**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| PASHA ANWAR, *et al*.,<br><br>Plaintiffs,<br><br>v.<br><br>FAIRFIELD GREENWICH LIMITED, *et al*.,<br><br>Defendants.<br><br>This document relates to:<br>*Joaquina Teresa Barbachano Herrero v. Standard Chartered Bank International (Americas) Limited and Standard Chartered PLC, 1:11-cv-03553-VM* | Master File No. 1:09-cv-00118-VM-THK |

**THIRD AMENDED COMPLAINT**

Plaintiff, JOAQUINA TERESA BARBACHANO HERRERO ("Barbachano"), by and through undersigned counsel and pursuant to the Federal Rules of Civil Procedure, hereby files this Amended Complaint for Damages against Defendants, STANDARD CHARTERED BANK INTERNATIONAL (AMERICAS) LIMITED and STANDARD CHARTERED PLC (collectively, the "Defendants"), and alleges as follows:

**NATURE OF THE ACTION, THE PARTIES, JURISDICTION AND VENUE**

1. This is an action for violation of state securities laws, breach of fiduciary duty, fraud, gross negligence, and negligent misrepresentation. It arises from fraudulent and/or negligent investment advice and recommendations rendered, and the material omissions of fact made by the Defendants and/or their predecessors in interest to Barbachano, which caused the unsuitable investment of the assets in Barbachano's portfolio, exposing those assets to substantial risk and, ultimately, multi-million dollar losses, the unsuitable leveraging of Barbachano's portfolio through a multi-million dollar loan, and the further investment (and loss) of some of the assets contained in Barbachano's portfolio in the massive Ponzi scheme perpetrated by Bernard Madoff.

2. Barbachano is a resident and citizen of Mexico. In late 1996, she became a client of American Express Bank, Ltd. and its subsidiary, American Express Bank International (collectively "AEBI"), in Miami, Florida, the predecessors of the Defendants. AEBI provided financial and investment advice to Barbachano, assigning its employee, Jennifer Sierra ("Sierra"), as Barbachano's "Relationship Manager." As a result, and continuing thereafter, Barbachano reposed her trust and confidence in AEBI and Sierra, which AEBI and Sierra accepted, entering in to a fiduciary relationship with Barbachano. Indeed, AEBI, by and through Sierra, eventually managed all aspects of Barbachano's personal finances and investments.

3. Defendant Standard Chartered PLC is organized and existing under the laws of the United Kingdom, with a place of business at 1 Aldermanbury Square, London, EC2V 75B, United Kingdom, and is the parent corporation of Defendant Standard Chartered Bank International (Americas) Limited, by and through its wholly owned subsidiaries, Standard Chartered Holdings Ltd. and Standard Chartered Americas.

4. Defendant Standard Chartered Bank International (Americas) Limited is a corporation organized under the laws of the United States and is authorized to do business in Florida with a place of business at 1111 Brickell Avenue, Miami, Florida 33131.

5. AEBI was an Edge Act corporation that offered traditional private banking services to individuals outside of the United States and was headquartered in Miami, Florida at all relevant times.

6. In or about February 2008, Defendant Standard Chartered Bank PLC acquired the American Express Bank, Ltd. and all of its subsidiary companies and affiliated companies, including AEBI, changing its name to Standard Chartered Bank International (Americas) Limited. For ease of reference, Standard Chartered Bank PLC, AEBI, and Standard Charter Bank International (Americas) Limited shall collectively be referred to as the "Bank."

7. This Court has jurisdiction pursuant to the Edge Act of 1913 (12 U.S.C. § 632).

8. Venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in Miami, Florida.

9. This action was originally filed in the United States District Court for the Southern District of Florida. By order of the United States Judicial Panel on Multidistrict Litigation entered on May 20, 2011, this action was transferred to the United States District Court for the Southern District of New York for inclusion in the coordinated and consolidated pretrial proceedings in *In re Fairfield Greenwich Group Securities Litigation.*

**FACTUAL ALLEGATIONS**

10. In 1994, Barbachano inherited approximately $6 million following the death of her father, a well-known movie producer in Mexico.

11. In late 1996, Barbachano became a client of the Bank, and Sierra was assigned as her Relationship Manager. Barbachano advised Sierra that she had no knowledge of finances and investments and that her goal was to preserve her inheritance while making a modest return. In that regard, Barbachano advised Sierra that she (Sierra) should treat Barbachano like an "old widow" when making investment recommendations and not to gamble with her assets. Sierra advised Barbachano that her investment objective was "capital preservation and growth." Sierra further advised Barachano that her investment risk factor was considered "moderate conservative" and that her overall investment position would be conservative, but when the market presented an opportunity, Sierra would take some small risks. *See* **Exhibit A,** attached hereto and incorporated herein.

12. In addition, Sierra arranged for Barbachano to place a substantial part of her assets in a trust, which was subsequently created in the Cayman Islands, with AMEX International Trust (Cayman) Ltd., an affiliate of AEBI, acting as "Trustee," and, later, with Standard Chartered Trust (Cayman) Ltd., an affiliate of the Defendants, acting as "Trustee." The trust was initially named "Las Trojes," and was later re-named "Los Camotes," with the assets transferred into the trust by Barbachano and held by the

Trustee for the benefit of Barbachano through two companies, Fardoll Co. Ltd. and Vegadeo Co. Ltd. Barbachano was the grantor and beneficiary of the assets held by the trust through the companies.[1]

13. Throughout their relationship, the Bank, by and through Sierra, made all investment decisions for Barbachano. In particular, Sierra, and together at times with John Dutkowski ("Dutkowski"), a Senior Investment Specialist of the Bank, would tout investments to Barbachano, advise Barbachano that the investments she and Dutkowski recommended were not risky, and assure Barbachano that the Bank reviewed in detail all the investments that Sierra and Dutkowski recommended and would continually monitor Barbachano's investments. Sierra would also show investment documents to Barbachano but would not necessarily leave them for Barbachano to review because, as Sierra said, she "would not understand them." For example, in the Bank's "call report," dated July 30, 2004, Sierra writes that "[Barbachano] is still in the process of learning the investment management of the account." The July 30, 2004 call report is attached hereto as **Exhibit B.**

14. The Bank, by and through Sierra, became involved in all aspects of Barbachano's investments and finances. Sierra met with Barbachano approximately four times each year (if not more) in both Miami, Florida and Mexico to review her portfolio and make recommendations. Sierra also spoke by telephone with Barbachano on a monthly or even more frequent basis concerning her investments and finances, repeatedly assuring Barbachano that she (Sierra) was monitoring her investments. Sierra also managed withdrawals and deposits for Barbachano, caused the payment of bills for Barbachano's Florida residence and credit cards, and ensured the payment of taxes. In addition, Sierra befriended Barbachano, often meeting her for dinner and taking a vacation with her to Key West, Florida. When Barbachano decided to sell her Florida residence, Sierra caused her (Sierra's) husband to act as Barbachano's broker, thus obtaining a commission from the sale.

[1] Because of the affiliated relationship between the Trustee and the Defendants, it would be futile to demand that the Trustee bring suit against the Defendants.

**Fairfield Investments**

15. In or about January 2004, the Bank, by and through Sierra, began touting to Barbachano an investment in Fairfield Sentry Limited Fund ("Fairfield"), which was eventually exposed as a feeder fund for Madoff's Ponzi scheme. Sierra represented that the investment in Fairfield was a "risk reducer" for Barbachano's investment portfolio. Sierra further represented that the Bank had investigated Fairfield and that Fairfield was not risky, had "no volatility," provided a six (6) to seven (7) percent annual return, and was a safe, conservative investment. Sierra also represented to Barbachano that an investment in Fairfield was an opportunity for only a select number of investors.

16. Unbeknownst to Barbachano, the Bank, by and through Sierra and Dutkowski, only began touting investment in Fairfield after Fairfield agreed to pay a "trailer fee" to the Bank in the amount of one-half of one percent of each investment per year. The Bank failed to disclose to Barbachano the payment of this "trailer fee" at any time. The Bank also failed to disclose to Barbachano that it only agreed to market Fairfield after Fairfield agreed to pay the Bank the "trailer fee."

17. On February 2, 2004, on the recommendation of Sierra, upon which Barbachano reasonably relied, Barbachano invested $300,000.00 in Fairfield.

18. Also, in 2004 and 2005, Barbachano, through an investment account maintained with UBS, invested approximately $100,000.00 in Fairfield.

19. In or about January 2006, Barbachano transferred the investments she maintained at UBS to AEBI, and as a result, approximately ninety-five (95) percent of Barbachano's funds were managed by the Bank.

20. On or about February 17, 2006, Sierra and Dutkowski reviewed Barbachano's investments (*see* **Exhibit C,** attached hereto and incorporated herein) and recommended that the investments in Fairfield be kept in Barbachano's portfolio as a "risk reducer," a recommendation upon which Barbachano reasonably relied. *See* "Investment Proposal" dated February 2006, which is attached

hereto and incorporated herein as **Exhibit D**. Thereafter, the Bank would continue to recommend that Barbachano maintain and increase her investment in Fairfield.

21. In 2006, Barbachano decided to sell her residence in Florida. Sierra caused her husband, John Naranjo and his company, Acqua International Reality, to act as Barbachano's broker, thus obtaining a commission from the sale of her residence.

22. In June 2006, after receiving the net proceeds from the sale of Barbachano's residence, Sierra caused Barbachano to invest an additional $400,000.00 in Fairfield. However, The Bank did not obtain Barbachano's written authorization for this additional investment.

23. Sierra and Dutkowski always touted the investment in Fairfield as a "risk reducer" for Barbachano's investment portfolio, representations upon which Barbachano reasonably relied. For example, and as stated above, in February 2006, Sierra and Dutkowski presented Barbachano with an "Investment Proposal" that stated Fairfield was a "risk reducer." *See* **Exhibit D**. Moreover, during their conversations, Sierra and Dutkowski repeatedly told Barbachano that the investments in her portfolio were safe, were suitable to her investment objectives and risk tolerance, and that the Bank properly investigated and monitored those investments.

24. However, during this time, neither Sierra nor Dutkowski advised Barbachano that Fairfield was a feeder fund for Bernard L. Madoff Investments Securities, LLC ("BLMIS"), that the Bank had received and was continuing to receive a "trailer fee" for the investment, and that the sole function of Fairfield, other than raising money from investors and extracting healthy fees for its sponsor, Fairfield Greenwich Group ("FGG"), was to turn over those investments to BLMIS, which was controlled by Bernard L. Madoff.

25. Furthermore, despite various representations made by Sierra and Dutkowski, as described above, the Bank failed to conduct adequate due diligence concerning the Fairfield investment in violation of both the Bank's internal due diligence standards and those prevalent in its sector of the financial industry. Specifically:

a. In violation of its own internal policies, the Bank recommended the Fairfield investment without doing any initial or on-going due diligence on Fairfield's sub-advisor, BLMIS; and ,

b. The Bank ignored obvious red flags, which should have put it on notice – and which made it reasonably foreseeable – that Madoff was engaged in a fraud, including but not limited to:

   i. BLMIS' invariable positive monthly return and low standard deviation;

   ii. The lack of any comparable product with comparative returns;

   iii. The fact that BLMIS performed both execution and custodial functions with the invested funds, which was exclusively controlled by Bernard Madoff;

   iv. The fact that BLMIS failed to file required SEC Form 13-Fs prior to February 2007, and, those that were filed after February 2007, evidenced discrepancies between amounts reported and amounts the company was supposedly managing;

   v. The fact that financial institutions investing with BLMIS, including the Bank, were not generally allowed to go visit BLMIS for due diligence purposes;

   vi. The fact that BLMIS' financial audits were conducted by a two-man firm, Friedhling & Horowitz;

   vii. The fact that BLMIS did not charge an administrative fee for its services or a share of supposed profits;

   viii. The fact that BLMIS did not allow any real-time electronic access to trading; and

ix. The fact that BLMIS utilized outdated technology, including paper trading confirmations, which were sent daily via U.S. mail to feeder funds, such as Fairfield.

26. In addition, the Bank failed to disclose that Fairfield's due diligence concerning BLMIS was similarly inadequate. For example, Fairfield failed to prepare any independent accounting report regarding the design or operational effectiveness of the internal controls at BLMIS.

27. Barbachano reasonably relied on the Bank's representations, by and through Sierra and Dutkowski, regarding Fairfield and had Barbachano been aware that those representations were false, she would not have invested in Fairfield.

28. Likewise, had Barbachano been aware that the Bank failed to conduct adequate due diligence concerning the Fairfield investment, in violation of both the Bank's internal due diligence standards and those prevalent in its sector of the financial industry, that the Bank was receiving a "trailer fee" from Fairfield and had only agreed to market Fairfield after Fairfield had agreed to pay the "trailer fee," and that Fairfield had failed to conduct adequate due diligence regarding BLMIS, Barbachano would not have invested in Fairfield.

**<u>Lack of Suitability of Barbachano's Portfolio Investments</u>**

29. The Bank's stated risk tolerance for Barbachano was always moderate conservative, with an investment objective of capital preservation and growth. *See* **Exhibit A**. However, by June 2008, the Bank, by and through Sierra and Dutkowski, had made substantial changes to the composition of Barbachano's portfolio, increasing the risk in the portfolio by substantially allocating Barbachano's assets to equities and alternative investments while simultaneously decreasing the amount of assets held in cash and bonds. Thus, by June 2008, the allocation of Barbachano's portfolio to cash and bonds was a mere

eleven (11) percent, that allocation of assets was unsuitable to Barbachano's investment objective of capital preservation and growth and her risk tolerance of moderate conservative.[2]

30. Specifically, on or about June 6, 20007, Sierra and Dutkowski met with Barbachano and her husband, Hector Velasquez ("Velasquez"), in Mexico City. During this meeting, Sierra and Dutkowski recommended that Barbachano reallocate her assets based on then-existing market conditions, while maintaining her position in Fairfield. Dutkowski and Sierra claimed that they would diversify her portfolio to minimize risk, using an investment risk factor of "moderate conservative" for Barbachano's assets, and that Barbachano should expect earnings of five (5) to seven (7) percent for 2008. When Velasquez asked what Barbachano's losses could be, Dutkowski advised that in the worst of cases, Barbachano could suffer losses of ten (10) to twelve (12) percent.

31. During the June 2007 meeting, Barbachano reiterated to Sierra and Dutkowski that she did not understand anything about investments and that she wanted to be clear that she did not want to risk her money. This message was repeatedly told by Barbachano to Sierra and Dutkowski during subsequent meetings on or about September 26, 2007 and June 2, 2008

32. Moreover, during a February 28, 2008 meeting between Barbachano, Velasquez, Sierra, Dutkowski, and Carla Borelly (Sierra's assistant) in Mexico City, Dutkowski described current market conditions, and Barbachano and Velasquez "reminded [Dutkowski and Sierra] to be cautious in the event things turned worse instead of better." *See* the Bank's March 5, 2008 call report, authored by Sierra, **Exhibit E**, attached hereto and incorporated herein. Also, a month earlier, on January 18, 2008, Sierra advised Velasquez that Dutkowski had stated that the American market is "extremely undervalued and oversold," thus providing further assurances to Barbachano that her assets were not at risk and that the

[2] The respective allocations of and investments contained in Barbachano's portfolio for the months of June 2006, December 2007, June 2008, December 2008, and September 2009 are set forth in **Exhibit F**, attached hereto and incorporated herein.

Bank was monitoring her investments. However, by the summer of 2008, Sierra believed that market conditions were highly volatile and that the markets were "going crazy."

33. Furthermore, during a June 2, 2008 meeting with Barbachano, Sierra, Velasquez, and Dutkowski in Mexico City, Barbachano repeatedly asked Sierra if everything was under control with her accounts, and Sierra continuously assured Barbachano that everything was fine and that Barbachano had nothing to worry about since Sierra was taking care of everything.

34. By the end of July 2008, over forty-two (42) percent of Barbachano's portfolio was invested in Signature Global Equities – an investment that the Bank rated four out of five on its risk matrix (with five being the most risky and one being the most conservative). Moreover, by the end of July 2008, over sixteen (16) percent of Barbachano's portfolio was invested in Fairfield – an investment that was a fraud and one in which the Bank had failed to conduct adequate due diligence or disclose to Barbachano that it was receiving "trailer fees" for her continued investment in that product.

