

**CIRCUIT COURT OF SARASOTA COUNTY, FLORIDA
TWELFTH JUDICIAL CIRCUIT**

BURTON W. WIAND, ESQ., as)
Court-Appointed Receiver for)
SCOOP REAL ESTATE, L.P.,)
VALHALLA INVESTMENT)
PARTNERS, L.P., VICTORY IRA)
FUND, LTD., VICTORY FUND, LTD.,)
VIKING IRA FUND, LLC, and)
VIKING FUND, LLC,)

Plaintiff,)

CASE NO.: _____)

v.)

WELLS FARGO BANK, N.A., as)
successor-in-interest to Wachovia Bank, N.A.)
and Timothy Ryan Best,)

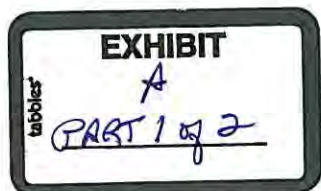
Defendants.)
/

PLAINTIFF’S COMPLAINT AND DEMAND FOR JURY TRIAL

Burton W. Wiand, Esq., as Court-Appointed Receiver (the “Receiver” or “Plaintiff”) for Scoop Real Estate, L.P., Valhalla Investment Partners, L.P., Victory IRA Fund, Ltd., Victory Fund, Ltd., Viking IRA Fund, LLC, and Viking Fund, LLC (collectively, the “Hedge Funds” or “Funds”), sues Defendants Wells Fargo Bank, N.A., as successor-in-interest to Wachovia Bank, N.A. (“Wachovia” or the “Bank”) and former Vice President of Wachovia’s Private Banking Group, Timothy Ryan Best (“Ryan Best” or “Best”), and alleges the following:

INTRODUCTION

1. Between 1999 and 2009, Arthur Nadel (“Nadel”) stole more than \$168 million dollars from the six Hedge Funds – Scoop Real Estate, L.P., Valhalla Investment Partners, L.P., Victory IRA Fund, Ltd., Victory Fund, Ltd., Viking IRA Fund, LLC, and Viking Fund, LLC –



by running a Ponzi scheme with the essential aid and assistance of Wachovia and, during portions of that time, Ryan Best.

2. At every turn, Wachovia and Best ignored federal banking regulations, ignored standard business and banking practices, and violated Wachovia's own internal policies. Without their invaluable and integral assistance, Nadel could not have stolen \$168 million invested by more than 370 investors into the Hedge Funds.

3. A Ponzi scheme is an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new and existing investors, rather than from actual investment returns.

4. Unlike other banking relationships and cooperation with perpetrators of other Ponzi schemes, Wachovia and, for portions of the scheme, Best's, entanglement with Nadel's Ponzi scheme were unique and egregious – Wachovia and Best did much more than manage bank accounts controlled by Nadel. The Bank participated in investments in Nadel's criminal enterprise, and helped fund the fraud through the lending of money. Wachovia directly profited and benefited to a great extent from Nadel's Ponzi scheme unlike other typical commercial banking relationships with Ponzi schemes.

5. Wachovia and Best played essential roles in Nadel's scheme, including permitting him to improperly open and use bank accounts associated with Hedge Funds, knowing full well that Nadel had no authority to open such accounts. Indeed, the ability to commingle funds across multiple Wachovia accounts was a key element in the continuation and longevity of Nadel's fraud. But for Wachovia and Best's willing enablement, facilitation and execution of numerous improper transactions, Nadel could not have successfully stolen tens of millions of dollars from the Hedge Funds.

6. The presence of numerous recognized badges of fraud and the facilitation and execution of numerous improper transactions establishes that Wachovia and Best knew that Nadel was stealing from and defrauding the Hedge Funds. The indicia of fraud included, but were not limited to, a) Nadel's creation of shadow bank accounts¹ at Wachovia in a "doing business as" capacity to mimic the names of Hedge Funds; b) Nadel's provision of incorrect information to the Bank in account opening documents, which was directly inconsistent with other information in Wachovia and Best's possession; c) Nadel's commingling of funds; c) Nadel's repeated transfers of large sums of money across the shadow accounts; d) Nadel's initiation of numerous wire transfers from trading accounts at another institution into Wachovia shadow accounts bearing account names different from the deposit account names attached to the wires; e) Nadel's repeated transfers between non-profit and business accounts; f) Nadel's repeated transfers between personal and business accounts; and g) Nadel's repeated transfers across the shadow accounts in large rounded denominations.

7. As explained further herein, during the peak years of Nadel's fraud, Wachovia directly involved itself in Nadel's scheme by participating in investments in the Hedge Funds. In 2007 and 2008 – just as the economic landscape descended into panic and chaos – Wachovia participated in investments in Nadel's fraud, which yielded significant rates of return. Just before the inevitable collapse of the massive fraud, Wachovia timely cashed out of the Hedge Funds to its great profit. Additionally, Wachovia issued mortgage loans to one of the Hedge Funds it invested in, and with the assistance of Best, to another Nadel-related entity, all of which served to further infuse funds, allowing the Ponzi scheme to continue and prosper.

¹ Since each of the Hedge Funds held a corresponding bank account at Northern Trust Bank, where Fund investors were directed to wire investment deposits and where checks from investors in the Fund were deposited, and Nadel specifically opened the Wachovia accounts to conceal his scheme from the Hedge Funds' staff, all of the Hedge Fund-related accounts opened by Nadel at Wachovia are referred to as "shadow accounts."

