system and the 4:00 p.m. deadline for buying and selling mutual fund shares at that day’s prices, in violation of the forward pricing rule. 17 C.F.R. § 270.22c-1(a).

98. In addition, broker-dealers and others who had the box could “batch” mutual fund trades instead of executing them one at a time, which is the standard method of entering mutual fund orders through BAS. The “batching” capability allowed brokers and timers who had the box to enter mutual fund trades *en masse* after the 4:00 p.m. deadline at that day’s prices.

99. Initially, the box was developed for use by the Broker-Dealer Services (“BDS”) group of BAS and Aurum, a broker-dealer who was known to be extensively involved in late trading and timing mutual funds. At the time the box was developed, BDS was not very profitable, and it hoped to increase its margins by charging a per trade fee to brokers that had access to the box.

100. BAS installed the box in the offices of three broker-dealers who routinely late-traded and timed mutual funds on behalf of their clients and themselves. BAS gave the box to the Aurum Defendants in around late 1999 or early 2000, to defendant Trautman in or about
early 2001, and to defendant Pritchard in early 2003. Each of these broker-dealers was charged $10 for each trade that was entered through the box.

101. BAS entered into clearing agreements with these brokers that, among other things, obligated them to comply with the securities laws. By virtue of these agreements, BAS sought to shift liability for its knowing violation of the forward pricing rule onto the broker-dealers.

102. BAS also installed the box in Canary’s offices in or around the summer 2001, but did not charge any fee to Canary for orders placed through the box. Rather, the Private Client Services (“PCS”) group of BAS provided the box free of charge to Canary, which was not a broker-dealer, as part of a special arrangement negotiated between Stern and Theodore Sihpol III (“Sihpol”) of PCS, under which Canary was charged a wrap fee of 100 basis points (one percent) for late trading and timing funds offered by BOA and 50 basis points (0.5 percent) for late trading and timing funds offered by other mutual fund families.

103. On September 16, 2003, the SEC instituted an administrative proceeding against Sihpol charging him with violations of the Securities Act of 1933, the Securities Exchange Act of 1934, the ICA, and the IAA for his role in enabling Canary to engage in late trading shares of mutual funds offered by BOA and other mutual fund companies. The SEC charged Sihpol\textsuperscript{10} for his facilitation of Canary’s late trading “manually” and through the box. As set forth in the SEC’s order:

\textit{“Manual” Late Trading at BAS}

\textsuperscript{10} Sihpol was also indicted on 40 counts in connection with late trading at BOA, including a scheme to defraud in the first degree, grand larceny in the first degree, violation of the Martin Act, and falsifying business records in the first degree.
15. In or around May 2001, Canary began to late trade the Nations Funds. At first, Canary conducted its late trading “manually.” In the manual stage, Canary was able to engage in late trading primarily because Sihpol and his team falsified BAS’ books and records. Prior to 4:00 p.m. ET, a Canary trader would send Sihpol or a member of his team a series of “proposed” mutual fund trades by e-mail or facsimile. Upon receipt, Sihpol, or a member of his team acting upon his instructions, would fill out an order ticket, time stamp it, and set it to one side until that evening. Thus, Sihpol created false order tickets that made it appear as if the orders had been received prior to 4:00 p.m. ET.

16. Sometime after 4:00 p.m. ET, a Canary trader would telephone Sihpol or a member of his team, and would either confirm or cancel the “proposed” trades. If confirmed, Sihpol’s team would fax the order (with its pre-4:00 p.m. time stamp and no post-4:00 p.m. time stamp) to the clearing department for processing. As a result, Canary would receive that day’s NAV. If Canary cancelled the “order,” Sihpol or a member of his team would discard the ticket.

**Late Trading Through BAS’ Electronic System**

17. In the summer of 2001, BAS technicians installed the direct access system in Canary’s offices. Through this system, Canary was able to enter its trades directly into BAS’ clearing function until 6:30 p.m. ET.

18. After a Canary trader entered the trades directly into the system, the trader would print out a document confirming the trades and the time (after 4 p.m.) that the trades had been entered. The trader then faxed the document to Sihpol or a member of his team. The following day, Sihpol or a member of his team would use this document to reconcile Canary’s trades. Once the trades were reconciled, Sihpol or a member of his team discarded the document.

19. From the summer of 2001 until the summer of 2003, Canary used the electronic system to late trade. Canary also late traded “manually” whenever there were technical problems with the electronic system. BAS technicians also installed a second direct access system in the residence of a Canary trader.

20. The electronic system enabled Canary to late trade with Nations Funds and in the many other mutual fund families with which BAS had clearing agreements. By using the electronic system, Canary was able to send orders directly to BAS’ clearing
function, circumventing the normal trading process in which each brokerage order must be properly documented, including the time the order was received.

21. Canary paid BAS a so-called “wrap fee” of one percent of the Canary assets in Nations Funds and one-half of one percent of the assets in other funds traded through the electronic link. Sihpol received a portion of this wrap fee. In addition, Canary agreed to leave millions of dollars invested in BAC proprietary mutual funds on a long-term basis. Canary also paid interest and other charges to BAS and its affiliates. Canary also paid fees for the installation and maintenance of the electronic system.

104. By March 2004, BOA admitted that, by allowing Canary and others to time and late trade mutual funds through its clearing platform, it caused harm not only to the Nations Funds, but to other mutual fund families as well:

The Corporation has announced it will establish a restitution fund for shareholders of the Nations Funds who were harmed by Canary’s late trading and market timing practices. In addition, the Corporation announced that it will provide restitution for shareholders of third party mutual funds who were harmed by any late trading activities by Canary that are found to have occurred through the Corporation in the event restitution is not otherwise available from Canary, its affiliates, its investors or from any other third parties.

BOA Form 10-K for Fiscal year 2003, filed March 1, 2004 (emphasis added).

105. On March 15, 2004, the SEC and the New York Attorney General announced a $675 million joint settlement in principle with BOA and Fleet in connection with their involvement in late trading and market timing. BOA’s monetary settlement was $375 million, comprised of restitution of $250 million and penalties of $125 million (and a fee reduction of $80 million over 5 years).

106. The SEC Press Release announcing the settlement in principle states that the $375 million “will be distributed to the mutual funds and their shareholders that were harmed as a
result of market timing in Nations Funds and other mutual funds through Bank of America.” (Emphasis added). The same release quoted Mark Schonfeld of the SEC as saying:

This settlement is a new benchmark in mutual fund market timing and late trading. Bank of America not only permitted timing in its own funds, it provided the instruments for timing and late trading of numerous other funds through its broker-dealer. This settlement will ensure compensation for all victims of the harm that resulted and prevent this misconduct from happening again. (Emphasis added).

107. BOA’s Press Release announcing the settlement states that, “subject to further discussions with the Nations Board of Trustees,” approximately $25 million “would go to Nations Funds shareholders” and the remainder to shareholders of other funds that were harmed by BAS’ clearing of timing trades. Thus, **BOA itself attributed $350 million of its $375 million monetary settlement to harm caused to other mutual fund families as a result of BAS’ facilitation of late trading and market in other mutual fund families.**

108. In further recognition of BAS’s misconduct in facilitating late trading through the box or otherwise, the BOA’s settlement with the SEC and NYAG provides that BOA will exit the securities clearing business by the end of 2004.

109. Between late 1999 through 2003, BAS, either manually or by providing the box, allowed the Aurum Defendants to late trade approximately $5.6 billion in third-party mutual funds, Trautman to late trade approximately $8.6 billion in third-party mutual funds, Canary to late trade $21.2 billion in third party mutual funds, and Pritchard to late trade approximately $4.9 billion in third party mutual funds.

110. Defendant BAS, by providing the box to the Aurum Defendants, Trautman, and Pritchard, facilitated their late trading and timing in the Funds in the aggregate amount of $75,649,612, as follows:
<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Number of Shares Purchased and Sold</th>
<th>Dollar Value of Purchases</th>
<th>Dollar Value of Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIMCO Select International A</td>
<td>3,905,118</td>
<td>16,765,302</td>
<td>16,922,016</td>
</tr>
<tr>
<td>PIMCO Total Return A</td>
<td>1,254,148</td>
<td>13,420,828</td>
<td>13,534,030</td>
</tr>
<tr>
<td>PIMCO Innovation A</td>
<td>111,070</td>
<td>2,617,291</td>
<td>2,658,503</td>
</tr>
<tr>
<td>PIMCO RCM Intl Grw Eqty A</td>
<td>919,595</td>
<td>7,817,658</td>
<td>7,844,511</td>
</tr>
<tr>
<td>Lg-Tm US Govt A</td>
<td>393,721</td>
<td>4,049,675</td>
<td>4,064,535</td>
</tr>
<tr>
<td>PIMCO RCM Emerging Markets A</td>
<td>68,972</td>
<td>644,940</td>
<td>658,381</td>
</tr>
<tr>
<td>PIMCO RCM Europe Fund A</td>
<td>149,411</td>
<td>925,754</td>
<td>937,241</td>
</tr>
<tr>
<td>PIMCO Short Term A</td>
<td>129,169</td>
<td>1,286,986</td>
<td>1,288,953</td>
</tr>
<tr>
<td>PIMCO Real Ret Bd A</td>
<td>15,410</td>
<td>168,432</td>
<td>170,077</td>
</tr>
<tr>
<td>PIMCO NACM Int’ Fund A</td>
<td>114,340</td>
<td>902,568</td>
<td>903,680</td>
</tr>
<tr>
<td>RCM Global S/C Fund A</td>
<td>55,274</td>
<td>654,912</td>
<td>655,991</td>
</tr>
<tr>
<td>PIMCO Target A</td>
<td>1,884</td>
<td>54,938</td>
<td>558,86</td>
</tr>
<tr>
<td>PIMCO Low Duration A</td>
<td>137,422</td>
<td>1,414,343</td>
<td>1,414,383</td>
</tr>
<tr>
<td>PIMCO High Yield A</td>
<td>19</td>
<td>198</td>
<td>197</td>
</tr>
<tr>
<td>PIMCO RCM Int’ Gr Eq Inst</td>
<td>537,212</td>
<td>6,075,729</td>
<td>6,075,442</td>
</tr>
<tr>
<td>PIMCO Growth A</td>
<td>46,876</td>
<td>1,103,589</td>
<td>1,101,739</td>
</tr>
<tr>
<td>PIMCO Global Innov A</td>
<td>357,372</td>
<td>3,321,388</td>
<td>3,314,769</td>
</tr>
<tr>
<td>PIMCO Emerging Mkts Bd A</td>
<td>1,638,624</td>
<td>14,106,542</td>
<td>14,049,280</td>
</tr>
<tr>
<td>TOTAL</td>
<td>9,835,636</td>
<td>75,331,073</td>
<td>75,649,612</td>
</tr>
</tbody>
</table>

111. Defendant BAS, by providing the box to Canary, facilitated Canary’s late trading and timing in the Pimco Funds, in the aggregate amount of $531,184,286, as follows:
<table>
<thead>
<tr>
<th>Fund Type</th>
<th>Value 1</th>
<th>Value 2</th>
<th>Value 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Duration A</td>
<td>3,613,399</td>
<td>36,737,823</td>
<td>36,776,601</td>
</tr>
<tr>
<td>PIMCO Total Ret II Admin</td>
<td>469,330</td>
<td>4,824,946</td>
<td>4,825,052</td>
</tr>
<tr>
<td>PIMCO Short Term A</td>
<td>1,208,054</td>
<td>12,117,241</td>
<td>12,115,766</td>
</tr>
<tr>
<td>PIMCO Total Return A</td>
<td>13,341,153</td>
<td>140,502,491</td>
<td>140,260,825</td>
</tr>
<tr>
<td>PIMCO Target A</td>
<td>13,716,356</td>
<td>213,463,615</td>
<td>212,946,154</td>
</tr>
<tr>
<td>PIMCO Innovation A</td>
<td>1,129,638</td>
<td>23,857,947</td>
<td>22,694,419</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>43,619,920</td>
<td>532,540,626</td>
<td>531,184,286</td>
</tr>
</tbody>
</table>

**Canary**

112. In or about summer 2001, as part of a package deal with BAS that included late trading and timing capacity in the Nations funds, financing for late trading and timing trades in Nations funds and other mutual funds, and unlimited capacity to late trade and time hundreds of other mutual funds, defendant BAS installed the “box,” free of charge, at Canary’s offices in Secaucus, New Jersey. The deal is memorialized in a letter dated May 1, 2001 by Stern to Sihpol of BAS, in which, among other things, Stern writes:

> We plan on transacting our trades manually at first (via Fax), at a time of day that is a little bit earlier than Matt [Auglieri, a mutual fund clearing specialist at BAS] specified in our first meeting. As soon as we can work out our lending arrangement with the bank and begin transacting electronically via ADP [i.e., the box], we will draw down leverage against the capital we have deployed in the Nations funds, effectively increasing our trading capital with your firm to $32 million. If all goes well, this capital should grow larger as we get a sense of what trades can and cannot be done via the Banc of America Securities Platform. We really would like to get going with ADP and begin trading electronically as soon as possible.

113. Canary executed a total of $531,184,286 in late trading and timing trades in the Funds through its own BAS box and a BAS box provided to Trautman.

114. As set forth above, the Aurum Defendants, Trautman, and Pritchard were brokers or timers that had agreements with BAS that enabled them to late trade and time mutual funds.
through the BAS “box.” These defendants late traded and timed mutual funds both for their clients, who bought and sold hundreds of millions dollars worth of mutual funds, and for their own accounts.