35. In or about June 2008, Barbachano also advised Sierra that she wanted to withdraw substantial funds from the portfolio managed by the Bank in order to purchase and renovate property in Mexico. Barbachano's withdrawal of funds from her portfolio would result in both Sierra receiving reduced compensation from the Bank and the Bank collecting reduced fees from Barbachano for her assets under management.

36. Sierra discouraged Barbachano from withdrawing assets from her portfolio and, instead, persuaded Barbachano to obtain a multi-million dollar loan from the Bank. Further, the Bank caused the loan to be secured by the assets contained in Barbachano's investment portfolio and, thus, increased the volatility of the portfolio.

37. In so doing, Sierra had Dutkowski prepared an analysis, based on past performance of Barbachano's portfolio, to persuade Barbachano that she should obtain the loan from the Bank rather than liquidate a portion of her portfolio. Sierra also told Barbachano that she did not need to worry about

risking her money because Barbachano had a very secure portfolio. When Barbachano raised the possibility of only taking a loan for half the amount, Sierra insisted that a full loan was the better course.

38. It was unsuitable investment advice for Sierra to recommend that Barbachano leverage her portfolio and obtain a multi-million dollar loan from the Bank when Sierra knew that the market was experiencing extreme volatility. In addition, Sierra did not advise Barbachano that it was to her (Sierra's) financial benefit for Barbachano to obtain a loan from the Bank rather than reduce the amount of assets contained in Barbachano's portfolio.

**The Fallout**

39. In 2008-09, Barbachano suffered losses of approximately forty-three (43) percent in her portfolio, including all monies invested in Fairfield when Madoff's Ponzi scheme was revealed on December 11, 2008. Even excluding the investment in Fairfield, Barbachano lost approximately twenty-six (26) percent of the value of her portfolio – losses that Barbachano would not have suffered if the Bank had managed her portfolio consistent with Barbachano's risk level and investment objective.

40. In late August 2009, Sierra left the employment of the Bank. On August 19, 2009, however, and prior to her departure from the Bank, Sierra advised Barbachano (while at Barbachano's home in Mexico) that she should sue the Bank because her assets had been mismanaged – specifically, that there were suitability issues related to Barbachano's portfolio and that the Bank was a "mess." Sierra also told Barbachano that she (Sierra) did not obtain written authorization from Barbachano for many of the investments made and sold by the Bank on her behalf, as she was required to obtain, and failed to make changes to the trust, as Barbachano had requested. Further, upon Sierra's departure from the Bank, she failed to give Barbachano documents that Barbachano had previously requested.

41. On or about September 9, 2009, the Bank, by and through its representative and Barbachano's new relationship manager, Jose del Vecchio ("Del Vecchio"), met with Barbachano and Velasquez in Mexico City. Del Vecchio told Barbachano that her portfolio had been mismanaged. Rather than having a moderate conservative portfolio, many of her assets had actually been placed in

high-risk investments and Barbachano's portfolio was actually "aggressive," which was the reason she had lost so much money. Del Vecchio also criticized Sierra's management of Barbachano's account.

42. In October 2009, Del Vecchio, along with Dutkowski, recommended a new allocation of Barbachano's remaining assets to align her portfolio with her investment objectives. The proposal reduced Barbachano's investment in equities and increased her position in fixed income assets, which would re-allocate the composition of the portfolio to make it more conservative. The Bank, by and through Del Vecchio and Dutkowski, proposed that Barbachano's investment in Signature Global Securities be reduced by $1.2 million (reducing her equity assets from approximately fifty-one (51) percent of her portfolio to approximately twenty-four (24) percent of her portfolio) and that she invest $1.7 million in PIMCO Global Bonds (increasing her fixed income assets from approximately twenty-three (23) percent of her portfolio to approximately sixty-one (61) percent of her portfolio). A copy of the October 2009 "Investment Proposal" is attached hereto and incorporated herein as **Exhibit G.**

43. Thereafter, Barbachano attempted to end her relationship with the Bank and transfer her assets. However, the Bank, by and through Del Vecchio, attempted to have Barbachano execute documents releasing the Bank from any liability for the losses that she had suffered. The Bank also failed to provide Barbachano with account documentation that she repeatedly requested. And, to release her assets, the Bank demanded that Barbachano repay her loan full, which Barbachano ultimately did in order to transfer her assets.

44. Finally, in or about April 2010, Barbachano closed her accounts with the Bank.

## COUNT I

## INVESTMENT FRAUD – VIOLATION OF FLORIDA STAT. §§ 517.301 & 517.211(2) (AGAINST ALL DEFENDANTS)

45. Barbachano realleges paragraphs 1-44 as if fully set forth herein.

46. This is an action against the Defendants for violations of the anti-fraud provisions of section 517.301 of the Florida Statutes, part of the Florida Securities and Investors Protection Act (the "Act"), which seeks recovery pursuant to section 517.211(2) of the Florida Statutes, all part of the Act.

47. Section 517.301 provides in relevant part that:

> It is unlawful and a violation of the provisions of [Chapter 517] for a person:
>
> (a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment . . ., directly or indirectly:
>
> > 1. To employ any device, scheme, or artifice to defraud;
> >
> > 2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
> >
> > 3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

48. Section 517.211(2), Fla. Stat., also provides in relevant part:

> Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

49. The shares of Fairfield were a "security" as that term is used in the Act. In addition, the Defendants rendered investment advice in connection with Fairfield and other securities and investments in Barbachano's investment portfolio, which also included securities with Global Signature Equities.

50. Defendants, by and through Bank employees working from the Bank's Miami, Florida location, rendered unsuitable investment advice to Barbachano in connection with the purchase and sale of securities in her investment portfolio, causing that portfolio to be allocated among investments unsuited to her investment objectives and risk tolerance. In so doing, Defendants employed a device, scheme, or artifice to defraud Barbachano; Defendants obtained money or property by means of untrue statements of a material fact and/or failure to state material facts necessary in order to make the

statements made, in the light of the circumstances under which they were made, not misleading; and/or Defendants engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon Barbachano.

51. The Defendants knew or should have known that the allocation of investments were unsuitable for Barbachano; the Defendants recommended the investments to Barbachano notwithstanding the unsuitability thereof and her lack of investment sophistication; the Defendants, fraudulently and/or negligently made material misrepresentations of material facts and failed to disclose material information relating to the suitability of the investments that they recommended; and the Defendants often made investment decisions without obtaining Barbachano's written authorization.

52. In particular, by June 2008, the Bank, by and through Sierra and Dutkowski, had made substantial changes to the composition of Barbachano's portfolio, increasing the risk in the portfolio by allocating the vast majority – eighty-nine (89) percent – of Barbachano's assets to equities and alternative investments while decreasing the amount of assets held in cash and bonds. Thus, by June 2008, the allocation of Barbachano's portfolio to cash and bonds had been reduced. That reallocation of assets was unsuitable to Barbachano's investment objective of capital preservation and growth and her risk tolerance of moderate conservative.

53. Moreover, by July 2008, over forty-two (42) percent of Barbachano's portfolio was invested in Signature Global Equities – an investment that the Bank rated four out of five on its risk matrix (with five being the most risky and one being the most conservative). Also, by July 2008, over sixteen (16) percent of Barbachano's portfolio was invested in Fairfield – an investment that was a fraud and one in which the Bank had failed to conduct adequate due diligence, monitor, or disclose to Barbachano that it was receiving "trailer fees" for her purchase and continued investment in that security.

54. Furthermore, in 2008, the Defendants caused Barbachano to obtain a multi-million dollar loan from the Bank rather than liquidate a portion of her portfolio. It was unsuitable investment advice for Sierra to recommend that Barbachano leverage her investment portfolio and obtain a multi-million

dollar loan from the Bank when Sierra knew that the market was experiencing extreme volatility. In addition, Sierra did not advise Barbachano that it was to her (Sierra's) financial benefit for Barbachano to obtain a loan from the Bank rather than reduce the amount of assets under management in Barbachano's portfolio.

55. The Defendants knew or should have known that the recommendations made to Barbachano were unsuited to her investment objectives and risk tolerance.

56. The Defendants acted or purported to act as a fiduciary to Barbachano in rendering her investment advice in connection with the purchase and sale of securities in her investment portfolio.

57. Barbachano justifiably relied upon Defendants' misrepresentations and omissions, following their investment recommendations and decisions in connection with the purchase and sale of securities in her investment portfolio.

58. In addition, the Defendants acted as an undisclosed agent of Fairfield in connection with Barbachano's purchase of that security and the Bank's recommendation that Barbachano maintain her investment in Fairfield, obtaining hidden "trailer fees" from Fairfield for Barbachano's purchase and continued investment in the Fairfield securities.

59. The Defendants also failed to conduct adequate due diligence and ignored obvious red flags in connection with their recommendation that Barbachano purchase and maintain her investment in Fairfield securities, while fraudulently and/or negligently representing to Barbachano that they had reviewed in detail all the investments recommended to her, and while fraudulently and/or negligently touting the investment in Fairfield as a "risk reducer" for Barbachano's investment portfolio, and fraudulently and/or negligently representing that Fairfield had "no volatility," would provide a six (6) to seven (7) percent annual return, and was a safe, conservative investment, when the Bank failed to conduct any due diligence to make and/or verify these representations.

60. Furthermore, the Defendants' failure to disclose to Barbachano the "trailer fees" obtained from Fairfield constitutes an omission of a material fact in connection with the purchase or sale of a

security, and the Defendants acted fraudulently and/or negligently in failing to the disclose that fact in order to conceal from Barbachano their material misrepresentations, lack of due diligence, hidden financial incentive, and breach of fiduciary duties in connection with Barbachano's purchase of, and continued investment in the Fairfield securities.

61. Barbachano justifiably relied upon Defendants' misrepresentations and omissions with regard to the Defendants' recommendation to purchase and to continue to invest in the Fairfield securities.

62. Barbachano has suffered substantial damages as a result of Defendants' material omissions and false and/or negligent misrepresentations of material facts.

63. Likewise, Barbachano has suffered substantial damages as a result of Defendants' failure to take reasonable steps to substantiate the investment recommendations made to her by conduting due diligence, which recommendations caused and induced her investment losses.

WHEREFORE, Plaintiff, Joaquina Teresa Barbachano Herrero, demands judgment against Defendants for damages, prejudgment interest, attorneys' fees pursuant to Section 517.211(6) of the Florida Statutes and costs, and for such other relief as the Court deems just and proper.

## COUNT II

### BREACH OF FIDUCIARY DUTY
### (AGAINST ALL DEFENDANTS)

64. Barbachano realleges paragraphs 1-44 as if fully set forth herein.

65. This is an action against the Defendants for breach of fiduciary duty.

66. Defendants entered into and had a fiduciary relationship with Barbachano, and Defendants. Barbachano and the Defendants also shared a relationship whereby Barbachano reposed her trust and confidence in Defendants regarding their investment recommendations and decisions. In particular, Defendants rendered investment advice to Barbachano and directed her investments and finances. Moreover, Sierra became involved in all aspects of Barbachano's investments and finances, and Sierra befriended Barbachano, obtaining Barbachano's trust and confidence in Sierra's recommendations.

The Defendants, by and through Sierra and Dutkowski, knew Barbachano's investment objectives and risk tolerance. The Defendants, by and through Sierra and Dutkowski, made continuing representations and recommendations regarding the investments that they touted to Barbachano, the due diligence that the Defendants performed with regard to those investments, the Defendants' continued monitoring of the investments contained in Barbachano's portfolio, and the safety and security of her portfolio investments. The Defendants further undertook to make recommendations regarding whether to liquidate or not assets contained in Barbachano's portfolio.

67. As such, Defendants owed Barbachano fiduciary duties of loyalty and care, including duties to make suitable investment recommendations and decisions only after conducting reasonable due diligence, researching potential investments, and disclosing all material facts, including the risks involved in any investment.

68. Defendants also owed Barbachano fiduciary duties to render investment and financial advice suitable to her investment objectives and risk tolerance, including suitable recommendations regarding the asset allocations contained in Barbachano's portfolio. The Defendants further owed Barbachano fiduciary duties to review the investments contained in her investment portfolio, to render suitable recommendations regarding the increase or liquidation of assets in her investment portfolio, including whether to borrow against and leverage those assets, to continuously monitor the investments contained in Barbachano's portfolio, and to cause the purchase or sale of investments on behalf of Barbachano only after obtaining Barbachano's written authorization.

69. In addition, Defendants owed Barbachano a fiduciary duty not to make material misrepresentations of fact or to omit material facts, including the disclosure of any facts that would give rise to a conflict of interest.

70. Defendants breached the fiduciary duties that they owed to Barbachano by causing her to make investments unsuited to her investment objectives and risk tolerance, including the failure to allocate investments consistent with those investment objectives and risk tolerance, by causing

Barbachano to obtain a multi-million dollar loan from the Defendants rather than liquidating part of her investment portfolio, by failing to disclose in connection with the loan that it was to Sierra's financial benefit that Barbachano obtain the loan rather than liquidate part of her portfolio, and by often making investment decisions without obtaining Barbachano's written authorization, including the purchase of Fairfield securities. The Defendants knew or should have known that the allocation of investments contained in Barbachano's investment portfolio was unsuitable for her investment objectives and risk tolerance; the Defendants recommended investments to Barbachano notwithstanding the unsuitability thereof and her lack of investment sophistication; and the Defendants fraudulently and/or negligently made material misrepresentations and failed to disclose material information relating to the suitability of the investments it recommended and the recommendation that Barbachano leverage her portfolio and obtain a multi-million dollar loan in 2008 rather than liquidate part of her portfolio.

71. Furthermore, in breach of their fiduciary duties, the Defendants ignored obvious red flags, failed to conduct reasonable due diligence, disclose material facts, and adequately research and/or disclose the risks involved in Fairfield, which investment Defendants fraudulently and/or negligently touted as a "risk reducer" for Barbachano's investment portfolio and fraudulently and/or negligently represented as having "no volatility," as providing a six (6) to seven (7) percent annual return, and as a safe, conservative investment.

72. The Defendants, in breach of their fiduciary duties, also failed to monitor Barbachano's investments, including her investment in Fairfield.

73. In addition, the Defendants breached their fiduciary duties of care and loyalty that they owed to Barbachano by accepting "trailer fees" from Fairfield and by failing to disclose the same to Barbachano. In so doing, the Defendants acted as an agent of Fairfield and under a conflict of interest that the Defendants had a duty to disclose to Barbachano.

74. Barbachano justifiably relied upon Defendants' investment advice, expertise, and skill and she suffered substantial damages as a result.

75. Likewise, Barbachano has suffered substantial damages as a result of Defendants' failure to take reasonable steps to substantiate the investment recommendations made to her, which recommendations caused and induced her investment losses.

76. Defendants' breach of fiduciary duty constitutes intentional misconduct or gross negligence, as those terms are defined in section 768.72, Fla. Stat. Accordingly, Barbachano reserves the right to amend the Complaint to seek punitive damages.

WHEREFORE, Plaintiff, Joaquina Teresa Barbachano Herrero, demands judgment against Defendants for damages, costs, prejudgment interest, and for such other relief as the Court deems just and proper.

## COUNT III

## FRAUD, INCLUDING FRAUDULENT CONCEALMENT (AGAINST ALL DEFENDANTS)

77. Barbachano realleges paragraphs 1-44 as if fully set forth herein.

78. This is an action against Defendants for common law fraud, including fraudulent concealment.

79. Defendants acted as investment advisors for Barbachano. In so doing, Defendants rendered investment advice to Barbachano and directed her investments and finances. Moreover, Sierra became involved in all aspects of Barbachano's investments and finances, and Sierra befriended Barbachano, obtaining Barbachano's trust and confidence in Sierra's recommendations. The Defendants, by and through Sierra and Dutkowski, knew Barbachano's investment objectives and risk tolerance. The Defendants, by and through Sierra and Dutkowski, made continuing representations and recommendations regarding the investments that they touted to Barbachano, the due diligence that the Defendants performed with regard to those investments, the Defendants' continued monitoring of the investments contained in Barbachano's portfolio, and the safety and security of her portfolio investments.

The Defendants further undertook to make recommendations regarding whether to liquidate or not assets contained in Barbachano's portfolio.

80. Accordingly, Defendants owed Barbachano duties to render investment and financial advice suitable to her investment objectives and risk tolerance, including suitable recommendations regarding the asset allocations contained in Barbachano's portfolio. The Defendants further owed Barbachano duties to review the investments contained in her investment portfolio, to render suitable recommendations regarding the increase or liquidation of assets in her investment portfolio, including whether to borrow against and leverage those assets, to continuously monitor the investments contained in Barbachano's portfolio, and to cause the purchase or sale of investments on behalf of Barbachano only after obtaining Barbachano's written authorization.