8. Wachovia, the predecessor to Wells Fargo Bank, N.A., has a history of assisting and profiting from the commission of fraud by account holders. In 2010, Wachovia entered into a Deferred Prosecution Agreement with the United States Department of Justice, wherein the bank admitted its failure to maintain an anti-money laundering program (“AML”) from May 2003 through at least July 2007 – which squarely coincided with the heyday of Nadel’s Ponzi scheme. As detailed below, one purpose of anti-money laundering programs is to prevent Ponzi schemes like the one masterminded by Nadel.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this case and the parties, and venue is proper in this Court. Specifically, this Court has original jurisdiction over the causes of action in this case as the damages exceed \$15,000. The events triggering these causes of action arise out of a Ponzi scheme operated by Nadel from his offices located in Sarasota County, Florida. The Hedge Funds were operated out of offices located in Sarasota County, Florida. The Wachovia bank accounts associated with the Hedge Funds were opened and managed in Sarasota County, Florida, and the banking transactions at issue herein originated in Sarasota County, Florida.

THE PARTIES

10. In January of 2009, after discovering that the Hedge Funds were victims of a Ponzi scheme operated by Nadel, the U.S. Securities and Exchange Commission filed the case of *Securities and Exchange Commission, Plaintiff, v. Arthur Nadel, Scoop Capital, LLC, Scoop Management, Inc., Defendants, and Scoop Real Estate, L.P., Valhalla Investment Partners, L.P., Valhalla Management, Inc., Victory IRA Fund, Ltd., Victory Fund, Ltd., Viking IRA Fund, LLC, Viking Fund, LLC, and Viking Management, LLC*, Relief Defendants, Case No. 8:09-cv-87-T-

26TBM, in the United States District Court for the Middle District of Florida, Tampa Division (“SEC Receivership Action”).

11. Concurrent with the filing of the SEC Receivership Action, the SEC sought and secured the appointment of Burton W. Wiand, Esq. as the Receiver.

12. Burton W. Wiand, Esq. is an attorney practicing in Tampa, Florida. He was appointed as Receiver by the United States District Court for the Middle District of Florida, Tampa Division, in the SEC Receivership Action, pursuant to an Order dated January 21, 2009, and was subsequently re-appointed Receiver on June 3, 2009, January 19, 2010 and September 23, 2010 (collectively, “Receivership Order”).

13. In accordance with the Receivership Order, the Receiver is authorized, empowered, and directed to investigate the affairs of the Hedge Funds and institute any actions and legal proceedings for the benefit and on behalf of the Hedge Funds, their investors and other creditors.

14. Under the terms of the Receivership Order and applicable law, the Receiver has standing to institute any actions and legal proceedings, including any he deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Hedge Funds, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Hedge Funds; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida

Statute § 726.101, *et seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from the court as may be necessary to enforce the Receivership Order.

15. Wells Fargo Bank, N.A. is a wholly-owned subsidiary of Wells Fargo & Company, a Delaware corporation (“Wells Fargo”). On December 31, 2008, Wells Fargo merged with Wachovia Corporation. By way of this merger, Wells Fargo assumed the liabilities of Wachovia Corporation arising from the transactions at issue in this case. Specifically, Wells Fargo acquired the assets and assumed the liabilities of Wachovia Bank, N.A. Prior to the merger of Wachovia and Wells Fargo, Wachovia Corporation merged with SouthTrust Corporation in late 2004. As a result of this merger, Wachovia acquired the assets and assumed the liabilities of SouthTrust Bank. Because the conduct at issue in this case occurred prior to the merger of Wachovia and Wells Fargo, Defendant Wells Fargo Bank, N.A. will uniformly be referred to as “Wachovia.” At all relevant times, Wachovia had branches located in Sarasota County, Florida.

16. Timothy Ryan Best is a citizen of the state of Florida, and was an employee of Wachovia between October 2002 and October 2011. Best was employed by Wachovia as Vice President of Wachovia Wealth Management’s Private Banking Group. Best served as a relationship manager for Nadel, and was responsible for the due diligence requirements regarding Nadel and the shadow accounts. Accordingly, he oversaw the shadow accounts, related transactions, and all of Nadel’s other banking activities. From his offices located in Hillsborough County, Florida, Best performed his responsibilities in connection with banking transactions and activities originating from Sarasota County, Florida.

17. Nadel managed all activities for the Hedge Funds and, in part, misrepresented their performance through two purported investment management companies – Scoop Capital,

LLC (“Scoop Capital”) and Scoop Management, Inc. (“Scoop Management”) – which he formed, owned and controlled.²

The Hedge Funds

Valhalla Investment Partners, LP

18. Valhalla Investment Partners, LP (“Valhalla Investment”) is a Delaware Limited Partnership formed by Neil Moody in March 1999 which, until January 2009, did business in Sarasota County, Florida as a private placement investment fund.

19. At all relevant times, Valhalla Investment's General Partner and Manager was Valhalla Management, Inc. (“Valhalla Management”). As Manager, Valhalla Management was responsible for administering all facets of Valhalla Investment, including its investment and trading activities.

20. Valhalla Management charged fees to and collected fees from Valhalla Investment for its purported management services. Those fees included: a) a quarterly performance allocation that was calculated as a percentage of purported net profits from investment and trading activities, and b) a monthly management fee that was calculated as a percentage of the purported net asset value of the Fund.

21. At no time was Nadel an officer, director, principal, member or partner of Valhalla Investment, nor did Nadel register “Valhalla Investment” with the Florida Division of Corporations of the Department of State, pursuant to the Florida Fictitious Name Act, §865.09, Fla. Stat., as a fictitious name under which he had authority to operate.

22. Pursuant to its responsibility to administer Valhalla Investment's trading and investment activities, Valhalla Management retained Nadel and Scoop Management as the

² The Nadel management companies – Scoop Capital, LLC and Scoop Management, Inc. – along with those established by Nadel's business partners, Neil and/or Chris Moody – Valhalla Management, Inc. and Viking Management, LLC – will be collectively referred to as “the Management Companies.”

investment advisor. In this capacity, Nadel purported to direct and execute the vast majority of Valhalla Investment's trading and investment activities, and also provided office space, office management, and all back office services.