115. The Aurum Defendants, which had the box since about late 1999 or early 2000, late traded and timed the Funds, as follows:

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Number of Shares Purchased and Sold</th>
<th>Dollar Value of Purchases</th>
<th>Dollar Value of Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIMCO Target A</td>
<td>1,884</td>
<td>54,938</td>
<td>55,886</td>
</tr>
<tr>
<td>PIMCO Growth A</td>
<td>13</td>
<td>500</td>
<td>500</td>
</tr>
<tr>
<td>PIMCO High-Yield A</td>
<td>19</td>
<td>198</td>
<td>197</td>
</tr>
<tr>
<td>PIMCO Innovation A</td>
<td>848</td>
<td>55,679</td>
<td>53,785</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>2,764</td>
<td>111,315</td>
<td>110,368</td>
</tr>
</tbody>
</table>

116. The Aurum Defendants late traded and timed the Funds on their own account, as follows:

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Number of Shares Purchased and Sold</th>
<th>Dollar Value of Purchases</th>
<th>Dollar Value of Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIMCO Target A</td>
<td>1,884</td>
<td>54,938</td>
<td>55,886</td>
</tr>
<tr>
<td>PIMCO Growth A</td>
<td>13</td>
<td>500</td>
<td>500</td>
</tr>
<tr>
<td>PIMCO Innovation A</td>
<td>848</td>
<td>55,679</td>
<td>53,785</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>2,740</td>
<td>110,638</td>
<td>109,705</td>
</tr>
</tbody>
</table>

117. Trautman, which had the box since about early 2001, late traded and timed the Funds as follows:
### Table 1

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Number of Shares Purchased and Sold</th>
<th>Dollar Value of Purchases</th>
<th>Dollar Value of Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIMCO Select International-A</td>
<td>3,905,118</td>
<td>16,765,302</td>
<td>16,922,016</td>
</tr>
<tr>
<td>PIMCO Total Return A</td>
<td>1,254,148</td>
<td>13,420,828</td>
<td>13,534,030</td>
</tr>
<tr>
<td>PIMCO Innovation A</td>
<td>110,222</td>
<td>2,561,611</td>
<td>2,604,718</td>
</tr>
<tr>
<td>PIMCO NACM International Fund-A</td>
<td>114,340</td>
<td>902,568</td>
<td>903,680</td>
</tr>
<tr>
<td>PIMCO RCM Intl Gr Eq Inst</td>
<td>537,212</td>
<td>6,075,729</td>
<td>6,075,442</td>
</tr>
<tr>
<td>PIMCO Growth A</td>
<td>46,863</td>
<td>1,103,089</td>
<td>1,101,238</td>
</tr>
<tr>
<td>PIMCO Global Innov A</td>
<td>357,372</td>
<td>3,321,388</td>
<td>3,314,769</td>
</tr>
<tr>
<td>PIMCO Emerging Mkts Bd A</td>
<td>1,638,624</td>
<td>14,106,542</td>
<td>14,049,280</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>7,963,899</strong></td>
<td><strong>58,257,058</strong></td>
<td><strong>58,505,174</strong></td>
</tr>
</tbody>
</table>

118. Trautman also late traded and timed the Funds on behalf of Canary, as follows:

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Number of Shares Purchased and Sold</th>
<th>Dollar Value of Purchases</th>
<th>Dollar Value of Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIMCO Total Return A</td>
<td>16,927</td>
<td>184,000</td>
<td>183,563</td>
</tr>
<tr>
<td>Pimco Select International-A</td>
<td>81,632</td>
<td>358,319</td>
<td>355,442</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>98,559</strong></td>
<td><strong>542,319</strong></td>
<td><strong>539,005</strong></td>
</tr>
</tbody>
</table>

119. Pritchard, which had the box since about early 2003, late traded and timed the Funds, as follows:
<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Number of Shares Purchased and Sold</th>
<th>Dollar Value of Purchases</th>
<th>Dollar Value of Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIMCO RCM Intl Grw Equity-A</td>
<td>919,595</td>
<td>7,817,658</td>
<td>7,844,511</td>
</tr>
<tr>
<td>PIMCO Lg-Trm US Govt A</td>
<td>393,721</td>
<td>4,049,675</td>
<td>4,064,535</td>
</tr>
<tr>
<td>Pimco RCM Emerging Markets-A</td>
<td>68,972</td>
<td>644,940</td>
<td>658,381</td>
</tr>
<tr>
<td>Pimco RCM Europe Fund - A</td>
<td>149,411</td>
<td>925,754</td>
<td>937,241</td>
</tr>
<tr>
<td>PIMCO Short-Term A</td>
<td>129,169</td>
<td>1,286,986</td>
<td>1,288,953</td>
</tr>
<tr>
<td>PIMCO Real Ret Bd A</td>
<td>15,410</td>
<td>168,432</td>
<td>170,077</td>
</tr>
<tr>
<td>Pimco RCM Global S/C Fund-A</td>
<td>55,274</td>
<td>654,912</td>
<td>655,991</td>
</tr>
<tr>
<td>PIMCO Low Duration A</td>
<td>137,422</td>
<td>1,414,343</td>
<td>1,414,383</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,868,973</strong></td>
<td><strong>16,962,700</strong></td>
<td><strong>17,034,071</strong></td>
</tr>
</tbody>
</table>

120. The late trading and timing orders that were processed through the box consisted of both “under the radar” late trading and timing, and late trading and timing arranged between the Aurum Defendants, Trautman, and Pritchard, or their intermediaries, on the one hand, and mutual fund advisers, on the other hand. Upon information and belief, these defendants, or their intermediaries, received wrap fees for providing under the radar or negotiated late trading/timing capacity in mutual funds.

121. Even where late trading and timing was “under the radar,” mutual fund advisers knew that funds were being timed by the sheer volume of asset turnover in the funds. One advantage to the brokers and timers that late traded and/or timed “under the radar” – as the Aurum Defendants, Trautman, and Pritchard sometimes did – was that they avoided paying wrap
fees to the mutual fund families. Where there was a negotiated timing arrangement with a mutual fund family, the defendants often shared wrap fees they received with the mutual fund family advisers.

**Additional Negotiated Timing Capacity Through Intermediaries**

122. UBS provided capacity to Canary, allowing them to conduct timing transactions in the Pimco Funds.

123. On April 5, 2001, an employee of UBS, Barry Brown, offered market timing capacity to Andrew Goodwin of Canary.

124. In accordance with an email between Brown and Goodwin on April 16, 2001, at least one trade in the amount of $437,802.87 was processed after 4:00 p.m. on the date the trade was made, constituting late trading. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that other late trades in Pimco Funds were executed pursuant to the negotiated market timing capacity in the Funds.

125. On July 6, 2000, Laurence Liebowitz of Kaplan sent an email to Goodwin and Noah Lerner, also from Canary, stating that Kaplan had negotiated up to $4 billion in timing capacity to use at $1,000,000 per trade, including the Pimco Total Return Bond Fund and the Pimco Limited Maturity Bond Fund.

126. On February 1, 2001, Liebowitz emailed Lerner a list of funds available for timing, including the Pimco PEA Target Fund.

127. At relevant times, Canary personnel frequently emailed requests to Kaplan for timed transactions in various Pimco Funds and other mutual funds.

128. Kaplan charged Canary a wrap fee of 1.25% for providing timing capacity, and a fee for providing late trading, which Canary paid.
129. David Byck negotiated market timing relationships at various mutual funds, including Pimco Funds.

130. On December 14, 2002, Byck sent an email to Lerner at Canary, outlining the details of the timing capacity arrangements he had negotiated for Canary as follows:

- Account will be opened directly with PIMCO
- Initial funding amount: approximately $30MM
- Maximum amount of trades per month in the High Yield Fund: one-round trip (i.e. one buy and one sale)
- When the assets are not in the High Yield Fund, the assets may be invested in one, or a combination, of the following PIMCO Funds: Money Market, Short Term, or Low Duration

131. In January 2003, Canary was permitted to open an account for market timing Pimco bond funds, including $50 million of capacity in the Pimco High Yield Bond Fund (PHIYX) through David Byck.

132. On January 17, 2003, David Byck sent an email to Lerner, stating “...Scott at Pimco got your paperwork. He had a few questions about Deutsche Bank which would be better answered by you than by me.”

133. On January 22, 2003, Suzanne Oden, a marketing assistant at Pimco, sent an email to Byck, stating that she had attached the wire instructions for opening an account at PIMCO, and indicating that “Your account number is 104220.” This was the same account number at Deutsche Bank for Tripod, a Canary entity.

134. On April 28, 2003, Byck offered Canary additional capacity in Pimco domestic and international high yield bond funds. As Byck stated in an email on May 6, 2003, that additional capacity was for $10 million in market timing capacity per month.
135. On June 9, 2003, Byck sent Lerner an email stating that Pimco was ready for the first $5 to $6 million in timing capacity in the Pacific Investment Management Series Low Duration Fund.

136. On July 2, 2003, Byck sent Lerner and Stern at Canary an email stating that he was able to increase Canary's capacity in Pimco high yield bond funds to approximately $85 million and another $15 million in offshore funds.

137. Byck charged Canary a wrap fee for his provision of timing capacity, which Canary paid. For example, on July 14, 2003, Byck emailed Lerner stating, “I calculated the fees, based on the updated information you emailed me,” and providing wire instructions to a Chase Manhattan Bank account in the name of Tee’s to Please, Ltd., for payment of the fee.

138. At relevant times, Dadco, an affiliate of Davidson, provided timing capacity in at least one Pimco mutual fund. Dadco charged a wrap fee for providing market timing capacity in the Pimco Funds, which Canary paid.

139. In late 2001 or early 2002, Goldberg Murray offered negotiated capacity to Canary in the Pimco Growth (PGWAX), Pimco Target (PTAAX), and Pimco Innovation (PIVAX) Funds. Goldberg and Michael Grady, also of Brean Murray, met with Canary, and Ken Corba and John Cashwell of Pimco, at which time it was made clear that part of the purpose of the deal was to raise funding for a new fund, the Pimco Select Growth Fund (PCEAX), that defendant Corba wanted to start.

140. The parties agreed that Canary could trade up $100 million in three Funds, with four round trip trades permitted each month, in exchange for which Canary would deposit $25 million into the Pimco Select Growth Fund.
141. On January 15, 2002, John Cashwell at Pimco sent an email to Michael Grady and Russ Goldberg of Brean Murray, stating that “as per [their] discussion this morning [Cashwell] had attached ...12/31/01 holdings for each of the Funds [they’d] be investing in [and] 12/31/01 product fact sheets on the PIMCO Equity Hedge Funds (Advantage, Navigator & Horizon)”, and requesting that Goldberg “please invest the long-term assets in Ken Corba’s Select Growth Fund (admin share class).”

142. On March 7, 2002, John Cashwell of Pimco sent an email directly to Stern at Canary, stating:

It was nice to meet you on Tuesday. Ken and I enjoyed our lunch at the Racquet Club. As you requested, I am attaching the operating docs for the PIMCO Equity Horizon Fund and PIMCO Equity Advantage Fund.

In addition, I’m sending you a fact sheet describing the Worldwide Value Equity Fund which is managed by John Schneider. This fund is for offshore investors.

143. On March 10, 2002, Stern responded by email that Canary was prepared to “begin trading the PIMCO mutual funds that we are allowed to trade... at Bear Stearns soon. This will allow us to trade into a Bear cash account instead of into your money market and bond funds, and should alleviate some of the issues that arose with the bond group in CA when we were trading at [BOA].”

144. Bear Stearns allowed late trading. Trades at Bear Stearns could be processed until 5:30 p.m. on the day they were executed, up to 90 minutes after the close of the financial markets each day.

145. After trading on the deal began in early 2002, the deal had to be resized because there was no Pimco money market fund big enough to handle $100 million worth of exchanges,
and because the portfolio manager of the Pimco Innovation Fund, and the bond management
group did not want to be involved.

146. It was decided that a settlement override would be executed on the Bear Stearns
platform through Brean. The deal was reduced to $60 million in trading assets, in exchange for
$15 million in the Pimco Select Growth Fund.

147. In Spring of 2002, Pimco’s Michael Gaffney, the portfolio of the Pimco Multi
Manager Series Opportunity Fund made a presentation for Pimco Horizon to Canary at its New
York offices. A deal was worked out whereby Canary made a $2 million investment for a $5
trade ticket in the Pimco Opportunity Fund. Canary was also given special redemption terms
from the hedge fund in the event of termination of the fund trading relationship.

On July 29, 2002, John Cashwell sent an email to Goldberg and
Grady at Brean Murray, objecting to the fifth trade Canary made in
the Pimco Growth and Target Funds in the month of July, stating,
“4 is ok . . . 5 is not.”

148. On August 28, 2002, Ryan Goldberg forwarded this email to Antonette
Scrivanich at Canary, stating that:

I will leave it up to you and Eddie to decide how you want to
proceed. I don’t want to see you miss a big move up but I would
say that this does put a stress on the relationship if you over trade
two months in a row. I think Pimco understands if it happens two
or three times a year but two in a row probably will raise
eyebrows.

149. Brean Murray charged Canary a wrap fee for providing market timing capacity in
the various Pimco Funds, which Canary paid.

150. On January 17, 2003, David Byck sent an email to Noah Lerner of Canary stating
“Scott at Pimco got your paperwork. He had a few questions about Deutsche Bank which would
be better answered by you than me.”
151. On January 22, 2003, Susan Oden of Pimco sent an email stating, “I have attached the Wire Instructions to facilitate opening an account at Pimco. Your account number is 104220.

152. This account number was the same as the Pimco account number on a November 2003 shareholder statement addressed to Tripod LLC, a Canary entity, in care of Deutsche Bank AG MS NYC01-1508, 51 W 52nd Street, New York, NY 10019.

[¶¶ 153 THROUGH 250 ARE INTENTIONALLY LEFT BLANK]

(8) Impact of Market Timing

251. Market timing and late trading are inconsistent with and inimical to the primary purpose of mutual funds as long-term investments. Mutual funds are marketed towards buy-and-hold investors, and are therefore the preferred investment instruments for many retirement and savings accounts. Nonetheless, certain market timers have been allowed to make frequent in-and-out trades to exploit the inefficiency of forward pricing and the cost structure of the mutual funds.

252. Market timing and late trading harm mutual funds, directly and indirectly, in a variety of ways. The types of adverse impact caused to mutual funds from market timing generally can be grouped into three categories: (a) Dead Weight, (b) Dilution, and (c) Concentration.

253. Dead Weight losses result from frequent transactions in mutual fund shares by market timers. Dead Weight harms not just the Funds targeted and traded by market timers, but also affects other funds in the same fund family that are not market timed.