81. In addition, Defendants owed Barbachano duties not to make fraudulent, material misrepresentations of fact or to omit material facts, including the disclosure of any facts that would give rise to a conflict of interest, with respect to any and all of the duties that Defendants undertook on behalf of Barbachano.

82. Defendants fraudulently misrepresented material facts and fraudulently concealed and failed to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Specifically, the Defendants, by and through Sierra and Dutkowski, acting with the intent to deceive and defraud, misrepresented to Barbachano that:

a. The investment recommendations made to her were consistent with her investment objectives and moderate conservative risk tolerance when, in fact, the investment recommendations resulted in an aggressive investment portfolio, unsuited to Barbachano's investments objective and risk tolerance;

b. Obtaining a multi-million dollar loan from the Defendants that leveraged the assets contained in Barbachano's portfolio, rather than liquidating part of that portfolio, was suitable to her investment objective and risk tolerance when, in fact, it was not;

c. The Bank performed adequate due diligence with regard to all recommended investments, including Fairfield, when, in fact, the Bank failed to conduct adequate due diligence; and

d. The Fairfield investment was a "risk reducer" for Barbachano's investment portfolio and that the Fairfield investment had "no volatility," provided a six (6) to seven (7) percent annual return, and was a safe, conservative investment.

83. The Defendants also fraudulently concealed and failed to disclose material facts to Barbachano and ignored red flags, further demonstrating its fraudulent intent with regard to the misrepresentations set forth above, including the Defendants' failure to disclose that:

a. The Bank received a "trailer fee" from Fairfield;

b. The Bank was acting as an agent of Fairfield;

c. The Bank only agreed to tout Fairfield to its clients, including Barbachano, after Fairfield agreed to pay the "trailer fee" to the Bank; and

d. Sierra financially benefitted from Barbachano obtaining a multi-million dollar loan from the Bank rather than liquidating a part of her portfolio.

84. Barbachano justifiably relied upon Defendants' fraudulent misrepresentations, following the investment recommendations made by Sierra and Dutkowski.

85. As a direct and proximate result of the Defendants' fraudulent misrepresentations, concealment, and omissions, Barbachano has suffered substantial damages.

86. Defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of Barbachano. Accordingly, Barbachano reserves the right to amend the Complaint to seek punitive damages.

87. WHEREFORE, Plaintiff, Joaquina Teresa Barbachano Herrero, demands judgment against Defendants for damages, costs, prejudgment interest, and for such other relief as the Court deems just and proper.

## COUNT IV

## GROSS NEGLIGENCE
## (AGAINST ALL DEFENDANTS)

88. Barbachano realleges paragraphs 1-44 as if fully set forth herein.

89. This is an action against the Defendants for gross negligence.

90. Defendants acted as investment advisors for Barbachano. In so doing, Defendants rendered investment advice to Barbachano and directed her investments and finances. Moreover, Sierra became involved in all aspects of Barbachano's investments and finances, and Sierra befriended Barbachano, obtaining Barbachano's trust and confidence in Sierra's recommendations. The Defendants, by and through Sierra and Dutkowski, knew Barbachano's investment objectives and risk tolerance. The Defendants, by and through Sierra and Dutkowski, made continuing representations and recommendations regarding the investments that they touted to Barbachano, the due diligence that the Defendants performed with regard to those investments, the Defendants' continued monitoring of the investments contained in Barbachano's portfolio, and the safety and security of her portfolio investments. The Defendants further undertook to make recommendations regarding whether to liquidate or not assets contained in Barbachano's portfolio.

91. Accordingly, Defendant owed Barbachano duties of care to make suitable investment recommendations and decisions only after conducting reasonable due diligence, researching potential investments, and disclosing all material facts, including the risks involved in any investment.

92. Defendants also owed Barbachano duties to render investment and financial advice suitable to her investment objectives and risk tolerance, including suitable recommendations regarding the asset allocations contained in Barbachano's portfolio. The Defendants further owed Barbachano duties to review the investments contained in her investment portfolio, to render suitable recommendations regarding the increase or liquidation of assets in her investment portfolio, including whether to borrow against and leverage those assets, to continuously monitor the investments contained in Barbachano's portfolio, and to cause the purchase or sale of investments on behalf of Barbachano only after obtaining Barbachano's written authorization.

93. In addition, Defendants owed Barbachano duties not to make material misrepresentations of fact or to omit material facts, including the disclosure of any facts that would give rise to a conflict of interest.

94. Defendants breached the duties that they owed to Barbachano and were grossly negligent by causing her to make investments unsuited to her investment objectives and risk tolerance, including the failure to allocate investments consistent with those investment objectives and risk tolerance, by causing Barbachano to obtain a multi-million dollar loan from the Defendants rather than liquidating part of her investment portfolio, by failing to disclose in connection with the loan that it was to Sierra's financial benefit that Barbachano obtain the loan rather than liquidate part of her portfolio, and by often making investment decisions without obtaining Barbachano's written authorization, including the purchase of Fairfield securities. The Defendants knew or should have known that the allocation of investments contained in Barbachano's investment portfolio was unsuitable for her investment objectives and risk tolerance; the Defendants recommended investments to Barbachano notwithstanding the unsuitability thereof and her lack of investment sophistication; and the Defendants were grossly negligent in making material misrepresentations and failing to disclose material information relating to the suitability of the investments it recommended and the recommendation that Barbachano leverage her portfolio and obtain a multi-million dollar loan in 2008 rather than liquidate part of her portfolio.

95. Furthermore, in breach of their duties owed to Barbachano, the Defendants were grossly negligent in failing to conduct reasonable due diligence, disclose material facts, and adequately research and/or disclose the risks involved in Fairfield, which investment Defendants negligently touted as a "risk reducer" for Barbachano's investment portfolio and negligently represented as having "no volatility," as providing a six (6) to seven (7) percent annual return, and as a safe, conservative investment.

96. The Defendants, in breach of their duties owed to Barbachano, were also grossly negligent in failing to monitor Barbachano's investments, including her investment in Fairfield.

97. In addition, the Defendants breached their duties owed to Barbachano and were grossly negligent by accepting "trailer fees" from Fairfield and by failing to disclose the same to Barbachano. In so doing, the Defendants acted as an agent of Fairfield and under a conflict of interest that the Defendants had a duty to disclose to Barbachano.

98. Barbachano justifiably relied upon Defendants' investment advice, expertise, and skill and she suffered substantial damages as a result.

99. Likewise, Barbachano has suffered substantial damages as a result of Defendants' failure to take reasonable steps to substantiate the investment recommendations made to her, which recommendations caused and induced her investment losses.

100. As a direct and proximate result of Defendants' gross negligence, Barbachano has suffered damages.

101. Defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of Barbachano. Defendants' conduct constitutes gross negligence, as defined in section 768.72, Fla. Stat. Accordingly, Barbachano reserves the right to amend the Complaint to seek punitive damages.

WHEREFORE, Plaintiff, Joaquina Teresa Barbachano Herrero, demands judgment against Defendants for damages, costs, prejudgment interest, and for such other relief as the Court deems just and proper.

## COUNT V

## NEGLIGENT MISREPRESENTATION
**(ALL DEFENDANTS)**

102. Barbachano realleges paragraphs 1-44 as if fully set forth herein.

103. This is an action against the Defendants for negligent misrepresentation.

104. Defendants acted as investment advisors for Barbachano. In so doing, Defendants rendered investment advice to Barbachano and directed her investments and finances. Moreover, Sierra became involved in all aspects of Barbachano's investments and finances, and Sierra befriended Barbachano, obtaining Barbachano's trust and confidence in Sierra's recommendations. The Defendants, by and through Sierra and Dutkowski, knew Barbachano's investment objectives and risk tolerance. The Defendants, by and through Sierra and Dutkowski, made continuing representations and

recommendations regarding the investments that they touted to Barbachano, the due diligence that the Defendants performed with regard to those investments, the Defendants' continued monitoring of the investments contained in Barbachano's portfolio, and the safety and security of her portfolio investments. The Defendants further undertook to make recommendations regarding whether to liquidate or not assets contained in Barbachano's portfolio.

105. Accordingly, Defendants owed Barbachano duties to render investment and financial advice suitable to her investment objectives and risk tolerance, including suitable recommendations regarding the asset allocations contained in Barbachano's portfolio. The Defendants further owed Barbachano duties to review the investments contained in her investment portfolio, to render suitable recommendations regarding the increase or liquidation of assets in her investment portfolio, including whether to borrow against and leverage those assets, to continuously monitor the investments contained in Barbachano's portfolio, and to cause the purchase or sale of investments on behalf of Barbachano only after obtaining Barbachano's written authorization.

106. In addition, Defendants owed Barbachano duties not to make material misrepresentations of fact or to omit material facts, including the disclosure of any facts that would give rise to a conflict of interest, with respect to any and all of the duties that Defendants undertook on behalf of Barbachano.

107. Defendants negligently misrepresented material facts and negligently failed to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Specifically, the Defendants, by and through Sierra and Dutkowski, negligently represented to Barbachano that:

a. The investment recommendations made to her were consistent with her investment objectives and moderate-conservative risk tolerance when, in fact, the investment recommendations resulted in an aggressive investment portfolio, unsuited to Barbachano's investments objective and risk tolerance;

b. Obtaining a multi-million dollar loan from the Defendants that leveraged the assets contained in Barbachano's portfolio, rather than liquidating part of that portfolio, was suitable to her investment objective and risk tolerance when, in fact, it was not;

c. The Bank performed adequate due diligence with regard to all recommended investments, including Fairfield, when, in fact, the Bank failed to conduct adequate due diligence; and

d. The Fairfield investment was a “risk reducer” for Barbachano’s investment portfolio and that the Fairfield investment had “no volatility,” provided a six (6) to seven (7) percent annual return, and was a safe, conservative investment.

108. The Defendants also failed to disclose material facts to Barbachano and ignored obvious red flags, further demonstrating its negligent scienter with regard to the misrepresentations set forth above, including the Defendants’ failure to disclose that:

a. The Bank received a “trailer fee” from Fairfield;

b. The Bank was acting as an agent of Fairfield;

c. The Bank only agreed to tout Fairfield to its clients, including Barbachano, after Fairfield agreed to pay the “trailer fee” to the Bank; and

d. Sierra financially benefitted from Barbachano obtaining a multi-million dollar loan from the Bank rather than liquidating a part of her portfolio.

109. Barbachano justifiably relied upon Defendants’ negligent misrepresentations, following the investment recommendations made by Sierra and Dutkowski.

110. As a direct and proximate result of the Defendants’ negligent misrepresentations and omissions, Barbachano has suffered substantial damages.

111. Defendants’ conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of Barbachano. Defendants’ conduct constitutes gross negligence, as defined in section 768.72, Fla. Stat. Accordingly, Barbachano reserves the right to amend the Complaint to seek punitive damages.

WHEREFORE, Plaintiff, Joaquina Teresa Barbachano Herrero, demands judgment against Defendants for damages, costs, prejudgment interest, and for such other relief as the Court deems just and proper.

## COUNT VI

## NEGLIGENCE
## (ALL DEFENDANTS)

112. Barbachano realleges paragraphs 1-44 as if fully set forth herein. This is an action for negligence against Defendants.

113. At all material times, Defendants owed a duty to Plaintiff to exercise reasonable care.

114. Defendants breached that duty to exercise reasonable care and failed to use the care that a reasonably careful person would use under like circumstances, by among other things, doing or failing to do the following:

a. Making units in the Fairfield Sentry Fund available to Plaintiff and other customers to purchase and recommending the purchase of units of the Fairfield Sentry Fund to Plaintiff and other customers while:

i. Knowing that Madoff Securities was functioning in the multiple roles of investment manager, broker, and custodian for the assets of Fairfield Sentry and, therefore, knowing that no independent third party served as neither the investment manager, the broker for the supposed execution of trades, or the custodian and no independent means existed for, among other things, verifying the accuracy of the trades being reported by monthly statements and trade confirmation, the accuracy of the reports of the value of the assets that supposedly were under management and held in custody, and the accuracy of the performance record being reported;.

ii. Knowing that financial institutions that invest in Fairfield Sentry were not allowed to go and visit Madoff or Madoff Securities for due diligence purposes and knowing that American Express Bank would not be permitted to speak with Madoff about any aspect of Madoff's management, brokerage, and custody of the assets of Fairfield Sentry;

iii. Failing to conduct a reasonable due diligence investigation directly of Madoff Securities including, but not limited to, failing to review documents and actual trade tickets, failing to conduct reasonable due diligence interviews of Madoff and the alleged traders and analysts who supposedly implemented the strategy, and failing to observe them during trading hours;

iv. Failing to conduct reasonable due diligence investigation into the alleged due diligence (both initial and ongoing) and supervision conducted by Fairfield Greenwich and Fairfield Sentry into Madoff, Madoff Securities, Madoff's two-person accounting firm, the counterparties on the alleged option trades, the alleged trading, the review of alleged trades, and the systems to prevent fraud and the gaps in those systems as actually being implemental;

v. Failing to conduct a reasonable due diligence investigation into the performance record being reported by Fairfield Sentry and whether it was reasonable given the reports in industry publications, the nature of the split-strike conversion strategy, the movement of the S&P 100, and the negative skew of put to call premiums on the S&P since 1986 as published by the Chicago Board of Options Exhange ("CBOE");

vi. Failing to conduct a reasonable due diligence investigation into the split strike conversion strategy as it was supposedly being employed by Madoff for Fairfield Sentry;

vii. Failing to conduct a reasonable due diligence investigation of the alleged counter-parties on the over-the-counter options allegedly being purchased and sold by Madoff for Fairfield Sentry, including an investigation of the identity of these counter-parties, interview of the counter-parties, review of the contracts for the options with these counter-parties, and investigation of the financial wherewithal of these counter-parties to perform their obligations under the option agreements;

viii. Failing to conduct a reasonable due diligence investigation of the two-person public accounting firm hired by Madoff to audit and report on the trading conducted for Fairfield Sentry and the other feeder funds;

ix. Failing to communicate to its relationship managers and investment specialists the essential facts relating to the due diligence investigation, which, if so communicated, would have prevented relationship managers and investment specialists from recommending Fairfield Sentry;

x. Failing to recognize as part of its due diligence investigation that a new version of the Private Placement Memorandum removed all references to Madoff and Madoff Securities and their multiple roles as the investment manager, the broker, and the custodian;

xi. Failing to recognize that since 1986 the premiums for equidistant puts on the S&P 500 Index have been higher than equidistant calls, which is known and published on the website of the CBOE as the Skew Index, and that therefore, the carry neutral explanation given by Madoff was impossible and the performance record of Fairfield Sentry was highly suspect;

b. Failing to monitor the Plaintiff's investment in Fairfield Sentry after Defendant recommended the purchase of the units of Fairfield Sentry to Plaintiff and other customers, including but not limited to, failing to take or advise that action be taken in order to protect Plaintiff's investment while;

i. Knowing that Madoff Securities continued to function in the multiple roles of investment manager, broker, and custodian for the assets of Fairfield Sentry with no independent third party serving as either the investment manager, the broker for the supposed execution of trades, or the custodian and with no independent means existing to, among other things, verify the accuracy of the trades being reported by monthly statements and trade confirmations, the accuracy of the reports of the value of the assets that supposedly were under management and held in custody, and the accuracy of the performance record being reported;

ii. Knowing that Madoff and Madoff Securities continued to prohibit financial institutions that invested in Fairfield Sentry from being allowed to go and visit Madoff or Madoff Securities for due diligence purposes and knowing that American Express Bank would not be permitted to speak with Madoff about any aspect of Madoff's management, brokerage, and custody of the assets of Fairfield Sentry;

iii. Failing to conduct a reasonable ongoing due diligence investigation directly of Madoff Securities including, but not limited to, failing to review documents and actual trade tickets, failing to conduct probing interviews of Madoff and the alleged traders and analysts who supposedly implemented the strategy, and failing to observe them during trading hours;

iv. Failing to conduct a reasonable ongoing due diligence investigation into the alleged due diligence (both initial and ongoing) and supervision conducted by Fairfield Greenwich and Fairfield Sentry into Madoff, Madoff Securities, Madoff's two-person accounting firm, the counterparties on the alleged option trades, the alleged trading, the review of alleged trades, and the systems to prevent fraud and the gaps in those systems as actually being implemented;

v. Failing to conduct a reasonable ongoing due diligence investigation into the performance record being reported by Fairfield Sentry and whether itt was reasonably given the nature of the split-strike conversion strategy, the movement of the S&P 100, and the negative skew of put to callpremiums on the S&P 500 since 1986 as published by the Chicago Board of Options Exhange ("CBOE");

vi. Failing to conduct a reasonable ongoing due diligence investigation into the split strike conversion strategy as it was supposedly being employed by Madoff for Fairfield Sentry;

vii. Failing to conduct a reasonable ongoing due diligence investigation of the alleged counter-parties on the over-the-counter options allegedly being purchased and sold by Madoff for Fairfield Sentry, including an investigation of the identity of these counter-parties, interviews of the counter-parties, review of the contracts for the options with these counter-parties, and investigation of the financial wherewithal of these counter-parties to perform their obligations under the option agreements;

viii. Failing to conduct a reasonable ongoing due diligence investigation of the two-person public accounting firm hired by Madoff to audit and report on the trading conducted for Fairfield Sentry and the other feeder funds;

ix. Failing to communicate to its relationship managers and investment specialists the essential facts relating to the due diligence investigation, which, if so communicated, would have prevented relationship managers and investment specialists from continuing to recommend Fairfield Sentry;

x. Failing to recognize as part of its due diligence investigation that a new version of the Private Placement Memorandum removed all referenes to Madoff and Madoff Securities and their multiple roles as the investment manager, the broker, and the custodian.

xi. Continuing to fail to recognize that since 1986 the premiums for equidistant puts on the S&P 500 Index have been higher than equidistant calls, which is known and published on the website of the CBOE as the Skew Index, and that therefore, the carry neutral explanation given by Madoff was completely fallacious and the performance record of Fairfield Sentry was highly suspect;

xii. Failing at a meeting on April 15, 2008, with Madoff to recognize that the "asymmetric" profit profile described by Madoff was impossible since 1986, failing to question Madoff competently and thoroughly about his strategy and the scope of this supposed assets under management, failing to question Madoff competently and thoroughly about the systems in place to prevent fraud and the gaps in those systems as actually being implemented; and failing to send personnel to the meeting who possessed an adequate basic knowledge of the equity and over-the-counter options markets to understand that Madoff's explanations made no sense.