23. In return for Nadel's purported services, Valhalla Investment paid Scoop Management a flat monthly service fee. Further, Valhalla Management paid Scoop Management a portion of the fees it collected from Valhalla Investment.

24. Valhalla Investment is owned, in part, by the limited partners (or investors) who invested in that Hedge Fund in return for limited partnership interests.

25. At all relevant times, at least most of these limited partners were honest members of the Hedge Fund to whom the Bank and/or Best could have reported Nadel's misconduct.

26. Pursuant to the Receivership Order, the Receiver has been appointed to represent the interests of Valhalla Investment.

Viking Fund, LLC

27. Viking Fund, LLC ("Viking Fund") is a Delaware Limited Liability Company formed by Neil Moody in March 2001 which, until January 2009, did business in Sarasota County, Florida as a private placement investment fund.

28. At all relevant times, Viking Fund's Managing Member and Manager was Viking Management, Inc. ("Viking Management"). As Manager, Viking Management was responsible for administering all facets of Viking Fund, including its investment and trading activities.

29. Viking Management charged fees to and collected fees from Viking Fund for its purported management services. Those fees included: a) a quarterly performance allocation that was calculated as a percentage of purported net profits from investment and trading activities,

and b) a quarterly management fee that was calculated as a percentage of the purported net asset value of the Fund.

30. At no time was Nadel an officer, director, principal, member or partner of Viking Fund, nor did Nadel register "Viking Fund" with the Florida Division of Corporations of the Department of State, pursuant to the Florida Fictitious Name Act, §865.09, Fla. Stat., as a fictitious name under which he had authority to operate.

31. Pursuant to its responsibility to administer Viking Fund's investment and trading activities, Viking Management retained Nadel and Scoop Management as the investment advisor. In this capacity, Nadel purported to direct and execute the vast majority of Viking Fund's investment and trading activities, and also provided office space, office management, and all back office services.

32. In return for Nadel's purported services, Viking Fund paid Scoop Management a flat monthly service fee. Further, Viking Management paid Scoop Management a portion of the fees it collected from Viking Fund.

33. Viking Fund is owned, in part, by the limited partners (or investors) who invested in that Hedge Fund in return for membership interests.

34. At all relevant times, at least most of these limited partners were honest members of the Hedge Fund to whom the Bank and/or Best could have reported Nadel's misconduct.

35. Pursuant to the Receivership Order, the Receiver has been appointed to represent the interests of Viking Fund.

Viking IRA Fund, LLC

36. Viking IRA Fund, LLC (“Viking IRA”) is a Delaware Limited Liability Company formed by Neil Moody in March 2001 which, until January 2009, did business in Sarasota County, Florida as a private placement investment fund.

37. At all relevant times, Viking IRA’s Managing Member and Manager was Viking Management. As Manager, Viking Management was responsible for administering all facets of Viking IRA, including its investment and trading activities.

38. Viking Management charged fees to and collected fees from Viking IRA Fund for its purported management services. Those fees included: a) a quarterly performance allocation that was calculated as a percentage of purported net profits from investment and trading activities, and b) a quarterly management fee that was calculated as a percentage of the purported net asset value of the Fund.

39. At no time was Nadel an officer, director, principal, member or partner of Viking IRA. nor did Nadel register “Viking IRA” with the Florida Division of Corporations of the Department of State, pursuant to the Florida Fictitious Name Act, §865.09, Fla. Stat., as a fictitious name under which he had authority to operate.

40. Pursuant to its responsibility to administer Viking IRA's investment and trading activities, Viking Management retained Nadel and Scoop Management as the investment advisor. In this capacity, Nadel purported to direct and execute the vast majority of Viking IRA Fund's investment and trading activities, and also provided office space, office management, and all back office services.

41. In return for Nadel's purported services, Viking IRA Fund paid Scoop Management a flat monthly service fee. Further, Viking Management paid Scoop Management a portion of the fees it collected from Viking IRA Fund.

42. Viking IRA Fund is owned, in part, by the shareholders (or investors) who invested in that Hedge Fund in return for membership interests.

43. At all relevant times, at least most of these shareholders were honest members of the Hedge Fund to whom the Bank and/or Best could have reported Nadel's misconduct.

44. Pursuant to the Receivership Order, the Receiver has been appointed to represent the interests of Viking IRA.

Victory Fund, Ltd.

45. Victory Fund, Ltd. ("Victory Fund") is a Florida Limited Partnership which, until January 2009, did business in Sarasota County, Florida as a private placement investment fund. Prior to November 2002, Victory Fund was known as Scoop Investments, LP ("Scoop Investments"). Scoop Investments was formed by Nadel in May 2001.

46. Beginning in December 2002, Victory Fund's General Partner was Scoop Capital – an entity formed, owned, and controlled by Nadel. Before that time, Victory Fund's (and predecessor Scoop Investments'), General Partner was Intex Trading Corporation ("Intex Trading"), another company formed, owned, and controlled by Nadel.

47. Nadel and Scoop Management were the Investment Manager or investment advisor for Victory Fund. In this capacity, Nadel purported to direct and execute Victory Fund's investment and trading activities, and also provided office space, office management, and all back office services.

48. In return for Nadel's purported services, Victory Fund paid Scoop Management a) a quarterly management fee that was calculated as a percentage of the purported net asset value of the Fund, and b) a flat monthly service fee.

49. Victory Fund is owned, in part, by the limited partners (or investors) who invested in that Hedge Fund in return for limited partnership interests.