254. Dead Weight includes, but is not limited to, the following:

(a) increased service agent fees, such as transfer agent, compliance administrator, custodian, portfolio accounting, shareholder servicing agent, adviser, auditor, and
fund accounting fees, and other agency fees, all of which increase based on the frequency of transactions and thus increase with market timing;

(b) statement costs (including costs of printing and postage for statements of account activity) for account statements relating to market timers’ trades;

(c) higher capital gains tax liability resulting from the sale of underlying securities to raise cash for redemption, including redemptions caused by investors who flee the fund after learning of the late trading and timing scandal;

(d) lost investment opportunity on cash that portfolio managers must hold in reserve to redeem market timers’ shares that cannot be invested in furtherance of the funds’ investment strategies and objectives;

(e) inefficient trading in the Funds’ underlying portfolio securities when investment advisers must buy or sell securities at inopportune times (e.g., buying shares of stock in a rising market or selling them in a declining market) to cover market timers’ trades (as well as to cover the redemption of fund shares for those innocent fund investors who have withdrawn their investments from mutual fund families implicated in the scandal);

(f) transaction costs for transactions in the Funds’ underlying portfolio securities that result from market timing (as well as from the redemption of fund shares for those innocent fund investors who have withdrawn their investments from mutual fund families implicated in the scandal), which include bid-ask spreads and brokerage fees;

(g) interest on borrowing to maintain the mutual funds’ position in the underlying portfolio securities; and

(h) increased expenses for fixed costs (including trustee or director expenses) resulting from shareholder redemptions from mutual fund families implicated in the scandal.
255. Market timing lowers the expected returns of mutual funds by restricting the amounts the fund portfolio managers are able to invest in furtherance of their investment strategies. Because the money deposited into mutual funds by market timers is not expected to remain in the funds for long periods of time but is deposited and redeemed frequently, portfolio managers must keep greater uninvested cash balances in the funds than would be required to meet ordinary redemption demand in the absence of market timing. With less cash available to invest, the net return on all fund assets (including the transient cash deposited by market timers) is lower than it would be otherwise if the managers were able to fully invest the money deposited by market timers.

256. Dead Weight harms not only the funds that are timed, but can also harm non-timed funds. Non-timed funds are harmed by market timing when timing increases costs that are shared by timed and non-timed funds within the same fund family. Certain costs, for example custodian fees, are shared by all funds in a mutual fund family. Market timing in one fund can cause an increase in these costs, which is then spread across all funds in the fund family. This is true regardless of whether those fees are calculated on a transactional basis or as a percentage of assets in the funds. If fees are calculated on a transactional basis, the costs are increased directly. If fees are calculated as a percentage of assets, the relevant service agent must charge a higher percentage of assets when the agreement is renegotiated in a subsequent year in order to compensate for predicted future transactions. Any service agent fees, statement costs, transaction costs, and interest charges on borrowing that increase as a result of market timing and are shared among multiple funds cause damage to timed-funds and non-timed funds alike.

257. Non-timed funds were also harmed by increased expense ratios resulting from market timing when large numbers of innocent investors redeemed their shares in the wake of
the scandal. Fixed costs, such as director’s fees, are shared among funds and are accrued daily. When large numbers of investors redeemed their shares after discovering that the funds were implicated in the market timing scandal, the assets of the funds shrank and the fixed costs became a greater burden.

258. Dead Weight is exacerbated when timing occurs in international and small capitalization funds because the underlying securities tend to be the most expensive to trade due to high bid-ask spreads.

259. In addition to exposing mutual funds to Dead Weight, market timers who purchase mutual fund shares on the expectation of a short-term price rise and redeem those shares at a profit also dilute the fund’s assets. When a timer purchases based on an anticipated rise in the prices of the underlying securities, the portfolio manager cannot invest the timer’s cash before the price of those securities rises. The timer therefore pays less than the true value of the fund share. When the underlying securities increase in price (as anticipated), the fund’s NAV increases and the timer participates in this “unearned appreciation.” The timer’s unearned appreciation results in dilution of the fund’s NAV dollar for dollar.

260. Dilution occurs when a market timer buys a mutual fund that has a stale price incorporated into its NAV, such as a fund invested in Japanese securities that calculates NAV based on information that is fourteen hours old. Dilution is compounded because the market timer repeatedly purchases mutual fund shares at a NAV that does not accurately reflect the value of the underlying securities.

261. Late trading in particular dilutes the assets of a mutual fund. When a market timer places an order to purchase mutual fund shares after the 4:00 p.m. close of the financial markets, the price at which the order should be executed is the following day’s higher NAV.
However, late traders are able to purchase the fund shares at the current day’s lower NAV, thus reducing the purchase price for the shares and depriving the funds of the NAV appreciation between the two days. Late traders recapture this saving in the form of increased profits when they subsequently redeem their mutual fund shares.

262. Dilution occurs because the fund manager cannot invest the timer’s cash at the stale price on which the NAV was calculated. In order to do so, in the example of Japanese securities, the fund manager would have to invest the timer’s cash fourteen hours prior to knowing what trade is needed. The timer’s cash is either invested in the underlying securities at the next day’s non-stale price, or else held in cash, but in both cases the timer receives a proportionate share of the increase in NAV that results from the rising value of the underlying securities even though the timer’s money was not invested when the value of the underlying securities increased. Since the timer’s money is either invested at a non-stale price or held in cash, it causes a dilution of NAV across all of the fund’s shares.

263. Concentration occurs when a market timer sells shares of the fund just prior to a negative price movement in the underlying securities. The exploitation of the down turn in the market is the reversal of the exploitation of the up turn in the market in dilution. The fund manager cannot liquidate the underlying securities prior to the next-day drop in prices, and instead must sell those securities at the reduced prices. Therefore, the market timer is able to redeem shares based on a stale, inflated NAV, which concentrates the negative returns to the existing fund shares the next day.

B. Fund Family Specific Facts

264. Like all other mutual funds, the Pimco Funds are and were priced at NAV once each day following the close of the financial markets at 4:00 p.m. Eastern Time. The NAV for
the Pimco Funds was and is determined by dividing the total value of a Fund’s portfolio investments and cash on hand, less any liabilities, by the total number of shares outstanding.

265. At relevant times, the Prospectuses, the Statements of Information, and “PIMCO Funds Shareholders’ Guide for Class A, B, C and R Shares” (“Shareholders’ Guide”) for the various Pimco Funds consistently stated that an excessive number of trades or exchanges in the Funds would be disadvantageous to the Funds and the Trusts.

266. Consequently, the Trusts and the Funds purported to reserve the right to terminate the exchange privileges of any shareholder who made an excessive number of exchanges in any 12-month period or in any calendar quarter.

267. At relevant times, the Prospectuses and Shareholders’ Guides for Funds in the MMS and PIM Trusts stated that a pattern of transactions characteristic of “‘market timing’ strategies,” including a series of “round-trip” transactions, can adversely affect the Funds. The Shareholders’ Guides purported to limit shareholders to no more than six round-trip exchanges in any 12-month period.

268. In the wake of the market timing and late trading scandal, PAFM and PIM Company have imposed a Redemption Fees of two percent of NAV for shares redeemed and exchanged within certain holding periods for all Funds within MMS and PIM (except the Money Market Fund).

269. As stated in both the June 28, 2004, and August 4, 2004, versions of the Shareholders’ Guide, for purposes of the two percent Redemption Fee, the holding period for all MMS Funds in is 60 days, and the holding periods for the Real Return and High Yield Funds in PIM are 7 days and 30 days, respectively.

270. The Shareholders’ Guides explain the purpose for the Redemption Fees:
The purpose of the Redemption Fees is to defray the costs associated with the sale of portfolio securities to satisfy redemption and exchange requests made by “market timers” and other short-term shareholders, thereby insulating longer-term shareholders from such costs. The amount of Redemption Fee represents the Adviser’s estimate of the costs reasonably anticipated to be incurred by the Funds in connection with the purchase or sale of portfolio securities, including international stocks, associated with an investor’s redemption or exchange. These costs include brokerage costs, market impact costs, \(i.e\), the increase in market prices which may result when a Fund purchases or sells thinly traded stocks) and the effect of “bid/asked” spreads in international markets.

271. The same language appears in the relevant prospectuses, for instance the December 31, 2003, Domestic Stock Funds Prospectus.

272. Despite the adverse effects of market timing on the Pimco Funds, Steve Howell, then the Manager of Operations at PAD, was directed by his superiors to permit Canary to time the Funds, as a result of which Canary engaged in massive market timing transactions, to the advantage of the defendants but to the disadvantage of the Funds.

273. The actions and failures to act of the Trustee Defendants alleged herein constitute willful misfeasance, bad faith, or gross negligence in the performance of their duties to the Trusts and were in reckless disregard of their obligations and duties to the Trusts.

274. The actions and failures to act of the Advisers and the Sub-Advisers alleged herein constitute willful misfeasance, bad faith, or gross negligence in the performance of their obligations under the Advisory Agreements or Portfolio Management Agreements and were in reckless disregard of their investment advisory obligations and duties thereunder.

275. The actions and failures to act of PAD alleged herein constitute willful misfeasance, bad faith, or gross negligence in the performance of its obligations under the Distribution Contract and were in reckless disregard of PAD’s obligations and duties thereunder.

New Jersey Attorney General’s Regulatory Action
276. On February 12, 2004, according to a public statement by PIMCO, the staff of the SEC informed PIMCO and PEA that it intended to recommend that the Commission bring civil and administrative actions against PIMCO and PEA "seeking a permanent injunction against violations of certain provisions of the federal securities laws, disgorgement plus prejudgment interest and civil penalties in connection with the Commission's staff's investigation of "market timing" and related trading activities". PIMCO stated that there was a substantial likelihood that the SEC would bring these actions.

277. On February 17, 2004, the Attorney General of New Jersey announced the filing of a complaint (the "New Jersey Complaint") in the New Jersey Superior Court against ADAM, PIMCO, PEA, and PAD, "charging that the defendants defrauded mutual fund investors by agreeing to permit a major investor to market time, at any given moment, up to $100 million in PIMCO mutual funds in violation of fund policies and to the detriment of ordinary investors." That major investor was Canary.

278. As alleged in the New Jersey Complaint, Canary and its intermediaries were permitted to make more than 200 market timing transactions in approximately 18 months, from late 2001 through May, 2003, despite the fact that the Pimco Funds, like many other mutual fund companies, have back-office employees, referred to as "market timing police," who were supposed to identify and stop frequent trading activity that violated the Funds' prospectuses and worked to the detriment of the Funds.

279. The New Jersey Complaint also alleged that Canary was given market timing capacity in selected PEA Funds in exchange for its agreement to leave millions of dollars of sticky assets in a separate PEA Fund on a long-term basis.
Paragraphs 23-69 of the New Jersey Complaint described the scheme involving PEA Funds in detail. That scheme started in late 2001 and lasted until May of 2003. As alleged:

starting in late 2001, and continuing to May 2003, PEA: (1) pursuant to an agreement that provided PEA with “sticky assets,” gave Canary permission to time the “PEA Funds” in violation of the prospectus language; (2) instructed the market timing police at PAD to allow the excessive Canary trades; (3) provided the fund holdings to Brean Murray, giving Canary the knowledge and opportunity it needed to hedge and time the funds.

Around October of 2001, the Chief Operating Officer of PEA, Taegan Goddard, received a call from a former colleague of his at Circle Trust, regarding a client of Circle Trust that was seeking market timing in PEA funds. Following the call, Goddard arranged for a Senior Vice President of PEA, John Cashwell, to meet with a representative of Circle Trust.

At the meeting, Circle Trust suggested scheduling a meeting with the then-CEO of PEA, defendant Corba, for the purpose of introducing PEA to brokers from Brean Murray. The Brean Murray brokers conducted market timing on behalf of Canary, and wanted to explain their business to Corba and to gain timing capacity for Canary. A conference call was scheduled a week later among PEA, Circle Trust, and Brean Murray to discuss more of the details.

Following the meeting with Circle Trust, Cashwell briefed Corba and Goddard on the discussions, and told them that he was going to contact Brean Murray to set up a meeting with Corba at PEA’s offices. Soon after, on November 1, 2001, the brokers from Brean Murray came to PEA to meet with Corba and Cashwell, in Corba’s office. Brean Murray said that they had high net worth clients interested in rapidly trading in and out of PEA funds. The following day, Brean Murray composed a letter to Corba that read in part as follows:

We are proposing a relationship whereby our clients, Canary Management, LLC and Trout Trading Management Co., have approval from your firm to trade on a short-term basis in the PIMCO Target fund, PIMCO Innovation fund, and the PIMCO Growth fund. . . . Additionally, Canary and Trout will make a
commitment of long-term assets to a PIMCO bond fund, a PIMCO money market fund or to the fund that is being traded. Our clients are generally comfortable with depositing 25% of the total trading assets into long-term commitments.

284. After the November 1, 2001, meeting with Brean Murray, it was, according to Cashwell, his understanding that Corba “had to have this relationship approved by executives of PIMCO Funds, meaning Steve Treadway,” including “specific parameters around the trading relationship, meaning the number of round trips, the percentage of cash, the moneys represented in each fund.”

285. On January 15, 2002, Cashwell sent the following e-mail to Brean Murray:

> As per our discussion this morning, I’ve attached the following info:

> - 12/31/01 holdings in each of the Funds you’ll be investing in . . .

> Also, please invest the long-term assets in Ken Corba’s Select Growth Fund

286. Corba made the decision to invest the long-term, or “sticky assets,” in the Select Growth Fund that he managed in order to increase the assets in the fund, which were relatively small at the time. Canary’s sticky asset investment nearly doubled the assets under management in the Select Growth Fund.

287. In early 2002, Corba also met with the PEA Managing Directors and Portfolio Managers, to inform them that PEA was going to enter a market timing relationship. The terms of the agreement were to allow capacity totaling $100 million in the PEA Growth, Innovation and Target Funds, in exchange for a long-term investment of $25 million in a separate PEA growth fund (the Select Growth Fund).