115. As a direct and proximate result of the foregoing negligence of Defendants, Plaintiff suffered damages in the amount of the investment made by Plaintiff in Fairfield Sentry and interest thereon.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages, plus pre-judgment interest, costs and for such further relief as the Court deems just and proper.

**PLAINTIFF'S DEMAND FOR JURY TRIAL**

116. Plaintiff demands a trial by jury on all issues so triable of right by a jury.

Respectfully submitted,

By: /s/ H. Eugene Lindsey III, Esq.
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New York Bar No. 2421923
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KATZ BARRON SQUITERO FAUST
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*Attorneys for Plaintiff*

AMERICAN EXPRESS PRIVATE BANK

AMERICAN
EXPRESS
BANK

# The Private Bank

EXHIBIT
199
4-24-12 TM

Proposal Prepared for
Geneva 4652
Prepared by Jennifer Sierra
Tel. (305) 530 - 2558
Presented in July 25, 2002

TB000645

EXHIBIT
A

# Agenda

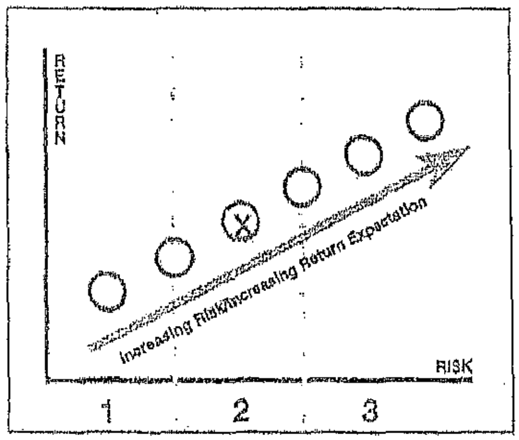


This proposal is a tool to assist you and your Relationship Manager in developing your current and/or long-term investment strategy. In using this proposal, please remember the following important points: The proposed Asset Allocation and proposed AEB Portfolio are based upon (1) your financial goals and investment categories you wish to avoid or limit; (2) the time frames of your financial goals; and (3) historical performance of major categories of investments and AEB's economics experts' forecasts about future long-term performance of financial markets. They show you potential combinations and proportions of various types of investments that seek to move you toward your financial goals at a level of risk acceptable to you. There is no guarantee that the proposed asset allocations and proposed investments will perform as forecasted or as they have in the past. There is no guarantee that your financial goals will be met.

You must consult your attorney for all questions involving legal issues.

# Investment Objectives

*We begin with a thorough assessment of your needs and goals, as determined through American Express Bank's proprietary evaluation process. Investments are selected with the goal of maximizing return and minimizing risk in accordance with each investor's risk profile and time horizon.*




1. Conservative – More concerned with preserving capital than maximizing capital gains. Can tolerate infrequent, very moderate negative returns.

2. Moderate – Seeks higher returns and, consequently, is able to tolerate several quarters of negative returns through difficult phases of a market cycle.

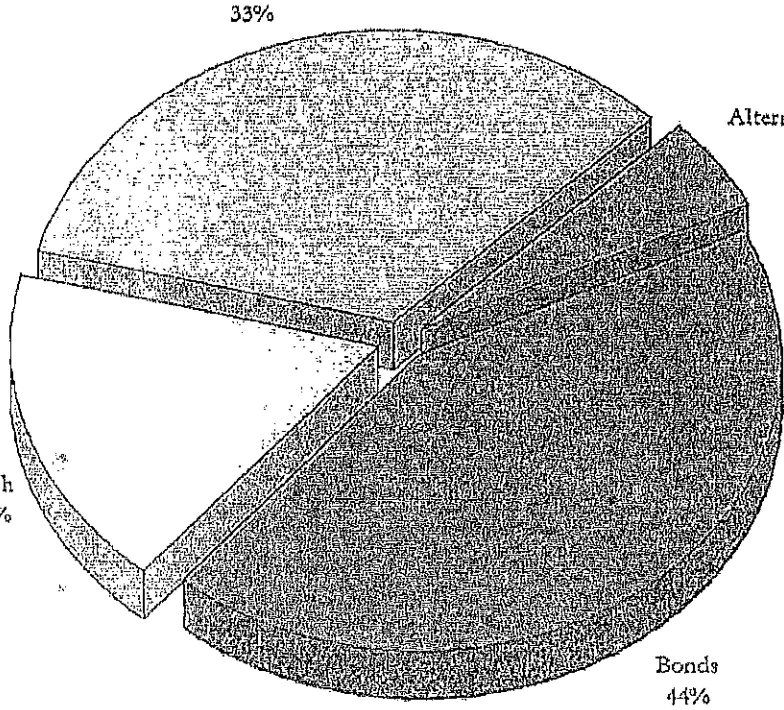
3. Aggressive – Seeks maximum capital gains, and is able to tolerate more than one year of negative returns in exchange for the highest potential returns.

# Your Objectives

*Based on your responses to the Investment and Fiduciary Questionnaires, this is our understanding of your needs.*

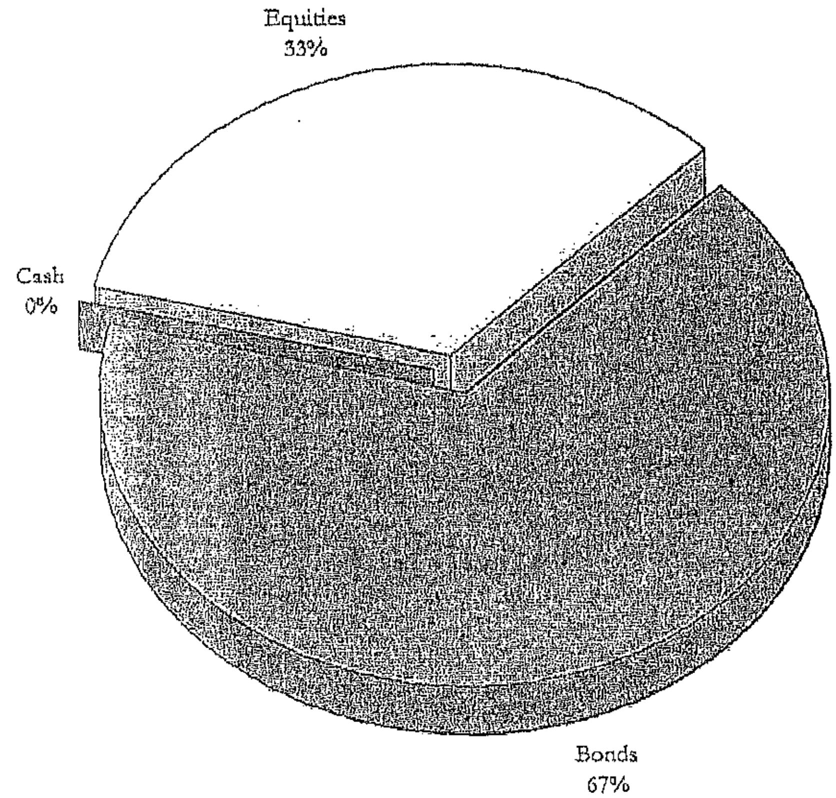
| | |
|---|---|
| Investment Objective: | **Capital Preservation and Growth** |
| Risk Tolerance: | **Moderate** |
| Time Horizon: | **5 Years** |
| Investable Assets: | **$4,795,283.33** |
| Future Investable Assets: | **$1,000,000 over 12 months** |
| Reference Currency: | **US Dollars** |
| Booking Location: | **Geneva** |

# Current Asset Allocation

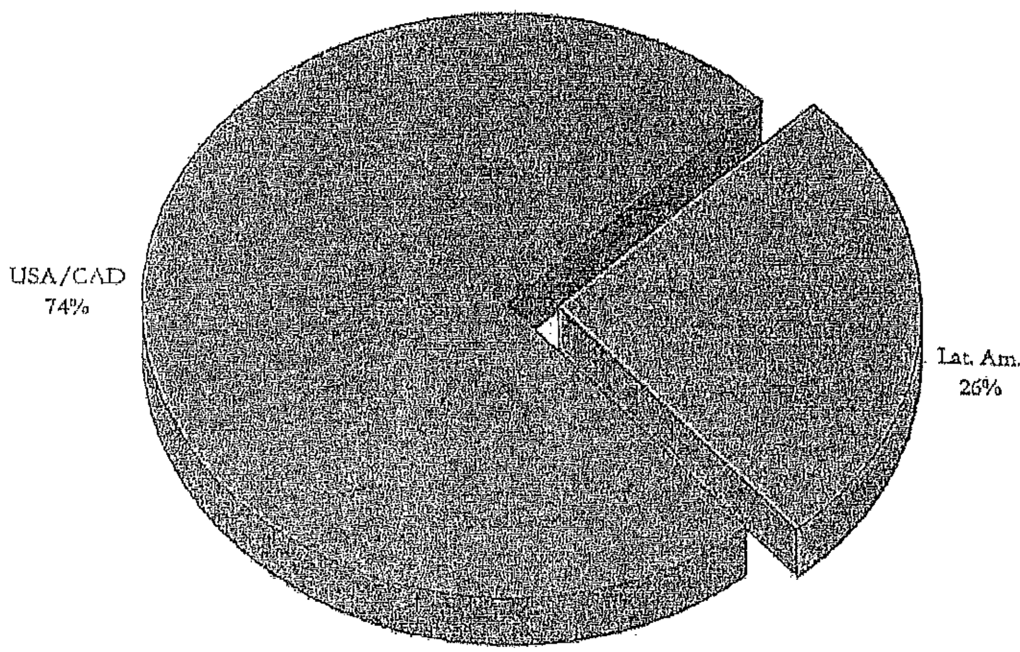


# Proposed Asset Allocation

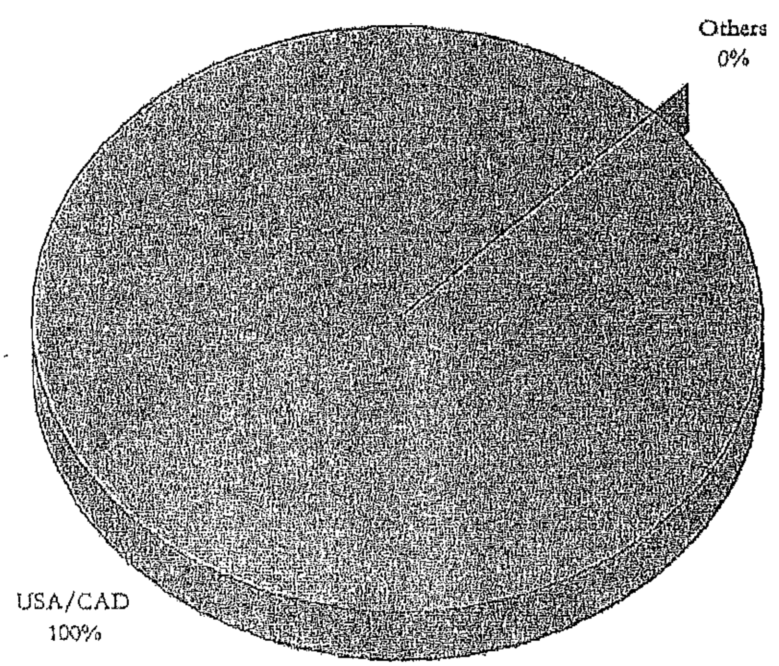
*We propose to invest your financial assets in a global portfolio that will diversify your investment risk between asset classes and markets. The objective of this proposal is to develop for you a US based portfolio coherent with a moderate tolerance for investment risk. It is designed to be held for the long term and has exposure to equities which, historically, have outperformed cash and bonds. Alternative Investments are recommended to enhance the asset allocation risk/reward ratio and limit the downside volatility of your portfolio.*