50. At all relevant times, at least most of these limited partners were honest members of the Hedge Fund to whom the Bank and/or Best could have reported Nadel's misconduct.

51. Pursuant to the Receivership Order, the Receiver has been appointed to represent the interests of Victory Fund.

Victory IRA Fund, Ltd.

52. Victory IRA Fund, Ltd. ("Victory IRA") is a Florida Limited Partnership formed by Nadel in March 2003, which, until January 2009, did business in Sarasota County, Florida as a private placement investment fund.

53. At all relevant times, Victory IRA's General Partner was Scoop Capital.

54. Nadel and Scoop Management were the Investment Manager or investment advisor for Victory IRA. In this capacity, Nadel purported to direct and execute Victory IRA's investment and trading activities, and also provided office space, office management, and all back office services.

55. In return for Nadel's purported services, Victory IRA Fund paid Scoop Management a) a quarterly management fee that was calculated as a percentage of the purported net asset value of the Fund, and b) a flat monthly service fee.

56. Victory IRA Fund is owned, in part, by the limited partners (or investors) who invested in that Hedge Fund in return for limited partnership interests.

57. At all relevant times, at least most of these limited partners were honest members of the Hedge Fund to whom the Bank and/or Best could have reported Nadel's misconduct.

58. Pursuant to the Receivership Order, the Receiver has been appointed to represent the interests of Victory IRA.

Scoop Real Estate, LP

59. Scoop Real Estate, LP ("Scoop Real Estate") is a Delaware Limited Partnership formed by Nadel in October 2003 which, until January 2009, did business in Sarasota County, Florida as a private placement investment fund.

60. At all relevant times, Scoop Real Estate's General Partner was Scoop Capital. Scoop Capital was also the Manager of Scoop Real Estate and was responsible for administering all facets of Scoop Real Estate, including its investment and trading activities.

61. Scoop Capital charged fees to and collected fees from Scoop Real Estate for its purported management services. Those fees included: a) a periodic allocation to it of a percentage of the Fund's net profits; b) a periodic allocation to it of a percentage of the gross profits generated by the sale of certain fund assets; and c) a quarterly management fee that was calculated as a percentage of the purported net asset value of the Fund.

62. Pursuant to its responsibility to administer Scoop Real Estate's investment and trading activities, Scoop Capital retained Nadel and Scoop Management as the investment advisor. In this capacity, Nadel purported to direct and execute the vast majority of Scoop Real Estate's investment and trading activities, and also provided office space, office management, and all back office services.

63. In return for Nadel's purported services, Scoop Real Estate paid Scoop Management a flat monthly service fee.

64. Scoop Real Estate is owned, in part, by the limited partners (or investors) who invested in that Hedge Fund in return for limited partnership interests.

65. At all relevant times, at least most of these limited partners were honest members of the Hedge Fund to whom the Bank and/or Best could have reported Nadel's misconduct.

66. Pursuant to the Receivership Order, the Receiver has been appointed to represent the interests of Scoop Real Estate.

The Fund Managers

Valhalla Management, Inc.

67. Valhalla Management, Inc. ("Valhalla Management") is a Florida Corporation, formed by Neil Moody in February 1999 with its principal place of business in Sarasota County, Florida. It served as the General Partner and manager of Valhalla Investment from the inception of the Fund through January 2009.

68. At all relevant times, Neil Moody and/or Chris Moody were the sole principals of Valhalla Management. Further, Neil Moody served as its Director and President while Chris Moody served as its Vice-President and Treasurer.

69. At no time was Nadel an officer, director, principal, member or partner of Valhalla Management.

70. Nadel, through Scoop Management, provided investment advisory services to Valhalla Management regarding its investment and trading activities, which enabled Nadel to use Valhalla Management to perpetrate the Ponzi scheme discussed herein.

Viking Management, LLC

71. Viking Management, LLC ("Viking Management") is a Florida Limited Liability Company formed by Neil Moody in January 2003 with its principal place of business in Sarasota

County, Florida. It served as the Managing Member and Manager of Viking Fund and Viking IRA from the inception of each Fund through January 2009.

72. At all relevant times, Neil Moody and/or Chris Moody were the sole principals of Viking Management. Further, Neil Moody was its Managing Member and President and Chris Moody was its Co-Managing Member.

73. At no time was Nadel an officer, director, principal, member or partner of Viking Management.

74. Nadel, through Scoop Management, provided investment advisory services to Viking Management regarding its investment and trading activities, which enabled Nadel to use Viking Management to perpetrate the Ponzi scheme discussed herein.

Scoop Capital, LLC

75. Scoop Capital, LLC ("Scoop Capital") is a Florida Limited Liability Company formed by Nadel in June 2001 with its principal place of business in Sarasota County, Florida. It served as the General Partner of Victory Fund, Victory IRA Fund, and Scoop Real Estate from the inception of each Fund through January 2009.

76. Nadel created, owned, and controlled Scoop Capital, and served as its President and Managing Member.

77. Nadel's control of Scoop Capital allowed him to perpetrate the Ponzi scheme discussed herein.

78. Nadel used Scoop Capital to divert proceeds of his Ponzi scheme for his and his family's benefit, including through his control of Scoop Capital's bank and other financial accounts.

Scoop Management, Inc.

79. Scoop Management, Inc. ("Scoop Management") is a Florida Corporation formed by Nadel in April 2001 with its principal place of business in Sarasota County, Florida.

80. Nadel created and owned Scoop Management and was its President and Director. Nadel controlled Scoop Management and all of its operations, and performed all of Scoop Management's trading activities for the Hedge Funds.

81. At all relevant times, Scoop Management was the investment advisor for Valhalla Management and Viking Management and, in that role, provided trading, research, and operational services for Valhalla Management and Viking Management and, more specifically, for Valhalla Investment, Viking Fund, and Viking IRA.