288. On January 30, 2002, Canary, through Brean Murray, arranged to deposit the $25 million “sticky assets” in the PEA Select Growth Fund. On February 8, 2002, Brean Murray (on
behalf of Canary) reallocated previous investments in PIMCO funds that had been placed through Bank of America to new funds, specifically, $27,310,027 to the PEA Target Fund and $26,052,341 to the PEA Innovation Fund.

289. Canary’s redemptions in the PEA Funds were exchanged in and out of money market and fixed income funds managed by PIM Company in California. Because PIM Company objected to frequent exchanges in and out of its money market and bond funds,11 Brean Murray arranged to execute the trades through the Bear Stearns platform. Bear Stearns arranged for Canary’s trades to clear T+1, meaning the next day, as opposed to T+3, meaning in three days. This is advantageous for market timers, because they can purchase and redeem more frequently. In February, 2002, Brean Murray executed three round trips on behalf of Canary in the PEA Target Fund.

290. On March 2, 2002, defendant Stern met with Cashwell, Corba, and the Brean Murray brokers to discuss additional market timing capacity for Canary.

291. On March 7, 2002, Cashwell sent Brean Murray the Fund holdings for the PEA Target, Growth, and Select Growth Funds. That same day, Cashwell sent an e-mail to Stern, attaching the operating documents for the PEA hedge funds: Horizon, Advantage and Worldwide Value.

292. On March 10, 2002, Stern responded to Cashwell’s e-mail, informing him that Canary was ready to begin trading in the Target and Growth Funds through the Bear Stearns platform, and saying that he would call to discuss further arrangements for $100 million in trading capacity and the hedge fund investments.

11 As set out below, PIMCO later nevertheless negotiated timing capacity with Canary in certain of its funds.
293. In March, 2002, Brean Murray executed five round trips on behalf of the Canary account in the PEA Target Fund.

294. On March 22, 2002, Stern met with Michael Gaffney, the portfolio manager of the PEA Horizon hedge fund. Gaffney was also, at relevant times, the portfolio manager of the PEA Opportunity Fund. Cashwell sent Stern the Horizon subscription documents on March 28, 2002. He also told Stern that PEA would draft a side letter relating to the Canary investment in the Horizon hedge fund allowing Stern to withdraw from the fund if the market timing relationship ended.

295. On April 4, 2002, PEA sent a letter to Stern, signed by Goddard and prepared by Cashwell or his assistant at Goddard’s direction, in which PEA confirmed that Canary would have the ability to redeem its Horizon hedge fund investment if the market timing relationship ended.

296. On April 4, 2002, Cashwell sent the positions in the PEA Target, Growth, Opportunity, and Select Growth Funds to Brean Murray, pursuant to an April 1, 2002, request. By April 26, 2002, the Canary account executed at least five round trips in the Target Fund, though its agreement had been limited to four round trips per month.

297. Steve Howell, then the Manager of Operations at PAD and thus a market policeman, alerted his superiors that the Canary account “was dividing the number of shares (in and out of the fund) across a couple of days thereby increasing the number of individual transactions hitting the account.” Defendant Treadway, as CEO of PAD, requested a “more precise and limiting” definition of what constituted four round trips.

298. On April 29, 2002, Howell was contacted by the Funds’ transfer agent requesting that Bear Stearns wait one more day before placing the trades because Canary’s market timing
“was so aggressive that they were placing these large dollar trades the same day, even before the trades were settling.” Nevertheless, the market timing arrangement remained in effect, and Canary continued its excessive trading in PEA funds, to the detriment of long-term shareholders.

299. In May of 2002 alone, Brean Murray executed five round trips for Canary in each of the three funds that Canary was market timing, the Target, Growth, and Opportunity Funds.

300. In response to this trading, Corba sent an e-mail to Brean Murray on May 17, 2002, stating:

We are monitoring our agreed pattern of 4 round trips per month. The pattern that is most disturbing to me is that you only seem to be interested in being in our funds for a day or two at a time – perhaps the most opportunistic but extreme form of market timing that I have ever seen.

301. From June to September of 2002, Canary continued to time the PEA Target, Opportunity, and Growth Funds to the full extent of the four round trips per month permitted by agreement. Canary made three round trips in each of the funds in October, 2002.

302. In the summer of 2001, Goldberg and Grady, both of whom were employed at Brean Murray, offered timing capacity in the Invesco Funds to various market timers, including Canary. In addition, Goldberg and Grady offered late trading capability through Brean Murray’s clearing, including Security Trust Company and Bear Stearns.

303. In the summer of 2001, Goldberg and Grady opened accounts for Canary at Brean Murray for the express purpose of market timing and late trading the Funds.

304. Goldberg and Grady charged Canary a wrap fee of 130 basis points for arranging this negotiated timing capacity, which Canary paid.

305. Apparently in connection with the anticipated merger of the PEA Select Growth Fund into the Growth Fund (which took place in October, 2002), PEA warned Canary that it would have to stop timing its funds. Nevertheless, PEA continued to allow Canary to time.
Canary made more than a dozen round trips in the PEA Opportunity Fund between November, 2002 and May, 2003, when Canary left the PEA Funds.

306. Between February 8, 2002, and November 21, 2002, Canary made a total of 132 transactions, nearly 40 round trips, including purchases, exchanges and redemptions, in the PEA Target Fund. During this period, the NAV for the fund declined by $3.08, a loss of 20 percent.

307. Between April 11, 2002 and May of 2003, Canary made a total of 92 transactions, nearly forty round trips, including purchases, exchanges and redemptions, in the PEA Opportunity Fund. During this period, the NAV declined $5.17, a loss of 30 percent.

308. Between April 11, 2002 and November 21, 2003, Canary made a total of 70 transactions, 25 round trips, including purchases, exchanges and redemptions, in the PEA Growth Fund. During this period, the NAV declined $4.32, a loss of 21 percent.

309. The Growth Fund had an additional loss because of the Canary market timing relationship. During those days that Canary was invested in the Growth Fund, the securities in its portfolio increased in value. However, defendant Corba, the portfolio manager, always left Canary's investment remain in cash because he expected Canary to redeem right away. Had the market timing relationship not existed, Canary’s investment would have been placed into securities that would have increased the Fund’s NAV.

310. Between February 4, 2002, and April 3, 2002, Canary used five PIMCO fixed income and money market funds as vehicles to effect its timing transactions. In just three days, Canary completed 89 transactions.

311. Between February 4 and 7, 2002, Canary purchased shares worth $61 million in these five funds.
312. At the same time, Michael Howell, the Manager of Operations at PAD, had been instructed by his superiors not to apply the normal market timer procedures to Canary. Howell testified in proceedings by the New Jersey Attorney General that he had never seen market timing in excess of what Brean Murray was doing for Canary's account. He testified that senior management “were fully aware of what was going on.”

313. During the market timing relationship, PEA disclosed the holdings in its Target, Growth, Innovation, Opportunity, and Select Growth Funds to Canary through Brean Murray. This gave Canary the opportunity to short the securities held by those funds, or, for instance, hedge its position through derivatives, a distinct advantage.

314. PEA provided these holdings to Canary on a regular monthly basis, starting in January of 2002 shortly after the market timing relationship was formed. Indeed, the holdings continued to be sent to Brean Murray despite the fact that after May of 2003 Canary was no longer trading in the PEA funds pursuant to the initial agreement.

315. The second scheme permitting market timing by Canary, involving PIMCO and the funds that it manages, is described in detail in the New Jersey Complaint, at Paragraphs 70-83. That scheme started in approximately October of 2002 and lasted until approximately mid-September of 2003. During that time, Canary was permitted to engage in scores of market timing transactions in PIMCO-managed funds, specifically the PIMCO High Yield Fund and the PIMCO Real Return Fund.

316. PIMCO generally enforced its policy against round trip transactions through PIMCO Shareholder Services. When an investor called PIMCO with respect to its policy regarding frequent trading, the response was that PIMCO had a six-month hold policy. But that policy was not applied to Canary.
317. On October 1, 2002, Douglas Ongaro, a PIMCO Senior Vice President of Marketing, asked David Hinman, an Executive Vice President at PIMCO, who was also the High Yield Fund portfolio manager, whether PIMCO fixed income funds could handle the trading of $20 million in market timing money once a month, or twelve times per year, exceeding the amount stated in the prospectus. Hinman responded affirmatively.

318. On October 2, 2002, Scott Spalding, a Vice President with PIMCO, sent an e-mail to Byck, the market timing consultant who introduced Canary to PIMCO. In the e-mail, Spalding discussed the market timing opportunities in the High Yield Fund. Following discussions, Spalding and Byck came to an agreement allowing Byck’s clients to market time the PIMCO fixed income funds.

319. On December 13, 2002, Spalding sent an e-mail confirming the parameters of the market timing agreement. The agreement set forth an initial funding of $30 million and 12 round trips per year. While the assets were not in the High Yield Fund, the money would be invested in the Money Market, Short Term or Low Duration Funds.

320. On December 14, 2002, Byck sent Canary the following e-mail: “As promised, here is the deal from PIMCO in writing. It is very difficult to come by a deal they give in writing. I hope you are as excited about it as I am.”

321. On December 28, 2002, Byck sent Spalding, by e-mail, Canary’s address. He also told Spalding to send the account application to a Canary representative, Noah Lerner. On January 17, 2003, Lerner explained to Spalding the background of Canary and its interest in market timing mutual funds.

322. On January 22, 2003, Spalding informed Carol Rodgerson, a Vice President managing the PIMCO Shareholder Services unit, of the terms of the relationship between Canary
and PIMCO. Spalding asked Rodgerson to have the Shareholder Services unit monitor the activity and not reject any of the trades as long as Canary stayed within the allowed trading of $30 million and one round trip per month.

323. Throughout the period in which PIMCO allowed Canary to market time, Spalding and Byck were in contact with Douglas Ongaro and Andre Mallegol, a PIMCO Senior Vice President of Marketing, regarding the parameters of the market timing relationship with Canary. In addition, both Ongaro and Mallegol received monthly reports from Rodgerson regarding the Canary transactions.

324. On April 28, 2003, Byck contacted Mallegol to determine whether there was more market timing capacity within PIMCO. Two days later, Mallegol responded that there was market timing capacity for another $80 million, subject to the two conditions that it be done in four separate accounts and that trading occur on different days. Mallegol also requested a list of the accounts, client names and asset levels of those who wanted timing relationships.

325. Two weeks later, Byck confirmed that he “distributed” an additional $50 million to his client, in addition to the $30 million that was already invested. The funding was to occur on June 18, 2003, when Byck’s client was placing $4 million, to be held by Bear Stearns, in the PIMCO Real Return Fund. Two weeks later, the investment increased to $30 million, and it was invested directly through PAD.

326. Between August 5, 2003 and August 6, 2003, PIMCO received the account numbers representing the $30 million investment and a detailed list of all the market timing accounts that were placed with PIMCO. All of the market timing transactions ceased approximately September 11, 2003, shortly after the New York Attorney General’s announcement of his action against Canary.
327. In the meantime, between January 24, 2003, and July 7, 2003, Canary invested $30 million through Tripod LLC, a related entity. During that time there were 14 transactions, including purchases, exchanges, and redemptions between the High Yield Fund and the Money Market Fund, netting a profit of $2,947,061 for Canary.

328. Between February 6, 2003, and September 11, 2003, another limited partnership that PIMCO identified as a Canary entity invested $5 million with PIMCO. During that time there were 23 transactions, including purchases, exchanges and redemptions, between the High Yield Fund and the Money Market Fund, netting a profit of $937,861 for Canary.

329. Between August 6, 2003, and September 15, 2003, Canary also invested $30 million through three separate accounts at Canadian Imperial Holdings. During that time there were 45 transactions, including purchases, exchanges and redemptions, between the Real Return Fund and the Money Market Fund, netting a profit of $180,333 for Canary.

330. On June 1, 2004, the New Jersey Attorney General announced that he had settled regulatory proceedings with the Pimco entities by a Consent Order with ADAM, PAD, and PEA. Those entities agreed to pay a civil monetary penalty of $15 million as well as $3 million for investigative costs and further enforcement initiatives. Defendant Treadway was required to resign as Chairman of the Board of Trustees of MMS.

331. The Consent Order included the following findings of fact, among others, which were neither admitted nor denied by ADAM, PAD and PEA:

(a) From 2001 to 2003, PEA engaged in a scheme with [Canary] which benefitted ADAM, PEA, Canary and their intermediaries, at the expense of long-term mutual fund investors in PEA mutual funds.
(b) PEA permitted Canary to make more round trips than any other investor in return for the prospect of substantial fees and other income for itself and its affiliates.

(c) In the little more than a year in which Canary market timed the PEA Funds, Canary made more than 200 market timing transactions and 100 round trips, totaling more than $4 billion in purchases and redemptions.

(d) Based on their market timing arrangements with Canary, PEA arranged for PAD and PAD’s officers arranged for their market timing police to permit the transactions and make an exception for Canary’s market timing, rather than stopping the transactions.

(e) In return for excessive market timing capacity in select PEA funds, Canary agreed to leave millions of dollars, or “sticky assets”, in a separate PEA fund and a hedge fund on a long-term basis. These sticky assets were an additional inducement for PEA to allow market timing, because they assured a steady flow of compensation and fees to the adviser.

(f) PEA disclosed to Brean Murray, on or about the first day of each succeeding month, the monthly non-public holdings of all of the funds in which Canary was investing.

(g) The executives and officers at PEA and PAD were aware of the damaging effect that market timers had on their funds. As a result of permitting market timing, PEA, ADAM and PAD, and Canary and their intermediaries, profited substantially at the expense of long-term PEA fund investors.

332. In the Consent Order, ADAM, PEA, and PAD were required to institute numerous corporate governance changes, including, among others, the following:
(a) ADAM was required to separate the business management of PEA from the portfolio management function. To that end, the Chief Executive Officer of PEA shall have no role in managing mutual fund assets.

(b) Defendant Treadway was required to cease serving as Chairman of the Board of MMS funds. ADAM was required to recommend to the Trustees of those funds that the Board have an independent chairman, and a super-majority of at least 75% independent Trustees.

(c) PAFM and PAD were required to maintain separate and distinct Chief Executive Officers.