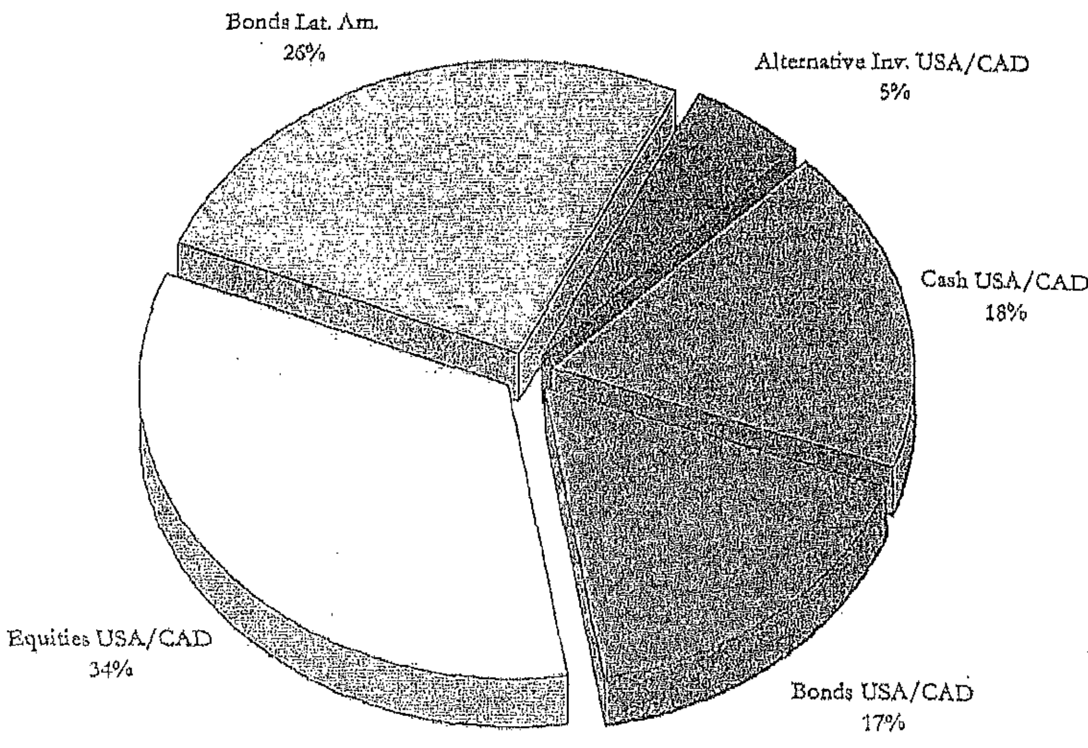
# Current Geographical Exposure



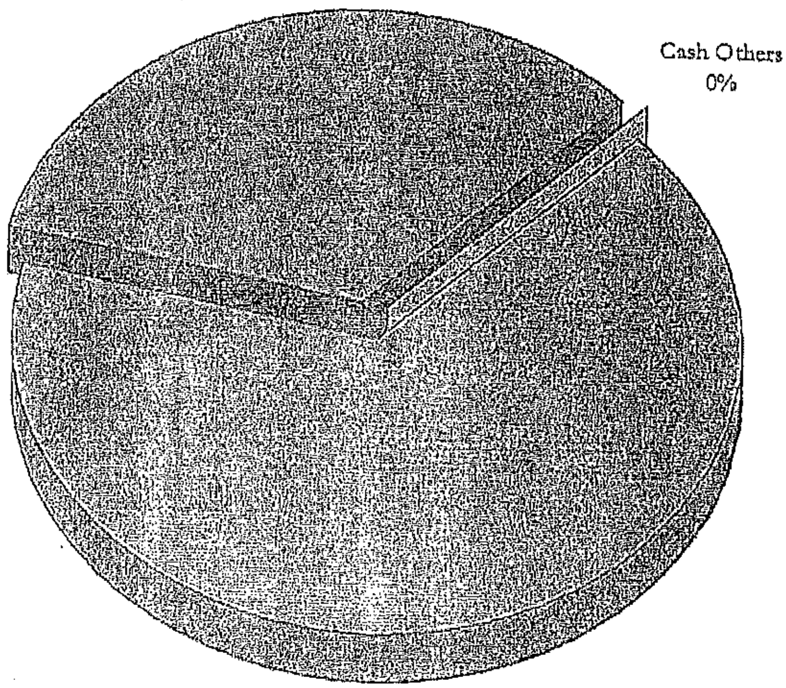
# Proposed Geographical Exposure



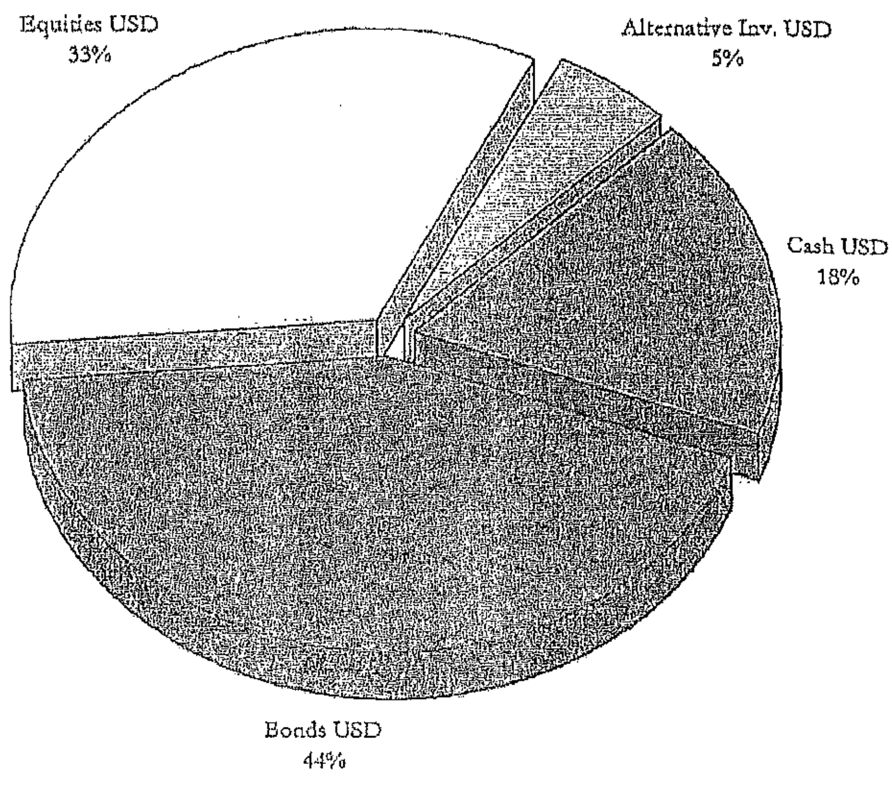
# Current Distribution of Assets by Region



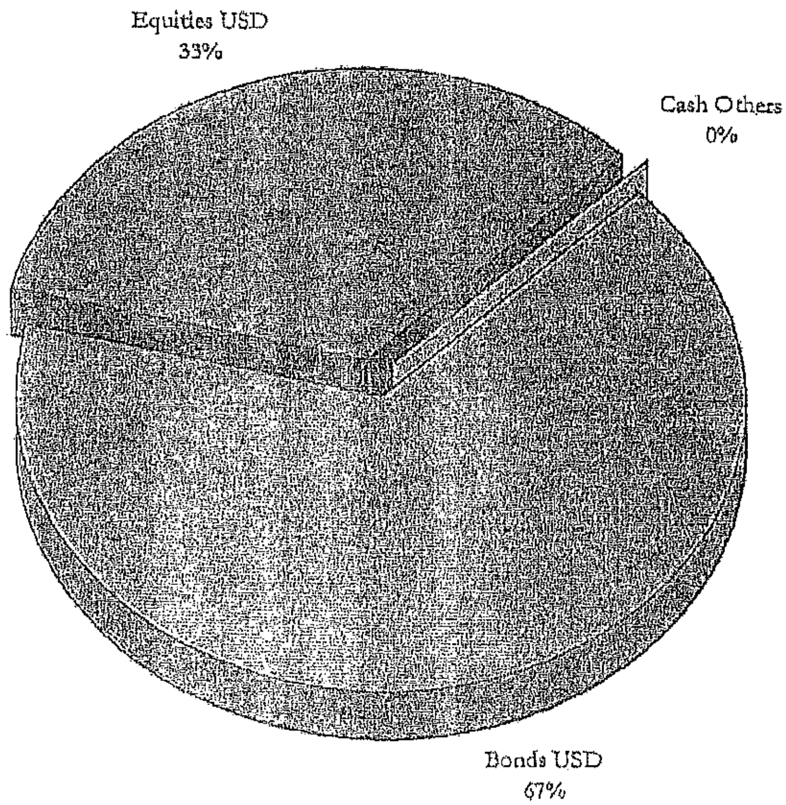
# Proposed Distribution of Assets by Region



# Current Distribution of Assets by Currency



# Proposed Distribution of Assets by Currency



# Current Investment Portfolio

| Recommended Products | % of Assets | Investable Amount USD |
|---|---|---|
| **Cash** | **44.21%** | **2,119,900.96** |
| Latin Money Mkt L | 29.77% | 1,427,550.81 |
| Deposits USD | 0.10% | 4,557.30 |
| WF US Liq. | 14.34% | 687,792.85 |
| **Bonds** | **17.03%** | **816,500.63** |
| Sign. US Mod F.I. | 17.03% | 816,500.63 |
| **Risk Reducers** | **5.28%** | **253,195.71** |
| Market Neutral A | 5.28% | 253,195.71 |
| **Equities** | **33.48%** | **1,605,686.03** |
| Sign. WS&P US | 33.48% | 1,605,686.03 |
| **Total** | **100.00%** | **4,795,283.33** |

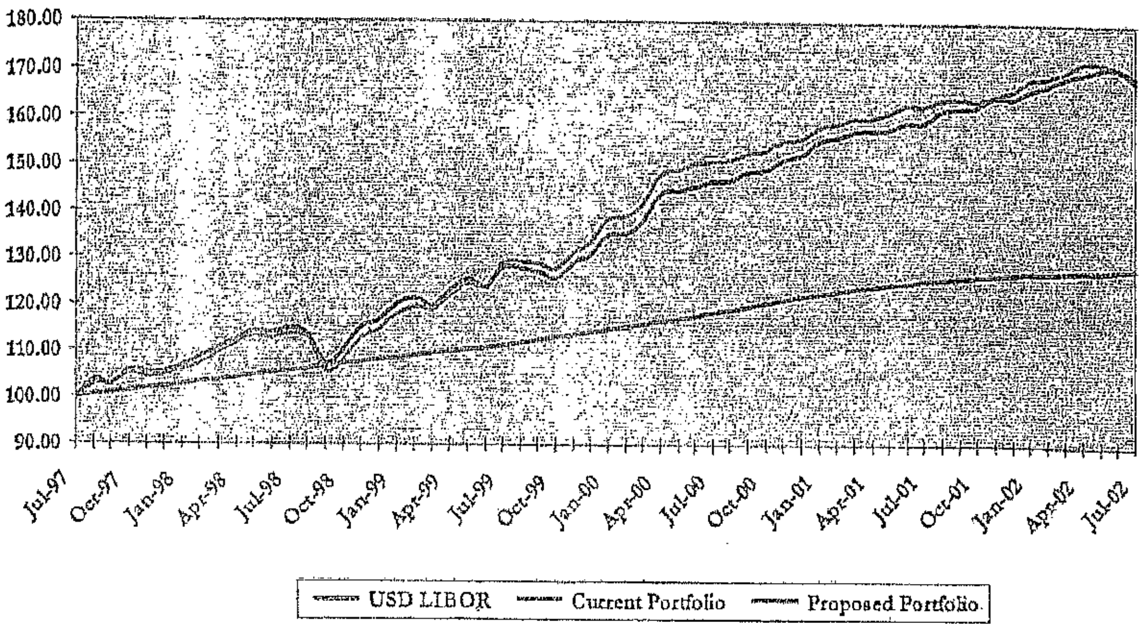
# Proposed Investment Portfolio

*These are the American Express Bank private banking products that we recommend, as well as the percentage and the amount in your reference currency we recommend allocating to each product and asset class.*

| Recommended Products | % of Assets | Investable Amount USD |
|---|---|---|
| **Cash** | **0.10%** | **4,557.30** |
| Deposits USD | 0.10% | 4,557.30 |
| **Bonds** | **66.42%** | **3,185,040.00** |
| *Sign. US Bonds | 17.03% | 816,500.63 |
| US Agencies/FMS | 28.54% | 1,368,539.37 |
| EM Debt (Mex Corp) | 20.85% | 1,000,000.00 |
| **Equities** | **33.48%** | **1,605,686.03** |
| Sign. WS&P US | 33.48% | 1,605,686.03 |
| **Total** | 100.00% | 4,795,283.33 |

# Historical Performance

*This chart illustrates how the recommended portfolio would have performed over the period specified in the graph.*



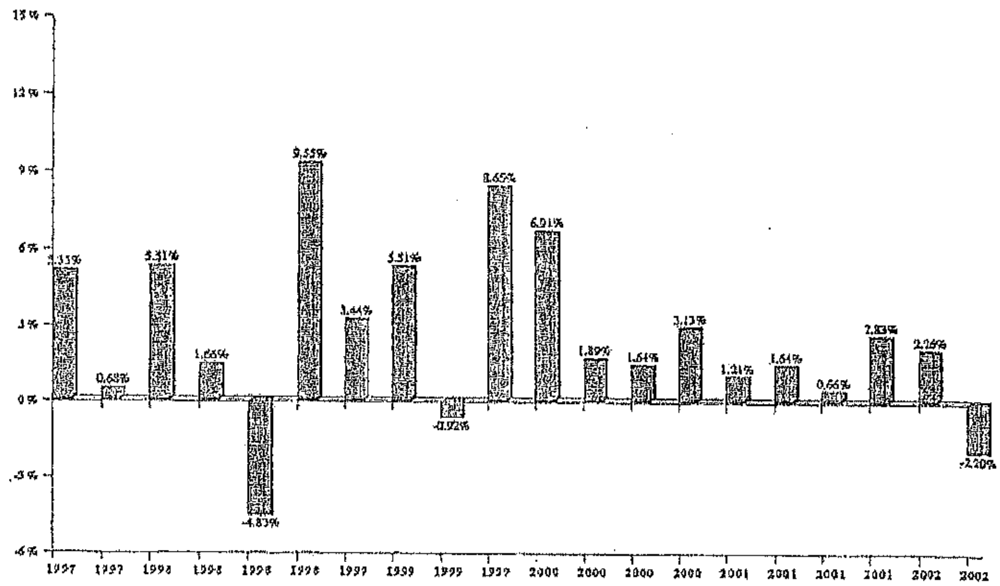

| | USD Libor | Current Portfolio | Proposed Portfolio |
|---|---|---|---|
| Return p.a. | 5.05% | 10.79% | 10.92% |
| Risk | | 5.61% | 5.50% |
| Sharpe Ratio | | 102.35% | 106.72% |
| Ending Value | 128.35 | 168.08 | 169.03 |
| | | | |
| Portfolio currency | USD | | |
| Starting date | Jul-97 | | |

This Chart represents the actual performance of the American Express Bank Investment Products included in the Proposal, where available. Where unavailable (i.e., prior to the inception date of any of the respective Investment Products) the chart uses, as substitutes for actual performance, indices that parallel the investment strategy of these Investment Products TB000059 of the inception dates for the Investment Products, please refer to the Appendix.

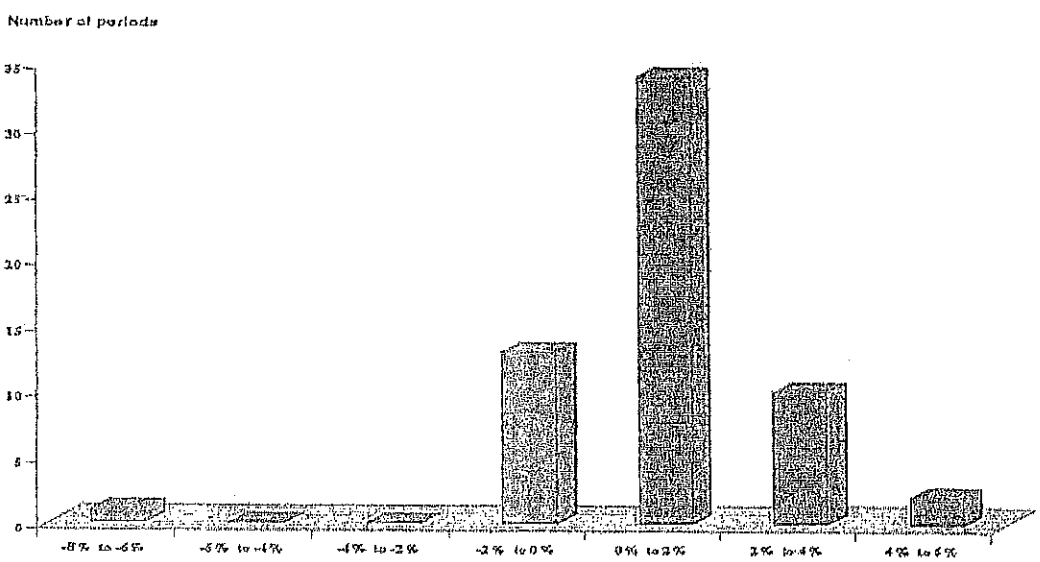
AMERICAN EXPRESS PRIVATE BANK

# Current Portfolio Historical Return Analysis

## Quarterly Returns




## Distribution of Monthly Returns

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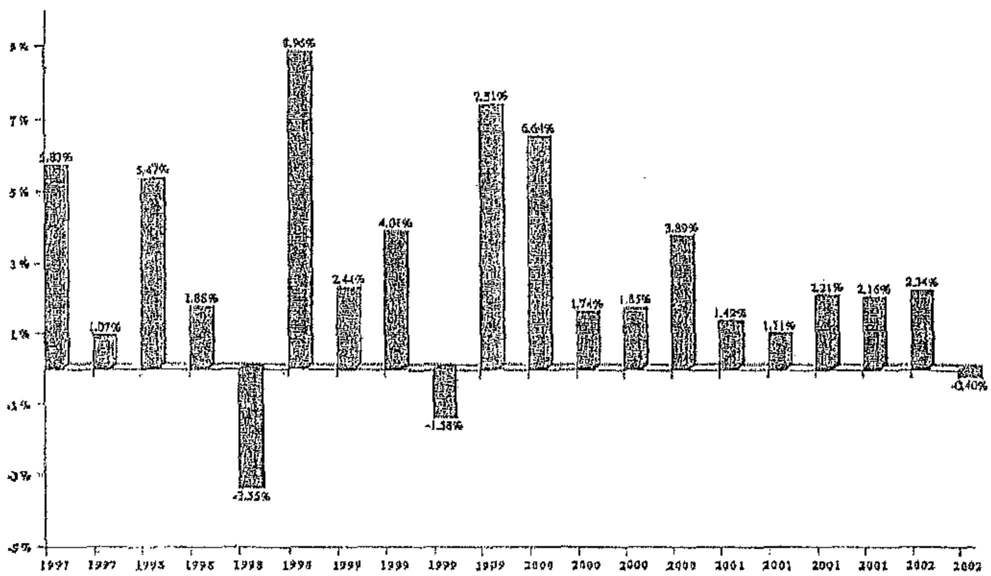
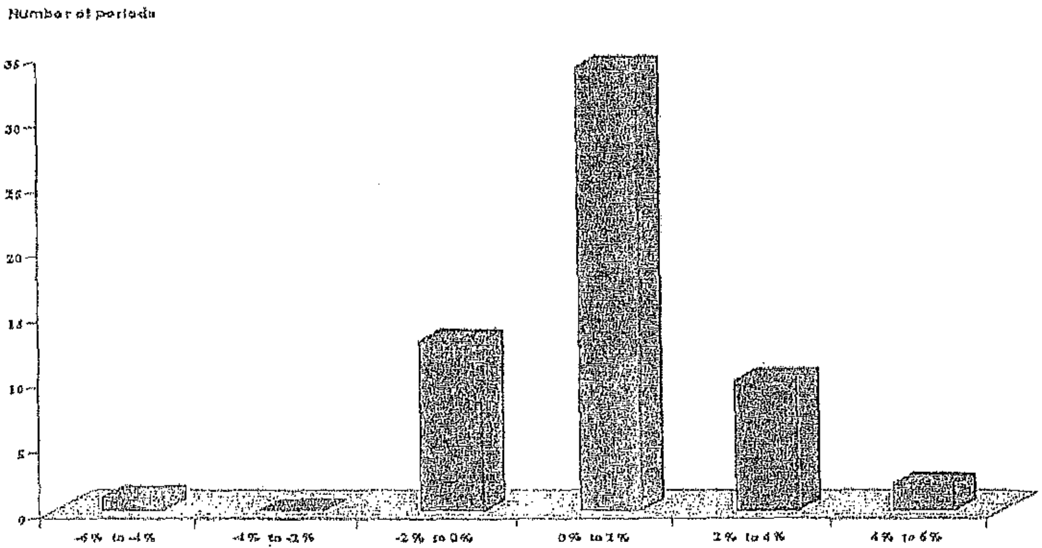
# Proposed Portfolio Historical Return Analysis