82. At all relevant times, Scoop Management was the investment advisor for Scoop Capital and – before it became Victory Fund's General Partner – for Intex Trading. In this capacity, Scoop Management provided trading, research, and operational services for Scoop Capital and Intex Trading and, more specifically, for Victory Fund, its predecessor Scoop Investments, Victory IRA and Scoop Real Estate. In other words, Nadel, through his control of Scoop Management, was responsible for trading and making trading decisions for each of the Hedge Funds and effectively controlled all of the Fund Managers.

83. Nadel's control of Scoop Management allowed him to perpetrate the Ponzi scheme discussed herein.

84. Nadel used Scoop Management to divert proceeds of his fraudulent scheme for his and his family's benefit, including through his control of Scoop Management's bank and other financial accounts.

THE FACTS COMMON TO ALL CAUSES OF ACTION

A. THE PONZI SCHEME

85. From 1999 through January 2009, Nadel and his management companies, Scoop Management and Scoop Capital, raised more than \$350 million from more than 370 investors on behalf of one or more of the Hedge Funds, through the offer and sale of securities in the form of partnership and/or shareholder interests in the Hedge Funds as part of a single, continuous Ponzi scheme (the "scheme").

86. A Ponzi scheme is defined as an operation that uses the principal received from new investors or additional principal received from existing investors to make payments to investors that are falsely characterized as "profits" or "gains." Ponzi schemes typically lure potential victims by promising abnormally high returns on their investments. In order to keep the scheme afloat, there is a perpetual need to find new sources of revenue, and therefore, new victims to swindle. Because the "profits" that older investors receive are nothing more than the capital contributions from new and unsuspecting investors, the house of cards eventually collapses once the cash flow dries up.

87. The Hedge Funds were actually or effectively controlled by Nadel through Scoop Management and Scoop Capital.

88. Nadel and the Moodys represented to investors and potential investors that their investment money was or would be used to trade securities, including the QQQQ exchange-traded fund. Investors chose to invest with Nadel and the Hedge Funds based on those representations.

89. Although investors' principal investment money was invested with one or more Hedge Funds in accordance with the pertinent investors' instructions, in actuality, Nadel treated

the Hedge Funds as a single source of money, commingling the Hedge Funds' monies in the various Hedge Funds' bank and trading accounts and in other accounts controlled by Nadel.

90. To the extent Nadel traded the money invested in the Hedge Funds, he did so in a pooled and commingled fashion through a single master trading account. When trading, Nadel would pool all of the available money raised from investors and invested in the different Hedge Funds, along with money in his personal or other non-Hedge Fund accounts that he controlled (collectively, "Nadel's accounts"), in a single account and use some of it to purchase securities. Then, at the close of each trading session, Nadel typically allocated the completed trades as he wished amongst the Hedge Fund accounts and Nadel's accounts. Typically, Nadel allocated profitable trades to his own accounts, including accounts in his name or that of Scoop Management or Scoop Capital, while unprofitable trades were allocated to the accounts of the Hedge Funds.

91. Nadel provided fictitious Hedge Fund performance numbers to his staff, who generated and distributed monthly reports containing the fictitious numbers to investors. The Hedge Funds' investment returns and performance, as represented to investors, potential investors, and the Moodys from 1999 onwards (as applicable based on then-existing Hedge Funds), were false and based on grossly overstated performance numbers fabricated by Nadel. The true results of the trading activity were never reported to investors or potential investors. Nor were the true results ever revealed to the Moodys.

92. Nadel caused the Hedge Funds to pay to himself and the Management Companies over \$94 million in performance and management fees from 1999 through the end of 2008. Because those fees were based on fictitious and inflated returns and net asset values, Nadel improperly and wrongfully diverted money from the Hedge Funds.

93. In addition to the payment of fees, Nadel caused the Hedge Funds to make distributions to investors that the investment performance of the Hedge Funds never supported. Through those distributions, Nadel improperly and wrongfully diverted money from the Hedge Funds.

94. For investors who did not request distributions, fictitious trading and investment profits were "credited" to the investors' purported accounts with the Hedge Funds. These fictitious profits were likewise unsupported by the Hedge Funds' actual investment performance and only served to further increase the Hedge Funds' insolvency.

95. The negative cash flow of the Hedge Funds made the eventual collapse of the scheme inevitable, as happens with all Ponzi schemes.

96. The scheme spearheaded by Nadel and his company, Scoop Management, was unknown to the Hedge Funds until January 2009.

B. WACHOVIA AND BEST'S RELATIONSHIP WITH NADEL AND THE HEDGE FUNDS

97. Nadel was a longstanding customer of Wachovia and opened several personal bank accounts, Management Company accounts, and the shadow accounts at Wachovia. At various times between 2000 and 2009, Nadel opened and maintained shadow accounts at Wachovia in the names of Valhalla Investment, Viking Fund³, Victory Fund and Scoop Real Estate.

98. For Valhalla Investments, Viking Fund and Viking IRA – which did not count Nadel as an officer, director, principal, member or partner – Nadel opened shadow accounts in the form of "doing business as" accounts, which mimicked the names of the Hedge Funds. From December 2000 through January 2009, Nadel maintained an account at Wachovia under the

³ The transaction history of the Arthur Nadel DBA Viking Fund shadow account reflects that it was used for two Hedge Funds – Viking Fund and the similarly-named Viking IRA.

name “Arthur Nadel DBA Valhalla Investments.” From June 2002 through January 2009, Nadel maintained an account at Wachovia under the name “Arthur Nadel DBA Viking Fund.” Arthur Nadel had not registered either “Valhalla Investments” or “Viking Fund” as fictitious names with the Division of Corporations, in violation of §865.09, Fla. Stat., a criminal act. At no time did Valhalla Investment, Viking Fund, or Viking IRA authorize Nadel to open these shadow accounts at Wachovia, and the Bank failed to ask for documentation confirming that Nadel had authority to open the shadow accounts or to use such names as fictitious names of his own.. Moreover, information made available to Wachovia upon its request demonstrated that Nadel was at no time “doing business as” Valhalla Investments, Viking Fund or Viking IRA, and a simple check of the fictitious names registry at the Division of Corporations would have further revealed his complete lack of authority to open such accounts.