333. The Consent Order also recited: “PEA has previously reimbursed . . . $1,616,738.00 to MMS Funds arising out of Canary’s market timing activity.”

**SEC Regulatory Action**

334. On May 6, 2004, the SEC filed a civil complaint (the “SEC Complaint”) against PAFM, PEA, PAD, Treadway, and Corba. Like the New Jersey Complaint, the SEC Complaint asserts allegations with regard to Canary’s market timing in Funds sub-advised by PEA that were substantially similar to those made in the New Jersey Complaint.

335. Additionally, the SEC Complaint alleges that “PEA improperly failed to have written policies designed to prevent the misuse of the Funds’ nonpublic portfolio holdings.”

336. The SEC Complaint further alleges that in May of 2002, PAFM advised the Trustees for the “PIMCO Funds,” including Treadway, of the adverse impact that market timers had on the mutual funds. The threefold negative impacts described were (a) increased trading and brokerage costs; (c) disruption of portfolio activities; and (c) additional capital gains that increased shareholders’ tax liabilities.
337. As further alleged, after receipt of this advice, the Trustees imposed a redemption fee, effective June 20, 2002, on short-term exchanges in certain classes of fund shares to reimburse the Funds for the costs of market timing and to create a disincentive for market timing. However, the Trustees did not impose a similar fee on the retail class of shares used by Canary in its special arrangement.

338. The SEC Complaint further alleged that Treadway approved of the market timing arrangement with Canary in January of 2002, but did not disclose his knowledge of the arrangement to MMS Board of Trustees until approximately September of 2003.

339. As further alleged in the SEC Complaint, at a June 20, 2003, meeting of the Board of Trustees, Treadway received authority to impose redemption fees on the class of shares used by Canary on a temporary basis if he believed such action was in the best interests of the shareholders. However, these redemption fees were not imposed on that class of shareholders until February of 2004.\(^\text{12}\)

340. The SEC Complaint alleges that PAFM, PEA, PAD, Treadway, and Corba all violated duties, including fiduciary duties, under the federal securities laws.

341. On September 13, 2004 PAFM, PEA, and PAD all agreed to a settlement with the SEC, embodied in an Order Instituting Administrative and Cease and Desist Proceedings ("SEC Consent Order"). Treadway and Corba still face civil fraud charges.

342. The SEC Consent Order (¶¶ 1-6) includes the following summary of its factual findings:

1. This action concerns the negotiated, but undisclosed, market timing agreement between Respondents and a hedge fund [Canary] that allowed the hedge fund to market time several mutual funds

\(^{12}\) Canary generally traded in Class A shares of the funds that it timed in the PIMCO family.
that are part of the PIMCO Equity Funds: Multi-Manager Series ("PIMCO Equity Funds" or the "Funds"). Respondents, entrusted with advising and distributing the Funds, represented to investors that the Funds would limit a practice known as market timing. ... Consistent with this policy, the Funds actively policed market timing activities and prevented some Fund shareholders from engaging in it. However, without any disclosure to Fund shareholders (and contrary to representations), Respondents executed a secret agreement with one preferred client [Canary] to allow market timing in amounts exceeding $4 billion in trading.

2. From February 2002 to April 2003, the PIMCO Equity Entities [PAFM, PEA and PAD] provided “timing capacity” in their equity mutual funds to a market timer, Canary Capital Partners LC (“Canary”), in return for Canary’s investment of “sticky assets” in a mutual fund and a hedge fund from which PAFM (as to the mutual fund) and PEA (as to both) earned management fees. . . .

3. At the height of the agreement, Canary used over $60 million in timing capacity at several different mutual funds [the PEA Growth Fund, the PEA Target Fund, the PEA Opportunity Fund and the PEA Innovation Fund] and invested $27 million in sticky assets into a mutual fund [the PEA Select Growth Fund] and a hedge fund [the Horizon Fund]. Finally, PEA failed to have written policies designed to prevent the misuse of the Funds’ nonpublic portfolio holdings, and, in fact, PEA disclosed those holdings to the broker-dealer [Brean Murray] that executed Canary’s trades.

4. Stephen J. Treadway, the former CEO of PAFM and PAD, as well as the former Chairman of the Board of Trustees of the PIMCO Equity Funds: Multi-Manager Series at the time of the arrangement with Canary, approved the market timing arrangement in approximately January 2002. Treadway, however, did not disclose his knowledge of the arrangement to the Board of Trustees until approximately September 2003.

5. Kenneth W. Corba, PEA’s former Chief Executive Officer, negotiated and approved of the timing and sticky asset arrangement with Canary. He also managed the PIMCO Growth Fund, which provided $30 million in market timing capacity to Canary, and the PIMCO Select Growth Fund, which received $25 million in sticky assets from Canary.

6. Respondents permitted the arrangement with Canary despite their awareness of the potential harmful effects of timing on mutual funds and despite possessing the ability to detect and prevent timing.
343. The SEC Consent Order (¶¶ 13-53) includes extensive factual findings consistent with the detailed allegations in the New Jersey and SEC Complaints.

344. PAFM, PEA, and PAD made certain Undertakings in the SEC Consent Order (¶¶ 58-65). Among other undertakings, they agreed that (a) no more than 25% of the board of Trustees of "any PIMCO Equity Fund" will be interested persons; (b) commencing in 2005 and not less than every fifth calendar year thereafter, each PIMCO Equity Fund will hold a meeting of shareholders at which the Board of Trustees will be elected.

345. PAFM, PEA, and PAD were all censured in the SEC Consent Order. They also agreed to pay disgorgement in the amount of $10 million, which was reduced to $8,883,262 because they had "previously made a payment of $1,616,738 to the PIMCO Equity Funds". PAFM also agreed to pay $10 million in civil penalties; PAD to pay $10 million in civil penalties; and PEA to pay $20 million in civil penalties.

**Pimco Entities’ Reaction to Being Caught**

346. As reported by the Associated Press on February 17, 2004, within hours of being sued by the New Jersey Attorney General, the Pimco Funds announced that PEA would pay about $1.6 million to replenish the affected funds. However, William Gross, a founder of PIMCO and its Chief Investment Officer, was quoted by **THE WALL STREET JOURNAL** on February 19, 2004, as claiming that "PIMCO’s prospectus gives managers ‘the right, but not the obligation’ to stop trading if it could be harmful to funds or shareholders."


348. The Trustees of MMS issued a "message to shareholders" on February 22, 2004. In that statement, they said:
The Independent Trustees of PIMCO Funds: Multi-Manager Series announced today that, following an extensive independent investigation into short-term trading in certain equity Funds, PEA Capital, the adviser to those Funds, has agreed to pay approximately $1.6 million to the Funds involved. This amount represents profits that would otherwise have been realized by Fund shareholders as well as PEA Capital's decision to rebate all fees earned on assets of the short-term trader.

Upon learning of the short-term trading in the funds, the Independent Trustees conducted their own investigation with the assistance of their counsel, Bingham McCutchen LLP, and the accounting firm of Ernst & Young. The investigation has revealed one arrangement to allow short-term trading in certain funds that was voluntarily terminated by PEA Capital before any regulatory inquiry began.

349. In a statement issued on February 26, 2004, in response to the New Jersey Complaint, PEA stated:

[A]n independent investigation of short-term trading in four funds of PIMCO Funds: Multi-Manager Series (MMS) sub-advised by PEA, ... concluded that shareholders of these three funds (PEA Target, PEA Opportunity and PEA Innovation Funds) had actually benefited [sic] from the trading and that returns on the remaining fund (PEA Growth Fund) had been diluted by less than $1.2 million.

PEA also noted that this figure had been validated by an additional independent review conducted by counsel for the Independent Trustees of MMS and their forensic accountants. PEA and its affiliate, PIMCO Advisors Distributors LLC (PAD), the distributor of MMS, have agreed with MMS Trustees to compensate for the dilution and to rebate to the four funds an additional $439,970, representing all fees received on the trader's assets.

**Additional Market Timing and Late Trading in Pimco Funds**

350. Canary was by no means the only entity that succeeded in market timing and/or late trading funds in the PIMCO family.

351. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that defendant Byck had negotiated or was in the process of
negotiating timing capacity in the High Yield Fund or the Real Return Fund for other potential market timers at the time Canary was charged by the NYAG.

352. Additionally, numerous funds in the Pimco family, other than those negotiated by or on behalf of Canary as described above, were timed through the Bank of America platform, by Canary and other market timers. Those funds include the PIMCO Select International Fund, the PIMCO Total Return Fund, the PIMCO RCM International Growth Equity Fund, the PIMCO Long-Term U.S. Government Fund, the PIMCO RCM Emerging Markets Fund, the PIMCO RCM Europe Fund, the PIMCO Short-Term Fund, the PIMCO NACM International Fund, the PIMCO RCM Global S/C Fund, the PIMCO Low Duration Fund, the PIMCO RCM International Growth Equity Fund, the PIMCO Global Innovation Fund, the PIMCO Emerging Markets Bond Fund, and the PIMCO Total Return Fund II.

353. As described above, Canary also timed some of the Pimco Funds using the BOA platform. Those funds included the PIMCO Innovation Fund, the PIMCO Real Return Fund, and the PIMCO High Yield Fund.

354. Many brokers or other intermediaries used the BOA platform to time PIMCO Funds, including the Aurum Defendants, Pritchard, and Trautman. In the course of a few years at most, these intermediaries purchased and sold about $75 million in shares of PIMCO funds through the BOA platform alone.

355. Defendant BOA N.A., as part of the package of late-trading and timing services BOA and BAS agreed to provide to Canary, financed Canary’s late trading and market timing in the Funds. BOA also provided financing for Canary’s “swap” transactions, which were arranged through BOA’s “swaps desk.”
356. Canary created a limited liability company, “Cockatiel,” which had four subsidiaries, and opened accounts at BOA under their names to effectuate the timing and short selling transactions funded by BOA.

357. On July 26, 2001, BOA and Canary executed a “Credit Agreement,” which gave Canary a revolving credit facility of $70 million. Canary used a portion of this financing to time the Funds.

358. On February 21, 2002, BOA and Canary amended the Credit Agreement to increase Canary’s revolving credit facility to $75 million.

359. A BOA document dated June 13, 2002, entitled “Cockatiel Capital Associates, LLC et al, CAR Comments” states that a loan agreement between Canary and BOA “renew[s] for an additional year the existing $125MM revolving line of credit” extended by BOA to Canary for the purpose of “invest[ing] in open-ended mutual funds and if availability allows, cover interest payments.” A second loan facility, “to renew the existing equity derivative facility,” would “remain unchanged at $166.7MM.”

360. BOA charged Canary LIBOR + 150 bps interest for providing 2:1 leverage on straight late trading and timing transactions. Swap transactions required higher leverage, sometimes as high as 6:1. With swap transactions, BOA generally was the account holder, with a security interest in the assets of the account, which, until the closing of the swap transaction, would consist of Canary’s mutual fund shares. BOA would lend Canary funds and, at the appropriate time, Canary would use the funds to execute the swap transaction, and deposit the proceeds in BOA’s account. Canary would pay BOA a set commission for the necessary purchases and sales, and BOA would return to Canary the profit on the transaction minus a 2% fee for providing the financing.
361. Canary’s timing assets in the Funds were used as collateral for the BOA financings. The proposed loan facility of June 13, 2002 notes that “[r]epresentatives from BAS and Nationsfunds have confirmed that our [BOA] collateral can be liquidated in one day. Since the loan’s inception, full positions in various mutual fund investments have been liquidated in one day with the largest being $28MM in the Alliance Mid-Cap Growth Fund and $24MM in the Invesco Cash Reserves Fund.”

362. PAFM served and serves as the adviser for the adviser of the MMS Funds (except the Exempted Funds) pursuant to a two-year Advisory Agreement that must be renewed annually.

363. The Advisory Agreement between PAFM and MMS provides that it must be approved annually (a) by the holders of a majority of the outstanding voting securities of a fund, or by the Board of Trustees, and (b) by a majority of the trustees who are not “interested persons” of the trust (meaning only that they have no direct or indirect financial interest in the Advisory Agreement).

364. Paragraph 2.a. of the Advisory Agreement, as amended and restated effective May 5, 2000, and as continued annually with regard to each fund in MMS, provides that PAFM:

2.a. Shall conform with the 1940 Act [the ICA] and all rules and regulations thereunder, and all other applicable federal and state laws and regulations, with any applicable procedures adopted by the Trust’s Board of Trustees, and with the provisions of the Trust’s Registration Statement filed on Form N-IA as supplemented or amended from time to time.

365. As adviser of the MMS Funds, defendant PAFM receives a monthly fee from each Fund in the trust (except the Excepted Funds) at annual rates ranging from .45% to 1.25%, based on the average daily net assets of the particular funds.
366. For the fiscal years ending June 30, 2001, 2002 and 2003, PAFM was paid total advisory fees by MMS Funds in the amounts of $77,805,461, $82,494,678, and $63,330,756, respectively.

367. For the PEA Growth Fund, the advisory fees paid for each such year were $12,303,201, $7,299,919 and $4,399,810, respectively. For the PEA Innovation Fund, the advisory fees paid for each such year were $27,373,864, $1,386,252 and $5,353,827, respectively. For the PEA Opportunity Fund, the advisory fees paid for each such year were $3,381,505, $2,462,723 and $1,617,206, respectively. For the PEA Target Fund, the advisory fees paid for each such year were $11,479,530, $7,551,258, and $4,470,675, respectively.

368. As a sub-adviser, PEA is paid monthly fees with regard to the funds that it sub-advises at annual rates ranging from .35% to .55%, including .40% for the PEA Growth Fund, .45% for the PEA Target Fund, and .55% for the PEA Opportunity and Innovation Funds.

369. For the fiscal years ending June 30, 2001, 2002, and 2003, respectively, PAFM or its predecessor paid PEA the following sub-advisory fees for the following funds: PEA Growth Fund, N/A, $5,839,935 and $3,519,848; PEA Target Fund, N/A, $6,178,302 and $3,657,826; PEA Opportunity Fund, N/A, $2,083,842, and $1,368,406; and PEA Innovation Fund, N/A, $9,635,366 and $4,530,161.