## Quarterly Returns




## Distribution of Monthly Returns

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# Current Portfolio Correlation Matrix

| | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| 1 | 1.00 | 0.16 | 0.91 | 0.59 | 0.60 | 0.12 |
| 2 | 0.16 | 1.00 | 0.25 | (0.05) | (0.10) | (0.10) |
| 3 | 0.91 | 0.25 | 1.00 | 0.61 | 0.51 | 0.14 |
| 4 | 0.59 | (0.05) | 0.61 | 1.00 | 0.55 | 0.17 |
| 5 | 0.60 | (0.10) | 0.51 | 0.55 | 1.00 | 0.19 |
| 6 | 0.12 | (0.10) | 0.14 | 0.17 | 0.19 | 1.00 |

List of Products

1 Deposits USD
2 Sign. US Mod F.I.
3 WF US Liq.
4 Latin Money Mkt L
5 Market Neutral A
6 Sign. WS&P US

# Proposed Portfolio Correlation Matrix

| | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| 1 | 1.00 | 0.16 | 0.17 | 0.16 | 0.12 |
| 2 | 0.16 | 1.00 | 0.98 | 0.92 | (0.10) |
| 3 | 0.17 | 0.98 | 1.00 | 0.88 | (0.11) |
| 4 | 0.16 | 0.92 | 0.88 | 1.00 | (0.05) |
| 5 | 0.12 | (0.10) | (0.11) | (0.05) | 1.00 |

List of Products

1 Deposits USD
2 Sign. US Mod F.I.
3 EM Debt (Mex Corp)
4 US Agencies/FMS
5 Sign. WS&P US

# Appendix

## American Express Bank Investment Products – Summary of Inception Dates

*Note: For investment products that have been in existence fewer than five years, a relevant benchmark, shown in italics, has been used as a substitute for the performance of the product itself.*

Signature Portfolios
U.S. Fixed Income 04/01/95 *Salomon Brothers U.S. Treasury Index (1-10 Years)*
U.S. Conservative 01/01/95
Global Fixed Income 01/01/95
Global Equity 01/01/95

Discretionary Mutual Fund Portfolios
*Benchmark used is a fixed blend of Worldfolio Class mutual funds specific to the portfolio risk profile*
Conservative 10/1/97
Moderate 10/1/97
Moderate European 10/1/97
Moderate Asian 10/1/97
Aggressive 10/1/97

American Express Funds–Worldfolio Class
US$ Liquidity 3/31/93
Euro Liquidity 3/31/93
US$ Short-Term Bonds 3/31/93
US$ Long-Term Bonds 4/6/99 *Lehman Corporate/Government Bond Index*
European Bonds – US$ referenced 4/6/99 *Salomon EuroBig Index/ Salomon German 3-7 years Government Bond Index (USD)*
European Bonds – Euro referenced 4/6/99 *Salomon EuroBig Index/ Salomon German 3-7 years Government Bond Index (Euro)*
Global Bonds – US$ 4/30/86
Global Bonds – Euro 4/6/99 *Salomon World Government Bond Index (Euro)*
Emerging Market Debt 9/30/94
Global Balanced 4/30/86
European Balanced – US$ referenced 4/6/99 *60% MSCI Europe & 40% Salomon European World Government Bond Index*
European Balanced – Euro referenced 4/6/99 *60% MSCI Europe & 40% Salomon European World Government Bond Index (Euro)*
World Equities 3/31/93
US Large Company Equities 5/31/93
US Aggressive Equities – US$ referenced 5/31/93
European Equities – Euro referenced 3/31/93
European Equities – US$ referenced 3/31/93
Japanese Equities 4/6/99 *MSCI Japan*
New Asia-Pacific 4/6/99 *MSCI A C Pacific (Free) Ex-Japan*

TB000664

CALL REPORT DATE: 7/30/04

CLIENT/PROSPECT NAME: Pablo Barbachano - AUM$5.1MM CIF 15530, 16707
Isabel Barbachano – AUM$ 3.5MM CIF 16707
Teresa Barbachano – AUM$2.8MM CIF 16704
Jose Antonio De Anda – AUM$1MM CIF 102690

DATE OF VISIT: 7/18/04

PLACE OF MEETING: Restaurant in Miami
PERSONS PRESENT: Jennifer Sierra

PURPOSE OF MEETING: The undersigned held a dinner with above-mentioned clients while they were in Miami on vacation. It had been a while since the undersigned extended an invitation to the Barbachano family and their husbands/wives, long-time clients of the Bank. Mr. Jose Antonio De Anda was in Miami as well only for the weekend and did not mined joining the group for dinner.

The undersigned wanted to extend the invitation as the Barbachano family, especially Pablo Barbachano, is negotiating the sale of the rest of the films in his library as well as the sale of real estate property. Once the sale is done, funds received from the sale of the films will be distributed amongst the 4 brothers and sisters (Mr. Francisco Barbachano was not present).

CLIENT INFORMATION:
The Barbachano family is doing well. Pablo and his wife recently had a baby boy. The first for Pablo's second wife and the third for him. Isabel and Federico are also doing well. Federico continues working as a high executive fro Grupo Bimbo in Mexico City. Teresa and Hector are happy and doing well. They have been married now for one year + and seem to be doing well.

**Pablo Barbachano:** Pablo commented to the undersigned that he is in the middle of negotiations to sale property land in Mexico. Proceeds from this sale will be added to the account. He also mentioned that he is seeking a buyer for the films left in his library. In addition, he is purchasing investment property in Miami with a group of investors. They already owned an apartment building in Coconut Grove and are looking to buy a second one.

Mr. Barbachano met earlier in June with Ayria Fiouzi in Mexico City to discuss insurance. He is interested in obtaining life insurance to protect his second wife and children as well in the event that he dies. Pablo confirmed his interest in the insurance, however, he does not think that he is able to do it immediately as he requires liquidity to provide collateral for the financing. He mentioned that as soon as he closes on the sale of the property land he would proceed.

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**Isabel Barbachano**: Isabel and Federico are doing very well. Federico works as a high executive for Grupo Bimbo and he is doing extremely well. Federico manages the investments for Isabel and controls distributions in the account. He is happy with the asset allocation in the portfolio and does not wish to make immediate changes. They do not have a high spending pattern.

**Teresa Barbachano**: Teresa is still in the process of learning the investment management of her account. Hector, her husband, is helping her with the information and decisions although he is not an authorized signatory in the account. They recently came back from a vacation in Asia, which they commented was great. We are not making any further changes in the portfolio since the ones implemented earlier this year when our Investment Specialist met with them in January jointly with the undersigned.

**Jose Antonio De Anda**: He was in Miami for a short visit since he had a court appearance to make. Mr. De Anda was charged with public disorderly conduct back in March while on vacation with his wife and other friend couple in Miami Beach. He claims he was unjustly charged and hired a lawyer to represent him in the case. The case will probably be dismissed and charges dropped, according to the lawyer, as there is no evidence other than an overzealous police force in South Beach. Of course, Mr. De Anda is concerned and worried about his name and any problem that this may cause for him. Mr. Jose Antonio De Anda can be a good source of referral as he is a prominent Tax Accountant in Mexico.

INVESTMENTS:

All portfolios are fully invested and changes are made at this time.

FOLLOW-UP:
Continue frequent contact with the Barbachano family as well as Mr. Jose Antonio De Anda.

RM NAME: Jennifer Sierra
SIGNATURE

CIF# 16704

CALL REPORT

DATE: 2/24/06

CLIENT/PROSPECT NAME: Teresa Barbachano and Hector Velazquez
DATE OF VISIT: 2/17/06

PLACE OF MEETING: Miami Office

PERSONS PRESENT: Jennifer Sierra and John Dutkowski

PURPOSE OF MEETING: Client visited the office for an Investment Presentation on the portfolio and the addition of assets transferred recently. After the meeting, the undersigned invited the clients for lunch.

CLIENT INFORMATION:
Mrs. Barbachano decided at the end of 2005 to transfer back to AEBI her portfolio held at UBS. She had split her portfolio 50/50 back in 2002. However, she has been unhappy for sometime with the management and performance of the portfolio at UBS.

The transfer was completed in February (we still have one position to be received).

INVESTMENTS:
Mrs. Barbachano and her husband were very happy with the 2005 portfolio results. The Investment Presentation included addition to existing positions already held in the portfolio and one new product – Global Emerging Short-Term Bond Fund. Clients agreed to sell the positions received from UBS and invest said funds according to the presentation.

Clients were very unhappy to learn the final balance received from UBS as they had different expected amounts. They will discuss the differences with the RM which managed that account.

FOLLOW-UP:
Process all the changes to the portfolio as agreed upon.

RM NAME: Jennifer Sierra
SIGNATURE

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DEFENDANT'S EXHIBIT

CONFIDENTIAL

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# A Proposal For Teresa Barbachano

Prepared By Jennifer Sierra

Tel: (305) 530-2558

Presented On February 2006

AMERICAN EXPRESS



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EXHIBIT

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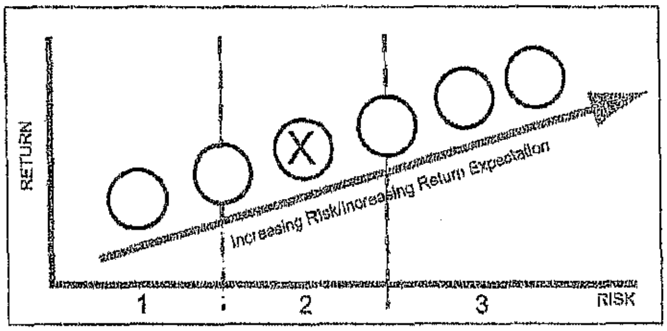
4-24-12

# Investment Objectives

We begin with a thorough assessment of your needs and goals, as determined through American Express Private Bank's proprietary evaluation process. Investments are selected with the goal of maximizing return and minimizing risk in accordance with each investor's risk profile and time horizon.




1. **Conservative** – More concerned with preserving capital than maximizing capital gains. Can tolerate infrequent, very moderate negative returns.
2. **Moderate** – Seeks higher returns and, consequently, is able to tolerate several quarters of negative returns through difficult phases of a market cycle.
3. **Aggressive** – Seeks maximum capital gains, and is able to tolerate more than one year of negative returns in exchange for the highest potential returns.

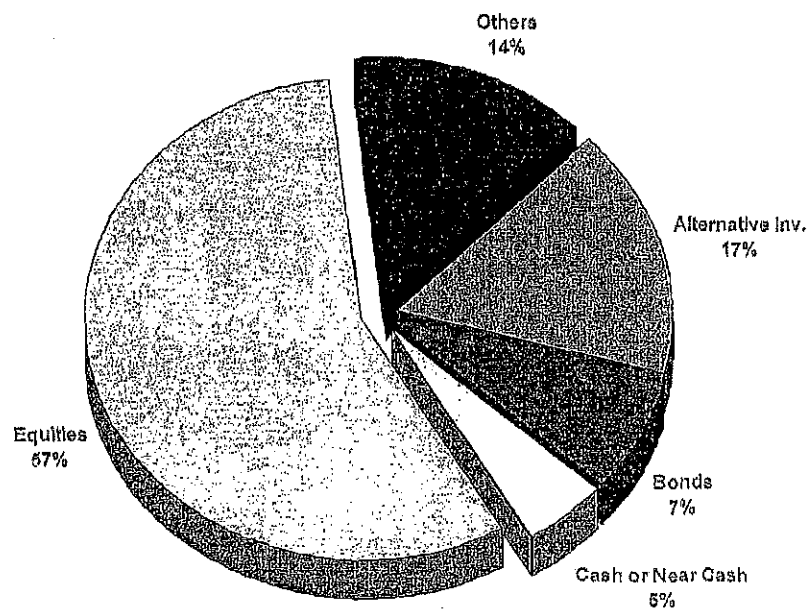
# Your Objectives

Based on your responses to the Investment Questionnaire and our discussions, the information below is our understanding of your needs. We invite you to tell us what items you would like to discuss further and clarify.

| | |
|---|---|
| **Investment Objective:** | Moderate Growth |
| **Risk Tolerance:** | Moderate |
| **Time Horizon:** | 7 Years |
| **Reference Currency:** | US Dollars |
| **Booking Location:** | Geneva |

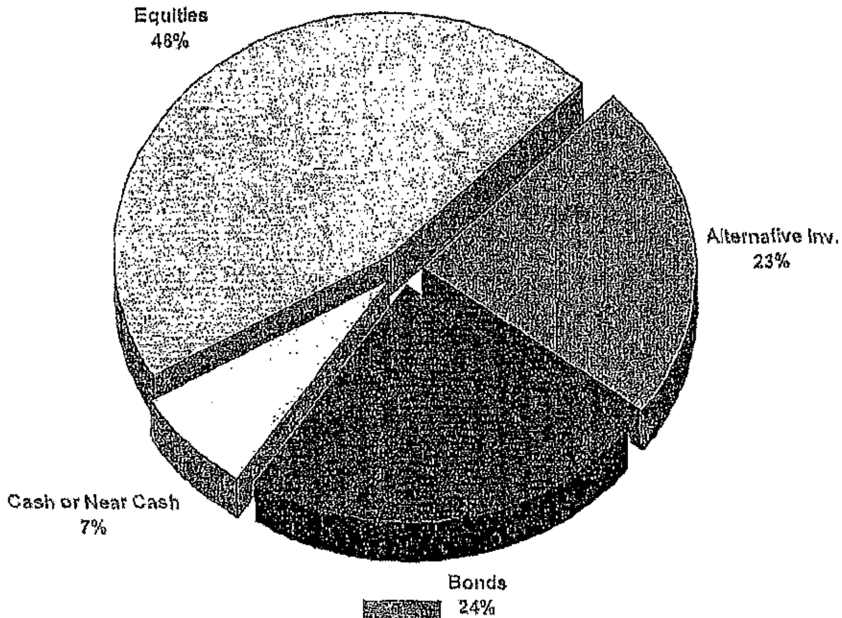
# Current Asset Allocation

The pie chart below illustrates your current asset allocation.