99. In addition to permitting Nadel to open the above-mentioned accounts, Wachovia actually participated in an investment in two of these Hedge Funds – Scoop Real Estate and Viking Fund – and received trading gains and/or principal redemptions in an amount exceeding the principal investment.

100. Specifically, in 2007, Wachovia participated in an investment in Viking Fund in the amount of \$350,000, and similarly participated (with others) in an investment in Scoop Real Estate in the amount of \$200,000. In 2008, after 18 months of investing, that investment received false profits in the aggregated amount of \$426,610.55.⁴

⁴ The false profits received by this investment were returned to the Receiver pursuant to a settlement agreement approved by the U.S. District Court for the Middle District of Florida, Tampa Division, under the SEC Receivership Action on June 10, 2011.

101. Wachovia also lent money to Nadel and two of his entities. In 2001, Wachovia⁵ funded a mortgage loan in the amount of \$180,000 to Nadel in connection with his home located at 3966 Country View Drive, Sarasota, Florida. In 2005, Wachovia funded a mortgage loan in the amount of \$1,747,250 to Scoop Real Estate in connection with investment property located at 100 34th Street North, St. Petersburg, Florida. Also in 2005, Wachovia funded a mortgage loan in the amount of \$2,655,000 to Scoop Real Estate in connection with investment property located in North Carolina. In 2008, Wachovia funded an interest-only mortgage loan to another Nadel entity – Laurel Preserve, LLC – in the amount of \$1,900,000 in connection with investment property located in North Carolina.⁶

C. WACHOVIA AND BEST'S OBLIGATIONS UNDER THE BANK SECRECY ACT

102. The Bank Secrecy Act ("BSA") required Wachovia and Best to assist U.S. government agencies with detecting and preventing financial crimes, such as money laundering, investor fraud, and embezzlement. The BSA is sometimes referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML."

103. The BSA requires banks to file a Suspicious Activity Report ("SAR") with respect to any transaction involving at least \$5,000, which the bank suspects "involves funds derived from illegal activities" or "has no business or apparent lawful purpose."

104. The BSA is aimed at detecting potential money laundering, but the activity that might trigger a SAR is not limited to obvious criminal activities, such as drug trafficking or terrorism.

⁵ This mortgage loan was originally funded by World Savings Bank, but was subsequently assumed by Wachovia pursuant to a merger of the two banks in May 2006.

⁶ In addition to lending money to Nadel and his entities, Wachovia also lent money to Nadel's business partner, Neil Moody. In May 2006, Wachovia funded a home equity line of credit ("HELOC") in the amount of \$880,000 to Moody as Trustee of the Neil V. Moody Revocable Trust in connection with property located at 464 Golden Gate Point, Unit 703, Sarasota, Florida.

105. Section 12 CFR 21.21 of the BSA required Wachovia to adopt a written, board-approved program designed to assure and monitor compliance with the Act. This compliance program must provide for a system of internal controls to ensure ongoing compliance.

106. Section 31 CFR 103.121 also imposed on Wachovia and Best the obligation to comply with the Know Your Customer requirements ("KYC"). KYC requires banks to know the true identities of its customers and its customers' business, including verification of the business and of the source of monies that come into the account, to monitor its customers' transactions to determine that a legitimate reason exists consistent with the business of the customer, for transfers in and out of the customers' accounts, and to determine if transactions are unusual or suspicious and, if so, to report those transactions to the proper authorities and close down the accounts.

107. In May 2007, the United States Attorney's Office for the Southern District of Florida, the IRS, and the DEA began investigating Wachovia's BSA compliance program.

108. These BSA compliance investigations determined that, from May 2003 through at least July 2007 – a period of time that overlapped with nearly half of the duration of Nadel's Ponzi scheme and most of the period of time during which Wachovia assisted Nadel – Wachovia violated the anti-money laundering ("AML") and suspicious activity reporting requirements of the BSA and the corresponding regulations. The violations at Wachovia were serious and systemic, and allowed certain Wachovia customers to launder millions of dollars of proceeds from the sale of illegal narcotics through Wachovia accounts over an extended time period. The investigation determined that there were significant failures in Wachovia's AML and compliance programs.

109. In March 2009, the United States charged Wachovia for criminal violations of the BSA, including willfully failing to establish an anti-money laundering program, as well as failing to file SARs and Currency Transaction Reports (“CTRs”).

110. To avoid further prosecution, Wachovia Bank and Wells Fargo Corporation entered into a deferred prosecution agreement whereby the Bank acknowledged responsibility for its unlawful conduct, agreed to cease such criminal conduct in the future, and paid \$160 million in fines.

111. The period of time during which Wachovia acknowledged that it did not have adequate AML and compliance programs coincided with much of the time Nadel was perpetrating his fraudulent scheme with the direct involvement and participation of Wachovia.

112. The Bank’s lack of adequate AML and compliance programs substantially contributed to the ability of Nadel to perpetrate his fraud.