370. The MMS Trust Board of Trustees has a Nominating Committee consisting of all of the Trustees who are not “interested persons” of the Trust within the meaning of the 1940 Act, i.e., Cannon, Carter, Childress, Coburn, Stooks and Thorne. The Nominating Committee does not normally consider nominees recommended by shareholders. It did not meet during the fiscal year ended June 30, 2003.
371. As stated in the Article 10 of the Bylaws of the Multi-Manager Trust, as Amended And Restated as of June 8, 2000, “no meeting of Shareholders is required to be called for the purpose of electing Trustees unless and until such time as less than a majority of the Trustees have been elected by the Shareholders.”

372. The Trustees of the MMS Trust (other than those affiliated with ADAM, PIM Company, or a sub-adviser), receive a quarterly retainer of $14,250, plus $3,000 for every Trustees meeting attended in person and $1,500 for each meeting attended telephonically, as well as $1,500 for each committee meeting and reimbursement of expenses. In addition to the Trustees being eligible for certain additional fees as Chair or Vice Chair of the Independent Trustees or of a committee, certain former Trustees may receive compensation for providing advisory and consulting services to the Board of Trustees.

373. The following PAFM Trustees (other than defendant Treadway) received the following amounts of compensation for the fiscal year ended June 30, 2003:

<table>
<thead>
<tr>
<th>Name</th>
<th>Total Compensation From MMS Trusts</th>
<th>Total Compensation from All Pimco Trusts</th>
</tr>
</thead>
<tbody>
<tr>
<td>E. Philip Cannon</td>
<td>$96,670</td>
<td>$183,051</td>
</tr>
<tr>
<td>Donald E. Carter</td>
<td>$92,048</td>
<td>$92,048</td>
</tr>
<tr>
<td>Gary A. Childress</td>
<td>$82,512</td>
<td>$82,512</td>
</tr>
<tr>
<td>Theodore L. Coburn</td>
<td>$79,500</td>
<td>$79,500</td>
</tr>
<tr>
<td>Richard L. Nelson</td>
<td>$39,000</td>
<td>$39,000</td>
</tr>
<tr>
<td>Lyman W. Porter</td>
<td>$39,000</td>
<td>$39,000</td>
</tr>
<tr>
<td>Alan Richards</td>
<td>$39,000</td>
<td>$39,000</td>
</tr>
<tr>
<td>W. Bryant Stooks</td>
<td>$88,997</td>
<td>$88,997</td>
</tr>
<tr>
<td>Gerald M. Thorne</td>
<td>$83,198</td>
<td>$83,198</td>
</tr>
</tbody>
</table>

374. PAFM also serves and served as the Administrator for the MMS Funds (except the Exempted Funds) pursuant to an Administration Agreement that must be renewed annually.
375. In addition to the Advisory Fees it is paid, PAFM also receives Administrative Fees from each MMS Fund at an annual rate expressed as a percentage of the Funds’ average daily net assets attributable to each class or group of classes of shares on an annual basis. Thus, for instance, for the PEA Growth Fund, the Administrative Fee Rate is .25% for shares in the Institutional and Administrative Classes, .40% of the first $2.5 billion and .35% of amounts in excess of $2.5 billion for Class A, B and C Shares, .65% for Class D Shares and .50% for Class R Shares. The Administrative Fee Rate is the same for the classes of shares of the PEA Innovation Fund, PEA Opportunity Fund and PEA Target Fund, except that for Class R shares of those funds the fee rate is listed as “N/A.”

376. For the fiscal years ending June 30, 2001, 2002 and 2003, respectively, PAFM, was paid Administrative Fees in totals amounts of $50,316,994, $46,165,340, and $41,129,926 by the MMS Funds.

377. For those fiscal same years, the PEA Growth Fund paid administrative fees to PAFM in the amounts of $9,703,273, $5,795, 556, and $3,485,901, respectively. For those same fiscal years, the PEA Innovation Fund paid administrative fees to PAFM in the amounts of $15,982,199, $6,967,895, and $3,259,585, respectively. For those same fiscal years, the PEA Opportunity Fund paid administrative fees to PAFM of $1,976,964, $1,390,396, and $894,882, respectively. For those same fiscal years, the PEA Target Fund paid administrative fees to PAFM in the amounts of $8,306,572, $5,411,000 and $3,187,612, respectively.

378. PIM Company served and serves as the adviser for the adviser of the PIM Funds pursuant to a two-year Advisory Agreement that must be renewed annually. Continuation of the Advisory Contract was last approved by the PIM Board of Trustees, including a majority of the “independent” trustees, on August 19, 2003.
379. The Advisory Agreement between PIM Company and the PIM Funds provides that it must be approved annually (a) by the holders of a majority of the outstanding voting securities of a fund, or by the Board of Trustees, and (b) by a majority of the trustees who are not "interested persons" of the Trust (meaning only that they have no direct or indirect financial interest in the Advisory Agreement).

380. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that the PIM Advisory Agreement, like the MMS Advisory Agreement, required PIM Company to comply with the requirements of the ICA and all rules and regulations of the SEC promulgated thereunder, as well as with the applicable procedures adopted by the PIM Trust’s Board of Trustees and the Trust’s organic documents.

381. As adviser of the PIM Funds, PIM Company receives a monthly fee from each Fund in the Trust at annual rates ranging from .20% to 1.25%, based on the average daily net assets of the particular funds.

382. Thus, for instance, for the Real Return Fund, the Administrative Fee Rate is .20% for shares of the Institutional and Administrative Classes, .30% for Advisor Class shares, .40% for Class A, B and C Shares, .65% for Class D Shares, .25% for Class J and K Shares, and .40% for Class R Shares.

383. For the fiscal years ended March 31, 2001, 2003, 2003 and 2004, the High Yield Fund paid advisory fees to PIM Company in the amounts of $7,084,431, $7,996,501, $10,590,729, and $18,495,459, respectively. For the fiscal years ended March 31, 2001, 2002, 2003 and 2004, the Real Return Fund paid advisory fees to PIM Company in the amounts of $1,358,282, $5,064,008, $14,082,155, and $21,123,119, respectively.
384. The Board of Trustees of the PIM Trust has a Nominating Committee consisting of all the “independent” Trustees, i.e., Cannon, Curtis, Hagan, and Popejoy. The Nominating Committee does not have a policy regarding whether it will consider nominees recommended by shareholders. It did not meet during the fiscal year ended March 31, 2003, and had one meeting during the following fiscal year. Trustees of this trust serve for perpetual terms “until their successors are duly elected and qualified.”

385. The Trustees of the PIM Trust (other than those affiliated with Pimco and its associates) receive an annual retainer of $60,000, plus $3,000 for every Board of Trustees meeting attended in person and $500 for each meeting attended telephonically, as well as reimbursement of expenses.

386. Each Trustee of the PIM Trust also serves as Trustee of the Commercial Mortgage Securities Trust and the Variable Insurance Trust. They are paid fees for serving as Trustees of those Trusts in addition to the fees they are paid as Trustees of the PIM Trust.

387. The “independent” Trustees of the PIM Trust received compensation for the fiscal year ended March 31, 2003, in the total amount of $436,266, which includes payments of $72,500 and $90,500, respectively, to Guilford C. Babcock and Thomas P. Kemp, who were Trustees until their retirement on June 30, 2003.

388. The following PIM Trustees received the following compensation for the fiscal year ended March 31, 2004:

<table>
<thead>
<tr>
<th>PIM Trustee Compensation</th>
<th>Total Compensation</th>
<th>Total Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FROM MMS Trusts</td>
<td>FROM ALL PIMCO Trusts</td>
</tr>
<tr>
<td>E. Philip Cannon</td>
<td>$79,512</td>
<td>$230,069</td>
</tr>
<tr>
<td>Vern O. Curtis</td>
<td>$77,212</td>
<td>$99,652</td>
</tr>
<tr>
<td>J. Michael Hagan</td>
<td>$74,000</td>
<td>$95,250</td>
</tr>
<tr>
<td>William J. Popejoy</td>
<td>$74,000</td>
<td>$75,250</td>
</tr>
</tbody>
</table>
389. PIM Company also serves and served as the Administrator for the PIM Funds pursuant to an Administration Agreement that must be renewed annually.

390. In addition to the Advisory Fees it is paid, PIM Company was paid Administrative Fees for the fiscal years ending March 31, 2001, 2002, 2003, and 2004, in the amounts of $8,316,046, $9,812,557, $13,292,594, and $23,769,251, respectively, by the High Yield Fund. For those same fiscal years, PIM Company was paid administrative fees of $1,559,146, $6,326,433, $18,200,673, and $27,588,880, respectively, by the Real Return Fund.

391. For the High Yield Fund, as well as numerous other funds in this trust, the Administrative Fee Rates are .25% for the Institutional and Administrative Shares, .35% for the Advisor Class Shares, .40% for the Class A, B and C Shares, .65% for the Class D Shares, .25% for the Class J and K Shares, and .40% for the Class R Shares.

392. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that PAD served and serves as the distributor for all the Pimco Funds pursuant to a Distribution Contract that must be renewed annually.

393. The Distribution Contract between PAD and the Pimco Funds between PAD and each of the Trusts continues in effect with respect to each Fund, and each class of shares thereof, for successive one-year periods, provided that such continuance is specifically approved (a) by the vote of a majority of the entire Board of Trustees or by the majority of the outstanding shares of the fund or class, and (b) by a majority of the Trustees who are not interested persons (as defined in the ICA) of the Trust and who have no direct or indirect financial interest in the Distribution Contract or the Distribution and Servicing Plans ("12b-1 Plans").
394. The Distribution Contract required PAD to comply with the requirements of the ICA and all rules and regulations of the SEC promulgated thereunder.

395. According to the Pimco Statements of Additional Information (“SAIs”), each class of shares in any Fund bears any class-specific expenses allocated to it, such as expenses related to the distribution and/or shareholder servicing of such class. In addition, each class of shares may also pay a different share of certain other expenses if they are incurred in a different amount by that class or if the class receives services of a different kind or to a different degree than the other classes. The Pimco SAIs provide that all other expenses are allocated to Fund classes in based upon the NAV of that class in proportion to the NAV of all other classes of Funds.

396. Under the 12b-1 Plans for distribution of shares for PIM Funds, each class of shares pays servicing and distribution fees to PAD. Class A shares of all funds except the Money Market Fund pay PAD servicing fees at an annual rate of .25%, calculated as a percentage of each fund’s average daily net assets attributable to the Class A shares. Class B shares of all funds pay PAD servicing fees of .25%. Class C shares purchased after July 1, 1991 of most funds, including the High Yield Fund and the Real Return Fund, pay PAD servicing fees of .25% and distribution fees of .65%.

397. Similarly, under the 12b-1 Plans for the MMS Funds, each class of shares pays servicing and distribution fees to PAD. Class A shares pay PAD servicing fees up to the annual rate of .25%, calculated as a percentage of each fund’s average daily net assets attributable to the Class A shares. Class B and Class C shares pay PAD servicing fees of .25% and distribution fees of .75%. Class R shares pay PAD both servicing and distribution fees of .25%.

Redemption Volatility in the Pimco Funds
398. In addition to the specific timing arrangements alleged herein, the volatility of redemptions in the Pimco Funds, including equity as well as bond funds, demonstrates timing in various Pimco mutual funds. Compared against a predicted annual volatility rates of approximately 20 percent (meaning that 20 percent of the mutual funds shares will be redeemed in any 12-month period) in the Fidelity mutual funds – which have not been implicated in the market timing scandal – redemption rates for many Pimco funds were many times higher.

399. The following table sets forth examples of extremely high volatility rates for some Pimco Funds during just the first seven months of 2003 alone:

<table>
<thead>
<tr>
<th>Pimco Mutual Fund</th>
<th>7-Month Volatility (in percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pimco RCM Europe Fund C</td>
<td>4,928.57</td>
</tr>
<tr>
<td>Pimco PEA Growth Fund A</td>
<td>3,523.93</td>
</tr>
<tr>
<td>Pimco RCM Europe Fund A</td>
<td>3,479.81</td>
</tr>
<tr>
<td>Pimco RCM Emerging Markets Fund A</td>
<td>2,657.78</td>
</tr>
<tr>
<td>Pimco PEA Opportunity Fund A</td>
<td>552.17</td>
</tr>
<tr>
<td>Pimco PEA Target Fund A</td>
<td>481.33</td>
</tr>
<tr>
<td>Pimco High Yield Fund D</td>
<td>137.42</td>
</tr>
<tr>
<td>Pimco Emerging Markets Bond Fund D</td>
<td>134.21</td>
</tr>
<tr>
<td>Pimco CA Intermediate Municipal Bond Fund D</td>
<td>111.49</td>
</tr>
<tr>
<td>Pimco Municipal Bond Fund A</td>
<td>110.82</td>
</tr>
</tbody>
</table>

[V. DEMAND FUTILITY ALLEGATIONS]

501. The allegations concerning demand futility do not apply to claims asserted by the plaintiffs under Section 36(b) of the ICA, which does not confer a direct right upon the Funds or the Trusts to bring such claims.
Plaintiffs have not made a demand upon the Trustees of the Funds to bring action against the Adviser, the Distributor, the officers of the Funds, or any other culpable parties because doing so is excused or would be futile for the reasons set forth below.

(a) No demand is required with respect to plaintiffs’ claims under Section 36(b) of the Investment Company Act, 15 U.S.C. § 80a-35(b), for breach of fiduciary duty in connection with compensation and other payments of a material nature to the Advisers or their affiliates.

(b) The Trustees are put into office by officers of the Funds or the Adviser, and are not required to stand for election or reelection by shareholders of the Funds except on rare occasions, and thus are not accountable to the shareholders of the Funds. Rather, the Trustees effectively serve at the pleasure of the Adviser. Additionally, the Trustees serve on the boards of virtually all of the Funds of the Fund Family, and are paid for this service with substantial Trustees’ fees and lucrative retirement benefits, in magnitudes that are sufficient to influence them to act in the interest of the Adviser when the interests of the Adviser may conflict with the interests of the Funds.