# Proposed Asset Allocation

We propose to invest your financial assets in a global portfolio that will diversify your investment risk between asset classes and markets. The objective of this proposal is to develop for you a US-based portfolio coherent with a moderate tolerance for investment risk. It is designed to be held for the long term and has exposure to equities which, historically, have outperformed cash and bonds. Alternative Investments are recommended to enhance the asset allocation risk/reward ratio and limit the downside volatility of your portfolio.



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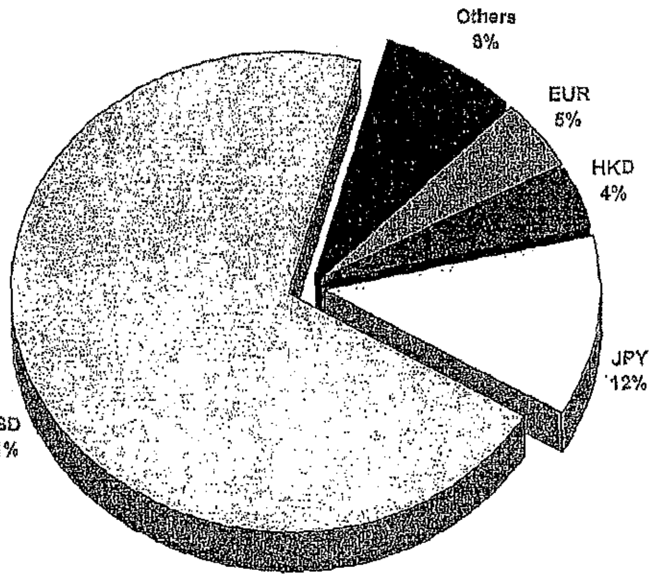
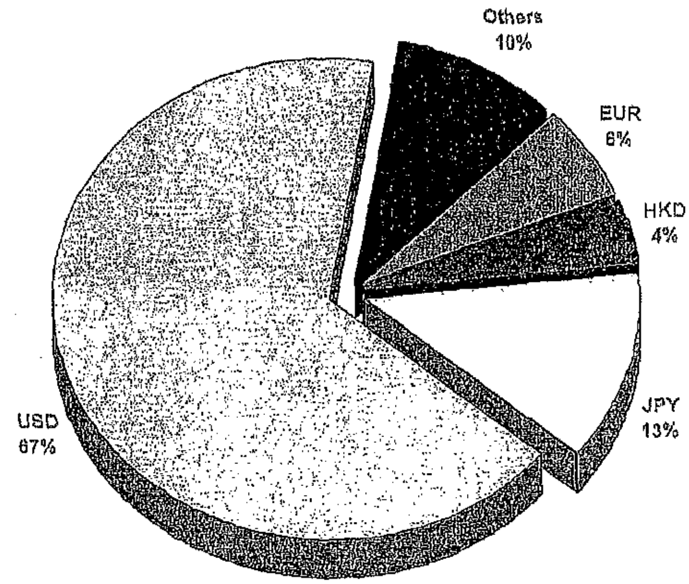
# Current Exposure By Currency

Based on our understanding, the pie chart below illustrates your current exposure by currency.



# Proposed Exposure By Currency

We propose to re-allocate your assets across the currencies illustrated below.



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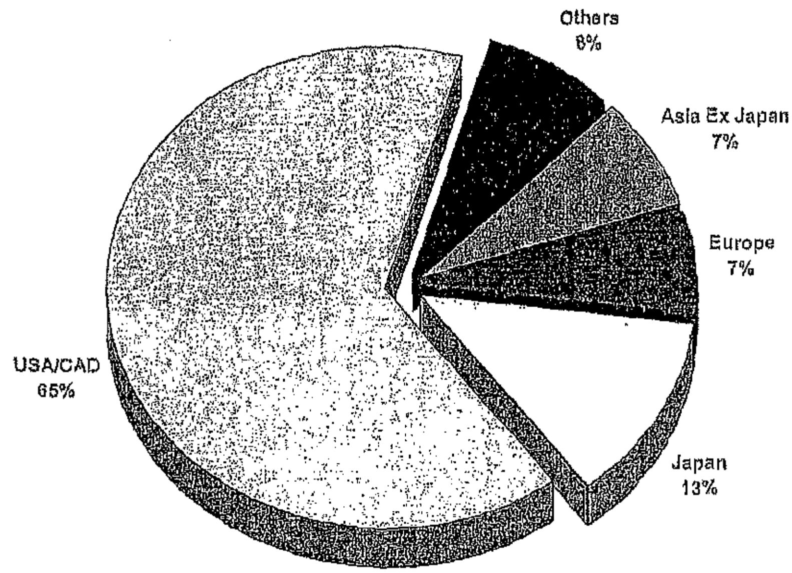
## Current Geographic Exposure

Based on our discussions, the pie chart below illustrates your current geographic exposure.



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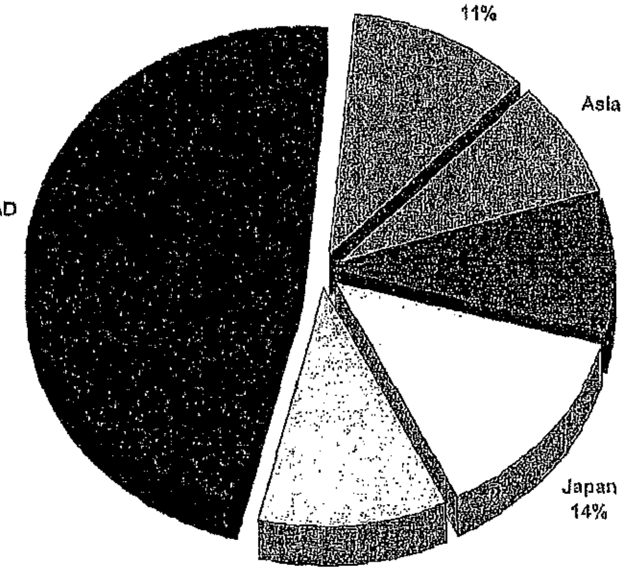
# Proposed Geographic Exposure

After a careful analysis of your goals, we propose the geographic allocation illustrated below.



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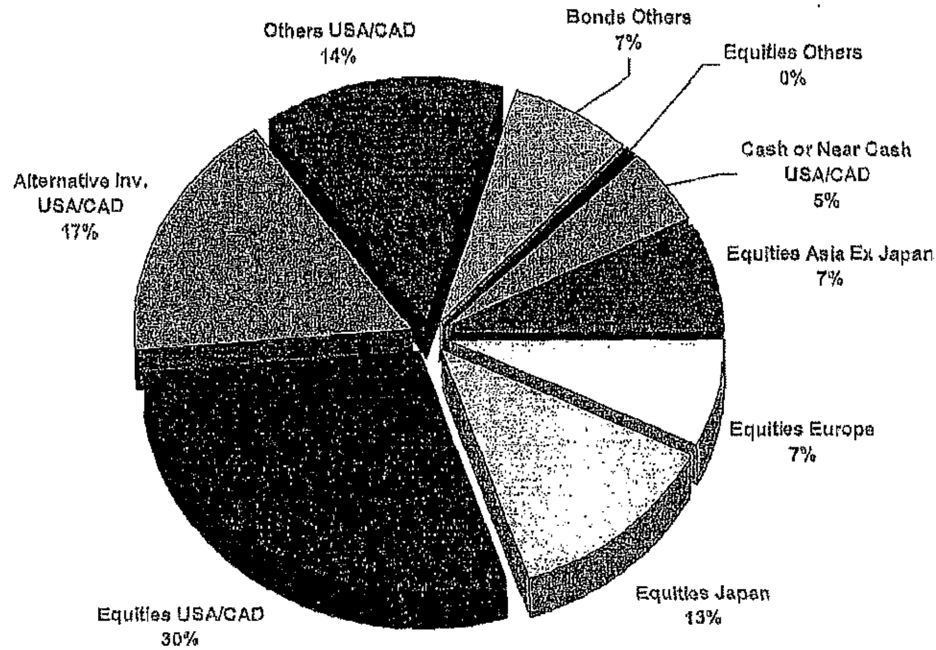
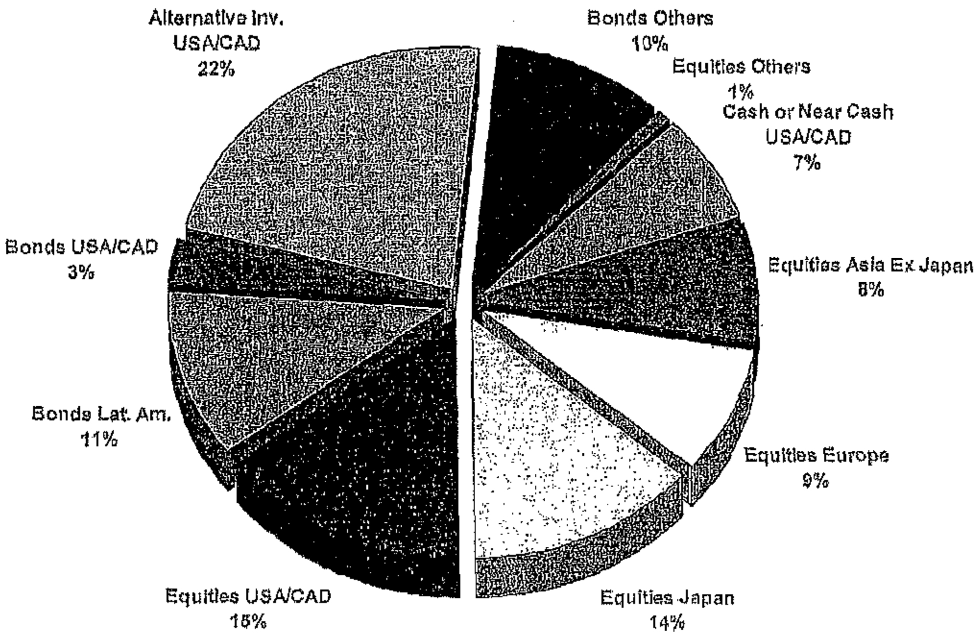
## Current Distribution Of Assets By Region

Based on our discussions, this pie chart illustrates the distribution of assets by region that you currently hold.



# Proposed Distribution Of Assets By Region

We recommend allocating your assets to reflect the distribution below.



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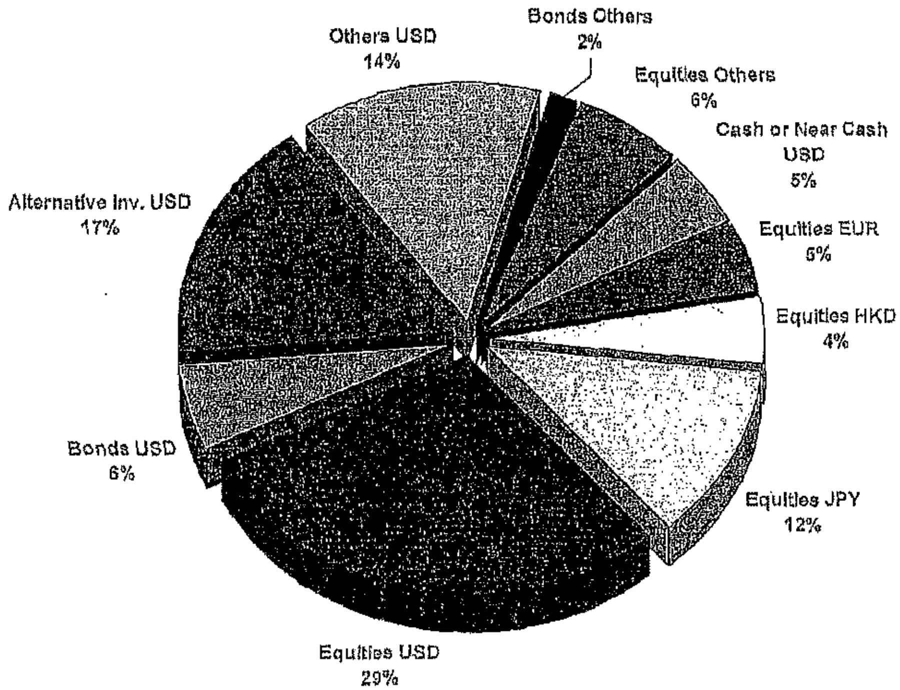
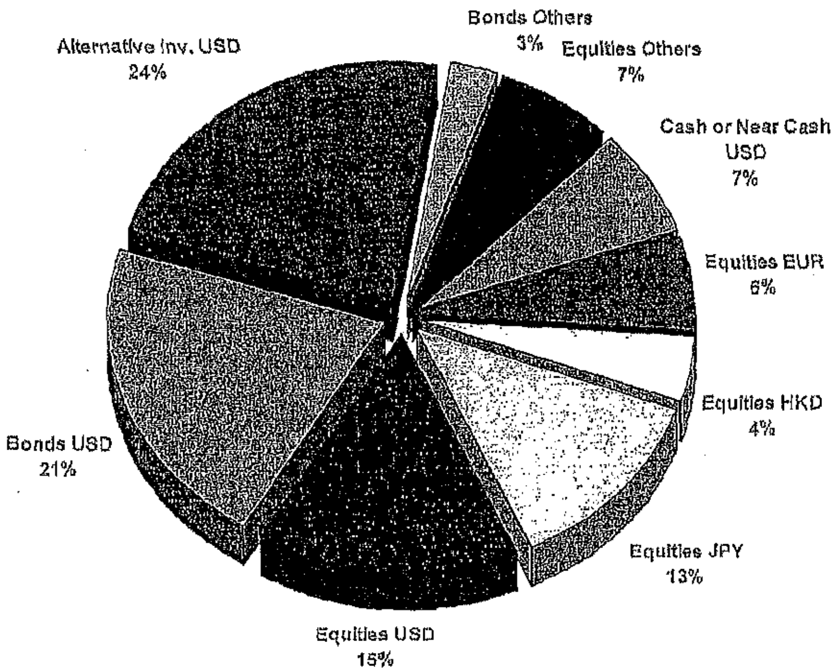
# Current Distribution Of Assets By Currency

Currently, the assets in your portfolio are distributed according to the illustration below.



# Proposed Distribution Of Assets By Currency

To achieve your goals, we propose to re-allocate your assets across currencies according to the illustration below.