113. At all times herein, Wachovia had available to it innocent shareholders, limited partners, banking and securities regulators, and others to whom it could have reported clear evidence of fraud. Additionally, the Bank could have reported Nadel’s misconduct to law enforcement and/or other regulatory agencies. Despite the availability of the aforementioned parties to whom Wachovia could have reported Nadel’s misconduct, the Bank ultimately failed to report the fraud or any instance of inappropriate conduct or any inappropriate transaction. The Bank also could have refused to continue its relationship with Nadel, but instead, chose to allow the Ponzi scheme to continue.

D. WACHOVIA AND BEST WILLFULLY IGNORED CLEAR EVIDENCE OF FRAUD

114. Nadel depended on Wachovia’s financial services and Best’s account management and loan facilitation to keep the mechanics of his Ponzi scheme working and to

allow him to commingle and siphon invested funds secretly and without permission of the Hedge Funds. At the very inception of the scheme, the steps taken to enlist Wachovia exposed numerous indicia of fraud. As set forth below, the process of opening the shadow accounts, the exchange of information that occurred as a result of Wachovia's participation in investments in the Hedge Funds, the thorough background checks of Nadel and the Funds that were required to secure mortgages from the Bank, and the nature of the shadow accounts' activity clearly revealed to Wachovia and Best that Nadel was operating a criminal enterprise.

Opening of Arthur Nadel d/b/a Valhalla Investments Partners Account

115. On December 26, 2000, Wachovia allowed Nadel to open shadow bank account number 2000706755110 under the name "Arthur Nadel d/b/a Valhalla Investments." Valhalla Investment is a hedge fund established by Neil Moody. This Hedge Fund held an "official" bank account under its own name at Northern Trust Bank, where Fund investors were directed to wire investment deposits, where checks from investors in the Fund were deposited, and from which investors received payments of their purported principal or investment gains.

116. There is no documentation identifying Nadel as having any authority to act on behalf of this Fund except as an investment advisor. Wachovia received no partnership resolution showing that Nadel had permission from the partnership to open an account in its name. Neither he nor any of his entities was an officer, director, principal, managing member or partner; nor had Nadel registered a fictitious name, as alleged in Paragraph 21 above.

117. The Fund was registered by Neil Moody as a limited partnership with the State of Delaware on March 31, 1999. When the Bank performed its due diligence and reviewed the Delaware registration, as it was required to do, it would have confirmed that Nadel was not an officer, director, principal, managing member or partner to the Fund and had no authority to open

this account. Wachovia received no corporate resolution showing that Nadel had permission from the Fund to open an account in its name.

118. The 2000 Comptroller of the Currency's Bank Secrecy Act/Anti-Money Laundering Handbook ("2000 OCC BSA Manual") states that the "OCC encourages banks to adopt policies that determine the true identity of customers and help to detect suspicious activity promptly." Comptroller of the Currency, Admin. of Nat'l Banks, Bank Secrecy Act/Anti-Money Laundering Handbook, p. 18 (Sept. 2000). It further states "Banks are encouraged to adhere to the following principles when establishing customer relationships ... Business Accounts: Ask business principals for evidence of legal status (i.e., sole proprietorship, partnership, or incorporation or association)." *Id.* at 20. The Manual advises banks to "[c]heck the name of a commercial enterprise with an information-reporting agency and check prior bank references." *Id.*

119. In contravention to this Anti-Money Laundering policy, Wachovia permitted Nadel to open this "doing business as" account under his own name, despite his lack of authority to do so and despite his violation of Florida criminal statutes, specifically §865.09, Fla. Stat., the Bank and Best permitted, facilitated, and executed the transfer of money invested in Valhalla Investment across Nadel's other shadow accounts and trading accounts associated with the six Hedge Funds, despite having knowledge that Nadel had no authority to engage in such activities.

Opening of Arthur Nadel d/b/a Viking Fund Account

120. On June 11, 2002, Wachovia allowed Nadel to open shadow bank account number 2000712344984 under the name "Arthur Nadel d/b/a Viking Fund." Viking Fund is a hedge fund established by Neil Moody. This Hedge Fund held an "official" bank account under its own name at Northern Trust Bank, where Fund investors were directed to wire investment

deposits and where checks from investors in the Fund were deposited, and from which investors received payments of their purported principal or investment gains.

121. There is no documentation identifying Nadel as having any authority to act on behalf of this Fund except as an investment advisor. Neither he nor any of his entities was an officer, director, principal, managing member or partner, nor had Nadel registered a fictitious name, as alleged in Paragraphs 30 and 39 above. Further, because Wachovia invested in Viking Fund (see details *infra*), the Bank knew that Moody was the principal of the Fund, that Nadel was merely its investment advisor, and that the “official” investor deposit account for this Fund was held at Northern Trust Bank.

122. The Fund was registered by Neil Moody as a limited liability company with the State of Florida on March 23, 2001. When the Bank performed its due diligence and reviewed the Florida registration, it would have confirmed that Nadel was not an officer, director, principal, managing member or partner to the Fund, and had no authority to open this account. Wachovia received no corporate resolution showing that Nadel had permission from the Fund to open an account in its name.

123. In contravention to the Anti-Money Laundering policy set forth in Paragraphs 102 through 105 above, Wachovia permitted Nadel to open this “doing business as” account under his own name, and despite his violation of Florida criminal statutes, specifically §865.09, Fla. Stat., the Bank and Best permitted, facilitated and executed the transfer of money invested in Viking Fund across Nadel’s other shadow accounts and trading accounts associated with the six Hedge Funds, despite having knowledge that Nadel had no authority to engage in such activities.

124. The similarly named Viking IRA is another hedge fund established by Neil Moody. This Hedge Fund also held an “official” bank account under its own name at Northern

Trust Bank, where Fund investors were directed to wire investment deposits, where checks from investors in the Fund were deposited, and from which investors received payments of their purported principal or investment gains.