(c) The Trustees have been well aware, for a very long period of time, of the existence of the types of activity complained of in this action, and of the potential that such activity might have been taking place in the Fund, yet have failed to investigate or to do anything to recover for damages caused to the Fund by such activities. Indeed, despite the Trustees’ awareness of investigations by state and federal law enforcement authorities, and of the legal actions that have been brought by such authorities, the Directors or Trustees have failed to take any action to investigate and have failed to take any action to recover for the Fund the damages cause to it by such unlawful activity.
(d) Market timing is a phenomenon that has been common knowledge in the mutual fund industry at least since the 1980s. As early as 1989, the high-profile mutual fund company Fidelity Investments began to impose and enforce heavy redemption fees on short term trades in its mutual fund shares. In 1992, a widely-publicized book entitled The New Market Wizards focused attention on market timing.

(e) Since at least as early as November 5, 1997, when an article appeared in THE WALL STREET JOURNAL entitled “Mutual Funds Fight the ‘Market Timers,’” the unlawful practices complained of have been well-known to persons in the mutual fund industry, including the Trustees of the Funds. That article detailed the prevalence of market timing in major mutual funds, the types of harm that such activity visited upon the mutual funds, and the types of measures that some mutual funds had taken and were taking in order to discourage or prevent such market timing altogether.

(f) As stated in an article printed in FORTUNE on April 19, 2004, “Clearly, by 2001 everyone connected with the fund industry had to know how crooked the business had become.” See “The Secrets of Eddie Stern,” FORTUNE (April 14, 2004). The article also noted that after the current mutual fund scandal broke, the SEC surveyed 88 of the largest fund companies and discovered that half admitted to allowing market timing, and 25 percent allowed late trading.

(g) Even though the Trustees have (or should have) had knowledge of the existence and extensiveness of unlawful market timing taking place in the industry, and of the harm that results to mutual funds and fund shareholders, the Trustees either have failed to take action, despite their knowledge, with respect to such practices in connection with the Funds or
they have failed to put in place the proper supervision and control mechanisms that would have brought the existence of such unlawful practices in the Funds to their attention.

(h) Under Section 15(c) of the ICA, 15 U.S.C. § 15(c), the Trustees have and had an express duty “to request and evaluate ... such information as may reasonably be necessary to evaluate the terms” of any investment advisory contract with respect to the Fund. In this case, the Trustees have and had a duty to obtain all information regarding all arrangements of the Adviser that related to the Adviser’s management agreement, including all terms and conditions applicable to the Adviser’s performance of its duties. Any terms, conditions, or arrangements whereby the Adviser facilitated, encouraged, permitted, and participated in, or failed to detect and prevent, market timing or late trading are and were, in fact, part of the Adviser’s contract.

(i) Alternatively, any such arrangements are and were, at minimum, among the information “reasonably necessary to evaluate the terms of” the Investment Adviser’s contract, within the meaning of Section 15(c) of the Investment Company Act. Consequently, the Trustees either failed to request all of the “reasonably necessary” information they needed to evaluate the Adviser’s contract or they knew about or approved such arrangements with respect to the Fund.

(j) Indeed, given the Trustees’ knowledge of the prevalence and commonplace nature of late trading and market timing in the mutual fund industry, it was incumbent upon the Directors or Trustees to take the obvious, prudent measure of implementing some kind of audit system or program that would enable them to discover all aspects and all components of the advisory contract with respect to the Funds. Had the Trustees done this, they would have become aware of the existence of the specific late trading and market timing
arrangements in place with respect to such funds. However, the Trustees failed to put any such necessary system or program in place, thus subjecting themselves to a substantial risk of personal liability for breach of their fiduciary duty because of their gross negligence, and rendering themselves incapable of being able to impartially consider a shareholder demand, thereby compromising their independence.

(k) The Trustees’ duties required them independently to act without a demand from a shareholder under the circumstance of this action. Their duties did not and do not come into play only when “kick-started” by a shareholder demand. The Trustees’ fiduciary duties apply and applied at all times to require them to act in the best interest of the Funds, to protect the Funds from harm, and to recover damages for the Funds when the Funds have been harmed.

(l) On September 3, 2003, the NYAG commenced the NYAG Complaint, thus bringing the market timing and late trading scandal to the attention of the world. Before and after the commencement of the NYAG Complaint, state and federal regulators notified mutual funds of an investigation into market timing and late trading. Since the NYAG Complaint was filed, state and federal regulators have entered into consent enforcement actions with at least six different mutual fund families, representing recoveries of civil penalties and recoveries in excess of $2 billion. The regulators’ investigation, the filing of the NYAG Complaint, and the subsequent enforcement actions have highlighted the existence of market timing and late trading as well as the magnitude and severity of the scandal throughout the mutual fund industry. No Director or Trustee could claim to be ignorant of the market timing and late trading scandal since September 3, 2003. Despite that, however, the Trustees have failed to take any action against the Adviser, the Distributor, or any persons responsible for causing harm to the Funds by market timing or late trading.
(m) The purpose of a demand requirement is to bring matters to the attention of the Directors or Trustees so that they can determine what action, if any, to take regarding the matter about which the demand is made. Here, the Trustees already are aware of the matters about which they should take action to recover damages for harm to the Funds caused by market timing and late trading. Since the Trustees are already aware of the matters requiring their action, and of their duty to act, any demand under these circumstances would be nothing but redundant surplusage and would serve as nothing but an unnecessary formality that would elevate form over substance.

(n) Because the Trustees have failed for a lengthy time period to take action to recover for the Fund the damages it has suffered because of market timing and late trading, doing so at this point would be tantamount, from their perspective, to an admission that earlier action on their part was required but not forthcoming, thereby subjecting themselves to a substantial likelihood of personal liability for breach of their duty of care.

(o) Given the Trustees’ awareness of the foregoing facts, and their demonstrated failure to act in the face of their knowledge of those facts, there is, at minimum, a reasonable doubt as to whether they would be independent and disinterested in responding to a demand. Moreover, given the egregiousness of the Trustees’ failure of oversight as outlined above, there is, at minimum, a substantial likelihood that they will be subject to personal liability for inadequate oversight of the officers and employees of the Funds. This exposure to a substantial likelihood of personal liability prevents the Directors or Trustees from being able to consider a demand impartially, if one had been made.

(p) The likelihood of personal liability is even more pronounced in the case of those Directors or Trustees who served on the Audit Committee of the Funds, [insert names],
since those members had easy access to the internal documents that revealed the market timing and late trading that harmed the Funds yet they took no steps to prevent such activity or to recover damages that the Funds suffered on account of such activity.

\[\text{¶¶ 503 THROUGH 600 ARE INTENTIONALLY LEFT BLANK]}\]

**COUNT I**

**VIOLATION OF SECTION 36(b) OF THE INVESTMENT COMPANY ACT**

(Against the Adviser, Sub-Adviser, and Distributor Defendants)

601. Plaintiffs incorporate by reference paragraphs 1 through 500 above, but not paragraphs 501 through 600 relating to demand, as if set forth herein.

602. The Trusts and the Funds are registered investment companies within the meaning of the ICA.

603. The Advisers and the Sub-Advisers are each investment advisers for the Funds as that term is defined in Section 2 of the ICA. The Sub-Advisers are also affiliates of the Advisers.

604. The Distributor Defendant is an affiliate of the Advisers for purposes of Section 36(b) of the ICA.

605. Pursuant to Section 36(b) of the ICA, 15 U.S.C. § 80a-35(b), the investment adviser of a mutual fund owes to the mutual fund the fiduciary duties of loyalty, candor, and due care with respect to the receipt of compensation for services or payments of a material nature paid by the mutual fund to such investment adviser or any affiliated person. Those fiduciary duties apply not only to the terms of the advisory fee agreements, but also to the manner in which advisers seek approval of such agreements.

606. Pursuant to Section 36(b) of the ICA, 15 U.S.C. §80a-35(b), the Adviser owes and owed to the Funds the fiduciary duties of loyalty, candor, and due care with respect to its receipt of compensation for services or payments of any material nature paid by the Funds or its
shareholders to the Adviser or any affiliated person. Those fiduciary duties include, but are not limited to, the duty of the Adviser to seek approval of any advisory agreement upon full disclosure of all information material to the Trustees’ decision regarding the Adviser’s compensation.

607. Pursuant to Section 15(c) of the ICA, 15 U.S.C. § 80a-15(c), the investment adviser of a mutual fund owes to the mutual fund the duty to furnish the directors of the fund “such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such [mutual fund] company.”

608. Thus, among other things, Section 36(b) of the ICA prohibits and prohibited the Adviser from soliciting the approval of any advisory agreement from the Funds or the Trustees by use of false or misleading information, or by failing to disclose information material to the Trustees’ decision regarding the Adviser’s compensation. Information concerning conflicts of interest, the nature and extent of market timing and late trading in the Funds, the nature and extent of capacity arrangements for market timing and late trading in the Funds, and the Adviser’s permission, facilitation, or encouragement of and participation in, or failure to detect and prevent, market timing and late trading in the Funds, are particularly important to the Funds and to their independent trustees.

609. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that, for any of the Funds, the Advisers and their affiliates did not make full and fair disclosure of all information that would be material to the Trustees’ decision regarding fees and/or other compensation under advisory and/or other agreements,
including in particular the Advisers’ permission, facilitation, or encouragement of and participation in, or failure to detect and prevent, market timing and late trading.

610. Pursuant to Section 15(c) of the ICA, 15 U.S.C. § 80a-15(c), the trustees of a mutual fund owe to the mutual fund an independent duty to “request and evaluate . . . such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such [mutual fund] company.”

611. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that, for any of the Funds, the Trustee Defendants did not request and/or evaluate information as reasonably may be necessary to evaluate advisory and/or other agreements, including in particular the Advisers’ facilitation, permission, or encouragement of and participation in, or failure to detect and prevent, market timing and late trading.

612. Pursuant to Section 36(b) of the Investment Company Act, 15 U.S.C. § 80a-35(b), mutual fund shareholder may bring a civil action against an investment adviser or any affiliated person who has breached his or its fiduciary duty concerning such compensation or other payments.

613. Each of the Advisers and the Distributor Defendant, as their affiliates, breached his, her, or its fiduciary duty to the Funds by the acts alleged in this Complaint including, without limitation, facilitating, permitting, or encouraging, participating in, or failing to detect and prevent, market timing and late trading, all in exchange for their own benefit, including the receipt of “sticky assets” and other deposits on which they would and did receive fees and other compensation or by participating in insider timing themselves.
614. By agreeing and/or conspiring with the market timers to facilitate, permit, or encourage, participate in, or by failing to detect and prevent, market timing and late trading, the Advisers and the Distributor Defendant placed their own self-interest in maximizing their compensation and other payments over the interests of the Funds.

615. As alleged herein, the Advisers and the Distributor Defendant breached their fiduciary duties with respect to the receipt of compensation for services or other payments of a material nature from the Funds or their shareholders.

616. By virtue of the foregoing, the Advisers and the Distributor Defendant have violated Section 36(b) of the Investment Company Act, 15 U.S.C. § 80a-35(b).

617. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, the adoption and approval of the advisory agreements, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which the Adviser and Distributor Defendants are liable.

COUNT II

VIOLATION OF SECTION 36(a) OF THE INVESTMENT COMPANY ACT
(Against The Trustee, Adviser, Distributor, Parent, and Individual Defendants)

618. Plaintiffs incorporate by reference all paragraphs 1 through 600 above, as if set forth herein.

619. The Trusts and the Funds are registered investment companies.

620. The Advisers are investment advisers under Section 36(a) as that term is defined in Section 2 of the ICA.

621. The Distributor Defendant acts as the principal underwriter for the Funds under Section 36(a) as defined in Section 2 of the ICA.
622. The Trustee Defendants are directors under Section 36(a) as that term is defined in Section 2 of the ICA.

623. Defendants ADAM, Treadway, and Corba, by virtue of their ownership, positions, and responsibilities for managing and directing the activities of the Adviser, Distributor, or Parent Defendants, are liable for the actions of those entities.

624. Pursuant to Section 36(a) of the ICA, 15 U.S.C. §80a-35(a), the Advisers, the Distributor Defendant, and the Trustee Defendants owe and owed to the Funds the fiduciary duties of loyalty, candor, and due care, including the duty of the advisers to seek approval of any advisory agreement with full disclosure of information material to the board’s decision regarding their compensation and the duty of the trustees to request and evaluate such information as may reasonably be necessary to evaluate advisory agreements.

625. Pursuant to Section 15(c) of the ICA, 15 U.S.C. § 80a-15(c), the investment adviser of a mutual fund owes to the mutual fund the duty to furnish the directors of the fund “such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such [mutual fund] company.”

626. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that the Advisers and the Distributor Defendant did not make full and fair disclosure of all information that would be material to a board’s decision regarding advisory and/or other compensation under advisory and/or other agreements, including in particular their facilitation, permission, or encouragement of and participation in, or failure to detect and prevent, market timing and late trading in any of the Funds.
627. Pursuant to Section 15(c) of the ICA, 15 U.S.C. § 80a-15(c), the trustees of a mutual fund owe to the mutual fund an independent duty to “request and evaluate . . . such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such [mutual fund] company.”

628. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that the Trustee Defendants did not request and/or evaluate information as reasonably may be necessary to evaluate advisory and/or other agreements, including in particular the Advisers’ facilitation, permission, or encouragement of and participation in, or failure to detect and prevent, market timing and late trading in any of the Funds.

629. Pursuant to Section 47(b) of the ICA, 15 U.S.C. § 46(b), an investment advisory agreement that is made in, or whose performance involves a, violation of the ICA, is null and void, and “is unenforceable by either party.” Pursuant to Section 47(b) of the ICA, 15 U.S.C. § 46(b), any advisory agreement made in, or whose performance involves a, violation of the ICA, may be rescinded by the mutual fund.

630. Each of the Advisers, the Distributor Defendant, and the Trustee Defendants breached his, her, or its fiduciary duty to the Funds by the other acts alleged in this Complaint including, without limitation, allowing market timing and late trading all in exchange for their own benefit, including the receipt of “sticky assets” and other deposits on which they would and did receive fees and other compensation or by participating in insider timing themselves.
631. By agreeing and/or conspiring with the market timers to permit and/or encourage them to time the Funds, the Advisers and the Distributor Defendant placed their own self-interest in maximizing their compensation and other payments over the interests of the Funds.

632. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, the adoption and approval of the advisory agreements and the 12b-1 Plans, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which defendants are liable.

COUNT III

VIOLATIONS OF SECTION 47 OF THE INVESTMENT COMPANY ACT
(Against the Adviser Defendant and Distributor Defendant)

633. Plaintiffs incorporate by reference all paragraphs 1 through 600 above as if set forth herein.

634. Pursuant to Section 47(b) of the ICA, 15 U.S.C. § 80a-46(b), any contract made in violation, or the performance of which results in a violation, of the ICA is declared unenforceable.

635. For the reasons alleged herein, the agreements between or among the Adviser, the Distributor, and the Funds and the 12b-1 Plans were made in violation of, and their performance resulted in violations of, the ICA and are, therefore, unenforceable.

636. Under Section 47(b) of the ICA, 15 U.S.C. § 80a-46(b), the advisory agreements and the 12b-1 Plans may be voided and the Advisers and the Distributor Defendant are liable to return to the Funds all of the fees and consideration of any kind paid to them thereunder.
COUNT IV

VIOLATION OF SECTIONS 206 AND 215 OF THE INVESTMENT ADVISERS ACT
(Against The Adviser, Sub-Adviser, and Distributor Defendants)

637. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

638. The Advisers, the Sub-Advisers, and the Distributor are investment advisers within the meaning of the IAA.

639. The Funds are clients of the Advisers and the Distributor Defendant within the meaning of Section 206 of the IAA.

640. Section 206 of the IAA, 15 U.S.C. § 80b-6, prohibits investment advisers from, among other things, directly or indirectly using the mails or any means or instrumentality of interstate commerce to (a) employ any device, scheme, or artifice to defraud a client or prospective client; (b) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon a client; and (c) engage in any act, practice, or course of conduct which is fraudulent, deceptive, or manipulative.

641. The Advisers, the Sub-Advisers, and the Distributor have violated Section 206 of the IAA by acting as alleged herein. In particular, plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that the Advisers, Sub-Advisors, and the Distributor facilitated, encouraged, permitted, and participated in, or failed to detect and prevent, market timing or late trading for their own personal gain at the expense of the Funds, and did not make full and fair disclosure of all information that would be material to a board’s decision regarding advisory and/or other compensation under advisory and/or other agreements, including in particular their facilitation, permission or encouragement
of and participation in, or failure to detect and prevent, market timing and late trading in any of the Funds.

642. Pursuant to Section 215 of the IAA, 15 U.S.C. § 80b-15, any investment adviser agreement made or approved in violation of any provision of the IAA, including the investment adviser agreements between the Advisers or the Distributor Defendant and the Funds and the 12b-1 Plans, is null and void and may not be enforced by any party thereto.

643. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, the adoption and approval of the advisory agreements and the 12b-1 Plans, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which defendants are liable.

COUNT V

CONTROL PERSON LIABILITY UNDER SECTION 48 OF THE INVESTMENT COMPANY ACT
(Against The Parent and Individual Defendants)

644. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

645. Section 48 of the ICA, 15 U.S.C. § 47(a), provides that it is unlawful for any person, directly or indirectly, to cause another person to do any act or thing that violates the ICA.

646. ADAM, Treadway, and Corba (the “Control Person Defendants”), directly or indirectly, caused the Advisers, the Administrators, and the Distributor to engage in the unlawful conduct alleged herein.

647. Pursuant to Section 48 of the ICA, 15 U.S.C. § 47(a), the Control Person Defendants are liable for causing, directly or indirectly, the Advisers and the Distributor Defendant to engage in the unlawful conduct alleged herein.
648. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, the adoption and approval of the advisory agreements and the 12b-1 Plans, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which defendants are liable.

**COUNT VI**

**COMMON LAW BREACH OF FIDUCIARY DUTY**

*(Against the Adviser, Sub-Advisers, Distributor, and Trustee Defendants)*

649. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

650. The Advisers, the Sub-Advisers, the Distributor Defendant, and the Trustee Defendants (the "Fiduciary Defendants"), and each of them, owe and owed to the Funds the fiduciary duties of loyalty, candor, and due care in the management and administration of the affairs of each of the Funds and in the use and preservation of the Funds’ property and assets. Further, said defendants owed a duty to each of the Funds not to waste the Funds’ assets and not to place their own personal self-interest above the best interest of the Funds.

651. To discharge those duties, the Fiduciary Defendants and each of them were required to exercise prudent supervision over the management, policies, practices, controls, and financial and corporate affairs of the Funds.

652. As alleged in this Complaint, each of the Fiduciary Defendants breached his, her, or its fiduciary duties by approving or receiving unlawful or excessive compensation or payments in connection with the timing and late trading schemes and other manipulative devices as alleged in this Complaint.

653. As alleged above, each of the Fiduciary Defendants also breached his, her, or its fiduciary duties to preserve and not to waste the assets of the Funds and each of them by
permitting or incurring excess charges and expenses to the Funds in connection with the market timing and late trading scheme.

654. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, the adoption and approval of the advisory agreements and the 12b-1 Plans, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which defendants are liable.

COUNT VII

BREACH OF CONTRACT
(Against the Adviser, Sub-Adviser, and Distributor Defendants)

655. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

656. The Funds have entered into an Advisory Agreements with ADAM, PAFM, and PIM Company, which are renewed annually.

657. The Funds have fully performed their obligations under the Advisory Agreements.

658. The Advisory Agreements required and require ADAM, PAFM, and PIM Company to comply with the requirements of the ICA and all rules and regulations of the SEC promulgated thereunder.

659. The Advisory Agreements required and require ADAM, PAFM, and PIM Company to comply with the rules and regulations of the Trusts and the Funds, as set forth in the Prospectuses, the SAIs, and otherwise.

660. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that the Sub-Advisory Agreements likewise required PEA,
Cadence, NFJ, Nicholas-Applegate, PIM Company, RCM, and Parametric to comply with the requirements of the ICA and all rules and regulations of the SEC promulgated thereunder.

661. Plaintiffs believe after a reasonable opportunity for further investigation and discovery, the evidence will show that the Sub-Advisory Agreements likewise required PEA, Cadence, NFJ, Nicholas-Applegate, PIM Company, RCM, and Parametric to comply with the rules and regulations of the MMS Trust and the Funds, as set forth in the Prospectuses, the SAIs, and otherwise.

662. The Funds and the Distributor Defendants have entered into Distribution Agreements which are renewed annually

663. The Funds have fully performed their obligations under the Distribution Agreements.

664. Rule 12b-1, which authorizes mutual funds to use their assets to pay for marketing and distribution expenses, restricts the implementation of such plans to those which benefit the Funds.

665. The Distributor Defendants breached the Distribution Agreements by permitting market timing in the Funds, which does not benefit the Funds.

666. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, the adoption and approval of the advisory agreements and the 12b-1 Plans, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which the Advisor, Sub-Advisor, and Distributor, Defendants are liable.
COUNT VIII

BREACH OF CONTRACT
(Against Certain Additional Defendants)

667. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

668. Upon information and belief, throughout the relevant period, BAS and the Advisers were parties to written or oral sales agreements governing BAS's duties as broker-dealer in selling and processing trades of Fund shares (the "Dealer Agreements").

669. The Funds, for whose benefit the Adviser entered into the Dealer Agreements, are intended third-party beneficiaries of the Dealer Agreements.

670. There is implied in all agreements an obligation of good faith and fair dealing pursuant to which neither party may take any action that will deliberately frustrate the other party's purpose in entering into the contract.

671. Upon information and belief, under the Dealer Agreements, information and belief, in the Dealer Agreements, BAS expressly agreed to clear mutual fund orders through the NSCC's Fund SERV system and to transmit orders that are received prior to 4 p.m. by a certain time that day ("Day 1"), and those received after 4 p.m. by a certain time the next business day ("Day 2"). Under the Dealer Agreements, BAS and the Advisers agreed that Day 1 Trades would be priced at the Day 1 NAV and the Day 2 Trades would be priced at the Day 2 NAV.

672. BAS had an express or implied obligation to comply with the federal securities laws, the ICA, the IAA, and all rules and regulations promulgated by the SEC, including the forward pricing rule.

673. In breach of the express or implied terms of the Sales Agreements, and in violation of its obligation of good faith and fair dealing, defendant BAS permitted brokers and
timers, including the Aurum Defendants, Trautman, Canary, and Pritchard, to submit orders for the purchase and sale of shares of mutual funds, on BAS' s RJE electronic trading platform or otherwise, after 4 p.m. on a given day (Day 2 Trade) at that day's NAV (Day 1 NAV), in violation of the forward pricing rule, and permitted certain of the Funds to be late traded and timed to the detriment of the Funds.

674. Accordingly, BAS has breached its Dealer Agreements with the Adviser.

675. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which defendants are liable.

COUNT IX

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Against the Additional Defendants)

676. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

677. The Additional Defendants knew of the existence and extent of the fiduciary duties owed by the Fiduciary Defendants to the Funds. The Timer Defendants and the Additional Defendants knew that market timing and late trading the Funds were manipulative devices and knew that these acts were a breach of the fiduciary duties owed to the Funds by the Fiduciary Defendants.

678. The Additional Defendants, including BAS, allowed for the use of their instrumentalities, including the BAS box, for purposes of market timing and late trading.

679. The Additional Defendants maliciously, without justification and through unlawful means, aided and abetted and conspired with the Fiduciary Defendants in breaching their fiduciary duties and provided substantial assistance and encouragement to the Fiduciary
Defendants in violating their fiduciary duties in the manner and by the actions described in this Complaint.

680. The Additional Defendants are jointly and severally liable with the Fiduciary Defendants to the Funds for damages proximately caused by their aiding and abetting as alleged herein.

681. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which defendants are liable.

COUNT X
UNJUST ENRICHMENT
(Against All Defendants)

682. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

683. All defendants received benefits in the profits they earned as a result of their unlawful conduct as described in this Complaint from trading on the Funds at the expense of the Funds or from encouraging, facilitating, or permitting market timing and late trading in the Funds.

684. Justice and equity require that the defendant not be allowed to retain those profits.

685. Justice and equity require that the defendants' unlawfully earned profits be disgorged and returned to Funds because such profits belong to the Funds.
COUNT XI

COMMON LAW INTERFERENCE WITH CONTRACT
(Against the Additional Defendants)

686. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

687. The Advisers and the Funds are parties to the Advisory Agreements.

688. The Advisers breached the Advisory Agreements in the manner and by the actions described in this Complaint.

689. The Additional Defendants knew of the existence of the Advisory Agreements between the Advisers and the Funds and knew their terms.

690. The Additional Defendants knowingly and intentionally induced the Advisers to breach that contract and interfered with the Advisers’ present and future performance of the Advisory Agreements by its acts of wrongdoing as alleged herein, intending to and proximately causing the described breaches of the Advisory Agreements.

691. The Additional Defendants carried out this wrongful conduct with knowledge that this conduct would interfere with the Investment Advisory Agreements and cause such breaches of the Investment Advisory Contract and did in fact cause breaches of such contract.

692. The conduct of the Additional Defendants was improper and without justification or privilege.

693. As a direct and proximate result of the Additional Defendants’ wrongful conduct, they are jointly and severally liable to the Funds with the for injuries and damages the Funds have suffered and which they will continue to suffer and is liable for actual and punitive damages.
COUNT XII

CIVIL CONSPIRACY
(Against All Defendants)

694. Plaintiffs incorporate by reference paragraphs 1 through 600 above as if set forth herein.

695. The Defendants entered into an agreement or agreements or combinations with each other to accomplish by common plan the illegal acts described in this Complaint and by their actions demonstrated the existence of an agreement and combination.

696. The Defendants by their actions have manifested actual knowledge that a tortious or illegal act or acts was planned and their intention to aid in such act or acts.

697. The Trustee Defendants’ conduct constituted willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of their office.

698. The Defendants maliciously and intentionally conspired, combined and agreed with one another to commit the unlawful acts alleged in this Complaint or to commit acts by unlawful means proximately causing injury and damages to the Funds for which they are jointly and severally liable.

699. As a direct and proximate result of the wrongful conduct alleged above, the Funds were harmed by, among other things, Dead Weight, Dilution, and Concentration, all of which reduced the assets and value (including the NAV) of the Funds, for which defendants are liable.

WHEREFORE, Plaintiff prays for judgment as follows:

A. Removing each of the Trustees of the Funds named in this Complaint and replacing them with independent Trustees;

B. Removing the Adviser Defendant and the Distributor Defendant;
C. Rescinding the management and other contracts for the Funds with the Advisor, Distributor and other Defendants;

D. Rescinding the 12b-1 Plans adopted by the Funds;

E. Ordering Defendants to disgorge all management fees and other compensation paid to the Adviser and all profits earned on unlawful trading and all management and other fees earned during the period of such trading,

F. Awarding monetary damages against all of the Defendants, individually, jointly, or severally, in favor of the Funds, for all losses and damages suffered as a result of the wrongdoings alleged in this Complaint, including punitive damages where appropriate, together with interest thereon,

G. Awarding Plaintiffs the fees and expenses incurred in this action, including reasonable allowance of fees for plaintiffs’ attorneys, and experts,

H. Granting Plaintiffs such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

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

Dated: September 30, 2004

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Exhibit A

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New Defendants
PA Fund Management LLC
Parametric Portfolio Associates
Aurum Securities Corp.
Aurum Capital Management Corp.
Golden Gate Financial Group, LLC
Bank of America Corp.
Banc of America Securities LLC
Bank of America, N.A.
Bear Stearns & Co. Inc.
Edward J. Stern
Circle Trust Company
Davidson Companies
Deutsche Bank AG
Kaplan & Co. Securities, Inc.
Pritchard Capital Partners, LLC
Trautman Wasserman & Company, Inc.
UBS AG
UBS Financial Services, Inc.

Dropped Plaintiffs
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William S. Thompson, Jr.
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John Cashwell
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