125. Viking IRA was registered by Neil Moody as a limited liability company with the State of Delaware on March 20, 2001. There is no documentation identifying Nadel as having any authority to act on behalf of Viking IRA except as an investment advisor. Neither he nor any of his entities was an officer, director, principal, managing member or partner, nor had Nadel registered a fictitious name, as alleged in paragraphs 30 and 39 above. In addition, by participating in an investment in Viking Fund, Wachovia knew that Viking Fund and Viking IRA were wholly separate entities. Yet, Wachovia and Best permitted Nadel to use the Arthur Nadel d/b/a Viking Fund shadow account to transfer money invested in Viking IRA Fund across his other shadow accounts and trading accounts associated with the six Hedge Funds, despite the fact that Viking IRA is a separate entity and the Bank and Best knew that it did not hold an account at Wachovia.

Ignoring Discrepancies in Account Opening Documents

126. Nadel submitted incorrect information to Wachovia in the opening documents for Valhalla Investment's shadow account. In the documents, dated December 26, 2000, he identified the Fund as a sole proprietorship, when it was, in fact, legally registered in the State of Delaware by Neil Moody as a limited partnership on March 31, 2009.

127. The allegations of Paragraph 118 regarding the OCC Manual are reasserted herein.

128. When the Bank performed its due diligence and reviewed the Delaware registration at the time of opening the account, it would have identified this error, and, if not

cleared up through the provision of supporting documentation, the account should have not been opened or, if already opened, it should have been closed. Further, the Bank's due diligence would have included a review of the fictitious names registry of the State of Florida, to determine whether Arthur Nadel was entitled to use "Valhalla Investments" as his own name on the account. Non-registration constituted a criminal violation under §865.09, Fla. Stat. Despite this knowledge, Wachovia ignored the discrepancies, allowed Nadel to open and use the accounts for his own purposes, and both Wachovia and Best enabled major financial transactions to pass through this account.

129. Nadel also submitted incorrect information to the Bank in the opening documents for the Arthur Nadel d/b/a Viking Fund shadow account. In the documents, dated June 11, 2002, Nadel identified the Fund as a sole proprietorship, when it was, in fact, legally registered by Neil Moody in the State of Florida as a limited liability company on March 23, 2001.

130. The allegations of Paragraph 118 regarding the OCC Manual are reasserted herein.

131. When the Bank performed its due diligence and reviewed the Florida registration at the time of opening the account, it would have identified this error, and, if not cleared up through the provision of supporting documentation, the account should have not been opened or, if already opened, it should have been frozen or closed. As alleged in Paragraph 128 above, Nadel's failure to register the name "Viking Fund" with the state was a criminal violation of which the Bank would have been aware by way of a simple check.

132. Despite this knowledge, Wachovia ignored the discrepancies, allowed Nadel to open and use the accounts for his own purposes, and both Wachovia and Best enabled major financial transactions to pass through this account. Furthermore, because Wachovia invested

\$350,000 in Viking Fund (see details *infra*), it knew that Moody was the principal for the Fund, that Nadel was not an officer, director, principal, managing member or partner, and that the “official” investor deposit account for this Fund was held at Northern Trust Bank.

133. Nadel also submitted incorrect information to the Bank in the opening documents for the Victory Fund shadow account on May 5, 2001. In the opening documents, Nadel identified the Fund as a general partnership, when it was, in fact, legally registered in the State of Florida as a limited partnership on May 1, 2001.

134. The allegations of Paragraph 118 regarding the OCC Manual are reasserted herein.

135. When the Bank performed its due diligence and reviewed the Florida registration at the time of opening the account, it would have identified this error, and, if not cleared up through the provision of supporting documentation, the account should have not been opened or, if already opened, it should have been frozen or closed.

136. Despite this knowledge, Wachovia ignored the discrepancies, allowed Nadel to open and use the accounts for his own purposes, and both Wachovia and Best enabled major financial transactions to pass through this account.

Failing to Implement Adequate Account Monitoring Programs and Guidelines

137. In violation of Wachovia’s requirements under banking regulations and laws, for the duration of the Ponzi scheme (unless otherwise noted), the Bank failed to implement and enforce adequate account monitoring programs and guidelines in the following ways:

138. Prior to July 2007, Wachovia did not have an adequate anti-money laundering program designed to ensure compliance with banking regulations and anti-money laundering laws, including a system of internal controls to ensure ongoing compliance, independent testing

for compliance conducted by either bank personnel or outside parties, properly qualified individuals responsible for coordinating and monitoring day-to-day compliance, and training for appropriate Bank personnel.

139. Wachovia and Best chose to ignore significant funds transfer activity across the shadow accounts, and deliberately avoided asking questions about such activities.

140. Wachovia did not have account opening and monitoring guidelines to identify and report unusual transactions and activities in the shadow accounts.

141. Wachovia did not have adequate procedures allowing it to form a reasonable belief that it knew the true identity of its customer: “Arthur Nadel d/b/a Viking Fund” and “Arthur Nadel d/b/a Valhalla Investment.” when the Bank had information available to it demonstrating that Nadel did not have documented authority to open accounts for, and was not doing business as Valhalla Investment, Viking Fund, or Viking IRA.

142. Wachovia and Best did not monitor the shadow accounts to ensure that the transaction amounts and frequencies were consistent with the type and nature of the business of the customer, Nadel.

143. Wachovia did not have a process for reconciling activity levels in the shadow accounts, which constituted higher risk accounts for the Bank, against expected activities to ensure that such activity levels were reasonable.

144. Wachovia and Best did not determine if the volume and amount of funds transfer activities in the shadow accounts were appropriate, given the nature of the customer account relationships. The Bank’s fraud detection systems would have been triggered by the fund transfer activities because of the dollar amounts at issue, thereby providing the Bank and Best an opportunity to review them and detect the fraud.