# Current Investment Portfolio

In addition to our discussions, we've based our analysis and recommendations on the information you provided below.

| Products | % Assets | Investable Amount (USD) |
|---|---|---|
| **Cash or Near Cash** | **0.96%** | **47,266** |
| Money Market | 0.96% | 47,266 |
| **Global Products** | **11.19%** | **552,871** |
| DP Trad Global Mod | 11.19% | 552,871 |
| **Risk Reducers** | **14.64%** | **723,043** |
| Fairfield Sentry | 8.89% | 439,284 |
| Global MN Cons FoF | 5.74% | 283,759 |
| **Equities** | **52.25%** | **2,580,686** |
| Sig Global Eq | 36.26% | 1,790,860 |
| Nordea I NA Value | 15.99% | 789,826 |

| Products | % Assets | Investable Amount (USD) |
|---|---|---|
| **Yield Enhancers** | **20.97%** | **1,035,685** |
| AEF Emer Mkt Debt | 4.69% | 231,712 |
| Permal FX Fin & Futures | 2.11% | 104,033 |
| Structured Products | 14.17% | 699,940 |
| **Total** | **100.00%** | **4,939,551** |



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# Proposed Investment Portfolio

Here's our recommendation including the products, investment percentages, and the amount in your reference currency we propose to allocate to each product and asset class.

| Recommended Products | % Assets | Investable Amount (USD) |
|---|---|---|
| **Cash or Near Cash** | **0.52%** | **25,648** |
| Money Market | 0.52% | 25,648 |
| **Bonds** | **10.12%** | **500,000** |
| Glo Emerg Mkt S-Term Bonds | 10.12% | 500,000 |
| **Global Products** | **20.24%** | **1,000,000** |
| DP Trad Global Mod | 20.24% | 1,000,000 |
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| Recommended Products | % Assets | Investable Amount (USD) |
|---|---|---|
| **Equities** | **36.26%** | **1,790,860** |
| Sig Global Eq | 36.26% | 1,790,860 |
| **Yield Enhancers** | **18.22%** | **900,000** |
| AEF Emer Mkt Debt | 10.12% | 500,000 |
| Permal FX Fin & Futures | 8.10% | 400,000 |
| **Total** | **100.00%** | **4,939,551** |



ase refer to Appendix I at the end of this proposal for information on the inception dates of products included in the portfolio as well as the use of benchmark data prior to these inception dates in the performance char

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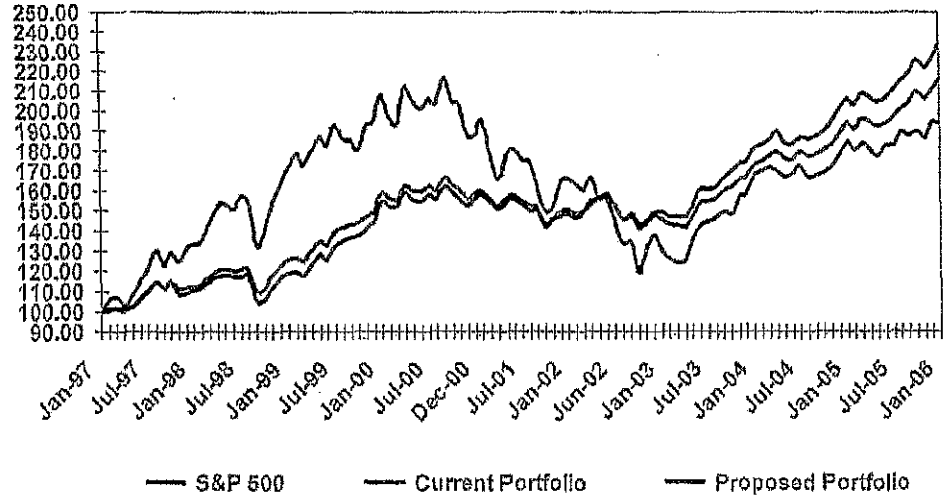
# Historical Performance




| | S&P 500 | Current Portfolio | Proposed Portfolio |
|---|---|---|---|
| Return p.a. | 7.53% | 8.83% | 9.73% |
| Risk | 16.07% | 8.31% | 8.87% |
| Sharpe Ratio | 0.23 | 0.59 | 0.66 |
| Ending Value | 194.07 | 216.47 | 233.40 |

| | |
|---|---|
| Portfolio currency | USD |
| Starting date | Jan-97 |



hart represents the actual performance of the American Express Bank Investment products included in the proposal, where available. Where unavailable (i.e., prior to the inception date of any of the respective investment products) the chart uses, a lutes for actual performance, indices that parallel the investment strategy of these investment products. For a listing of the inception dates for the investment products and information on indices used, please refer to the Appendix I. Past performance tor of future performance

# Current Investment Portfolio

In addition to our discussions, we've based our analysis and recommendations on the information you provided below.

| Products | % Assets | Investable Amount (USD) |
|---|---|---|
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| **Risk Reducers** | **14.64%** | **723,043** |
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| Products | % Assets | Investable Amount (USD) |
|---|---|---|
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| AEF Emer Mkt Debt | 4.69% | 231,712 |
| Permal FX Fin & Futures | 2.11% | 104,033 |
| Structured Products | 14.17% | 699,940 |
| **Total** | **100.00%** | **4,939,551** |

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# Proposed Investment Portfolio*

Here's our recommendation including the products, investment percentages, and the amount in your reference currency we propose to allocate to each product and asset class.

| Recommended Products | % Assets | Investable Amount (USD) |
|---|---|---|
| **Cash or Near Cash** | **0.52%** | **25,648** |
| Money Market | 0.52% | 25,648 |
| **Bonds** | **10.12%** | **500,000** |
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| Recommended Products | % Assets | Investable Amount (USD) |
|---|---|---|
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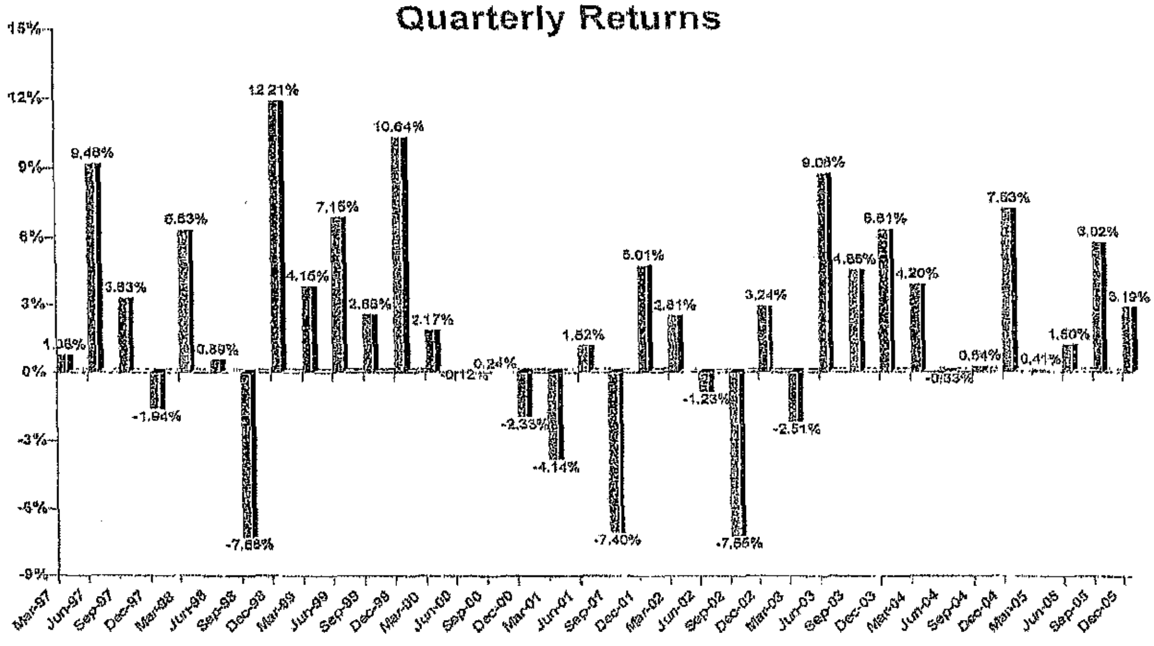
| Sig Global Eq | 36.26% | 1,790,860 |
| **Yield Enhancers** | **18.22%** | **900,000** |
| AEF Emer Mkt Debt | 10.12% | 500,000 |
| Permal FX Fin & Futures | 8.10% | 400,000 |
| **Total** | **100.00%** | **4,939,551** |



ease refer to Appendix I at the end of this proposal for information on the inception dates of products included in the portfolio as well as the use of benchmark data prior to these inception dates in the performance char

# Current Portfolio Historical Return Analysis

## Quarterly Returns

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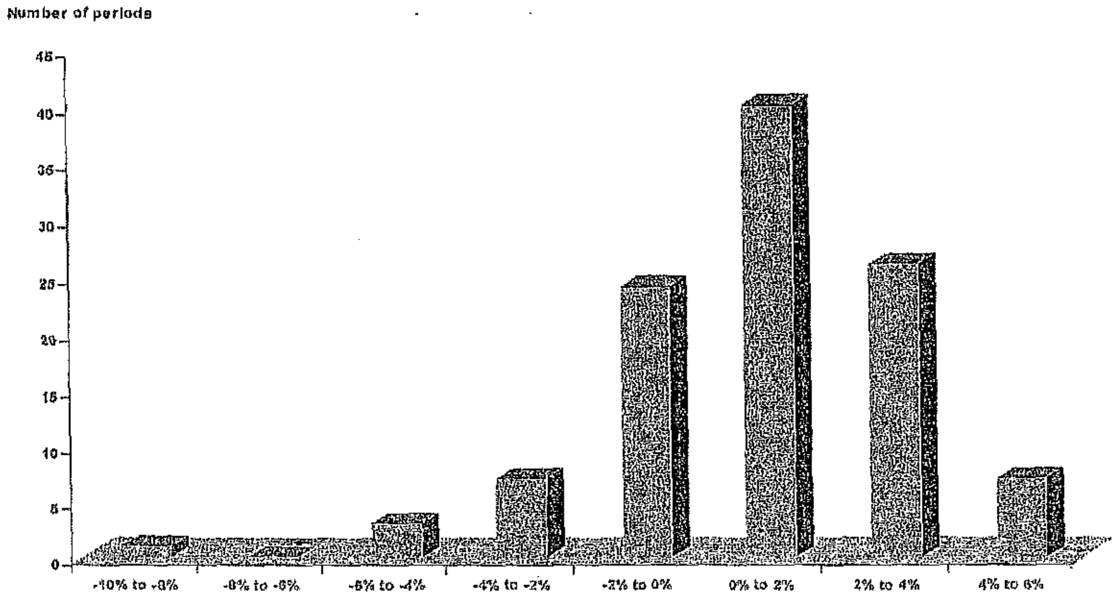
Past performance is not an indicator of future performance.

# Current Portfolio Historical Return Analysis

## Distribution of Monthly Returns

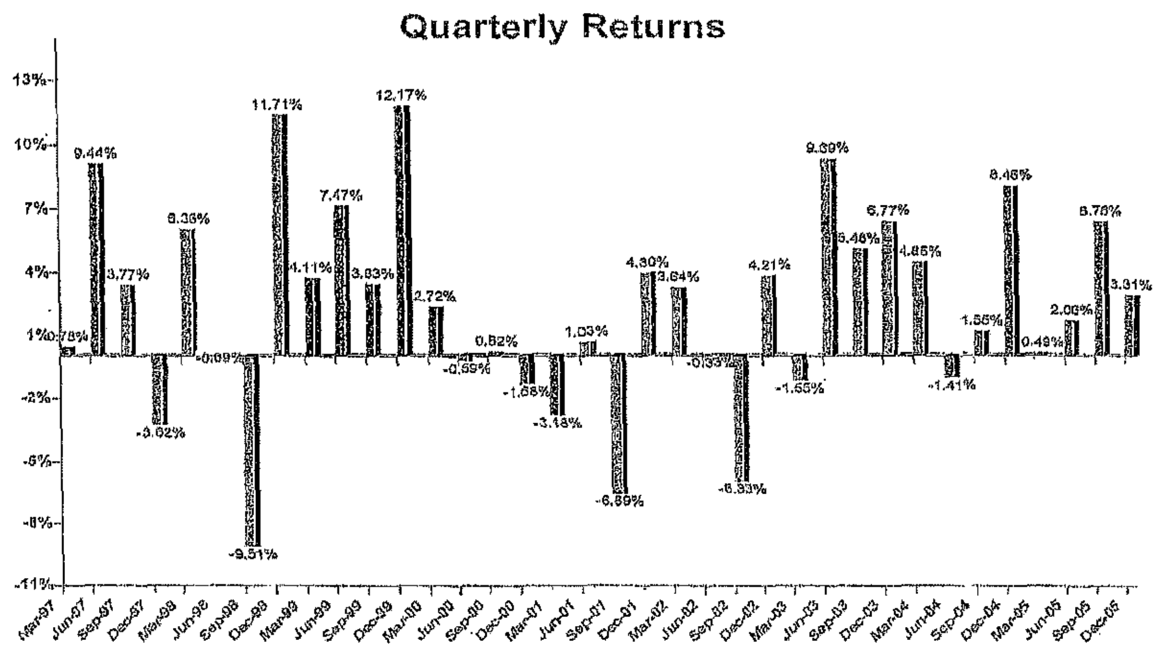





Past performance is not an indicator of future performance.

American Express Private Bank

# Proposed Portfolio Historical Return Analysis*

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ease refer to Appendix I at the end of this proposal for information on the inception dates of products included in the portfolio as well as the use of benchmark data prior to these inception dates in the performance cha

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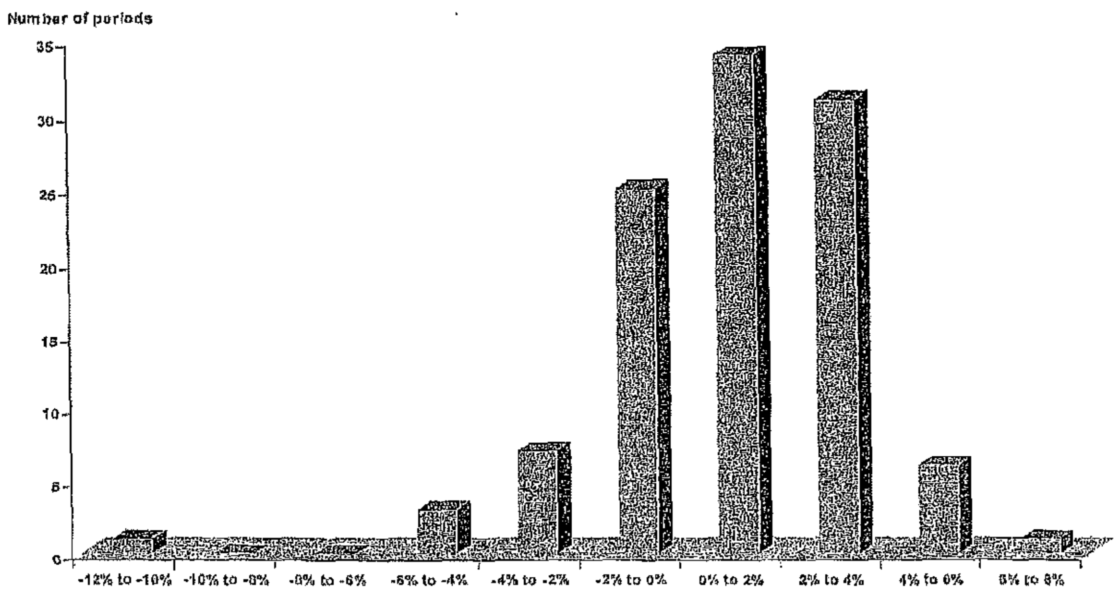
# Proposed Portfolio Historical Return Analysis

## Distribution of Monthly Returns






ease refer to Appendix I at the end of this proposal for information on the inception dates of products included in the portfolio as well as the use of benchmark data prior to these inception dates in the performance cha

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# Current Portfolio Correlation Matrix

| | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| 1 Sig Global Eq | 1.00 | 0.82 | 0.49 | 0.11 | 0.15 | 0.25 |
| 2 DP Trad Global Mod | 0.82 | 1.00 | 0.54 | 0.08 | 0.16 | 0.36 |
| ~~3 AEF Emer Mkt Debt~~ | 0.49 | 0.54 | 1.00 | 0.04 | 0.14 | 0.25 |
| 4 Fairfield Sentry | 0.11 | 0.08 | 0.04 | 1.00 | 0.15 | (0.03) |
| 5 Global MN Cons FoF | 0.15 | 0.16 | 0.14 | 0.15 | 1.00 | 0.32 |
| 6 Permal FX Fin & Futures | 0.25 | 0.36 | 0.25 | (0.03) | 0.32 | 1.00 |

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# Proposed Portfolio Correlation Matrix

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| 1 Sig Global Eq | 1.00 | 0.82 | 0.49 | 0.11 | 0.15 | 0.25 | 0.38 |
| 2 DP Trad Global Mod | 0.82 | 1.00 | 0.54 | 0.08 | 0.16 | 0.36 | 0.39 |
| 3 AEF Emer Mkt Debt | 0.49 | 0.54 | 1.00 | 0.04 | 0.14 | 0.25 | 0.80 |
| 4 Fairfield Sentry | 0.11 | 0.08 | 0.04 | 1.00 | 0.15 | (0.03) | 0.12 |
| 5 Global MN Cons FoF | 0.15 | 0.16 | 0.14 | 0.15 | 1.00 | 0.32 | 0.09 |
| 6 Permal FX Fin & Futures | 0.25 | 0.36 | 0.25 | (0.03) | 0.32 | 1.00 | 0.22 |
| 7 Glo Emerg Mkt S-Term Bo | 0.38 | 0.39 | 0.80 | 0.12 | 0.09 | 0.22 | 1.00 |



ease refer to Appendix I at the end of this proposal for information on the inception dates of products included in the portfolio as well as the use of benchmark data prior to these inception dates in the performance cha

CALL REPORT DATE: 3/5/08

CLIENT/PROSPECT NAME: Teresa Barbachano and Hector Velazquez
DATE OF VISIT: 2/28/08

PLACE OF MEETING: Restaurant in Mexico City

PERSONS PRESENT: Jennifer Sierra, Carla Borelly and John Dutkowski

PURPOSE OF MEETING: To review portfolio after changes were made/decided in January. Discuss market expectations and loan facilities.

CLIENT INFORMATION: Teresa Barbachano is in the process of dividing the assets inherited from her parents amongst her brothers and sister. A large percentage of the assets inherited involve real estate properties located in Acapulco, Merida and Mexico City. At this time, they are each deciding which property to keep and purchase the interest in the property from their brothers and sister. Teresa commented that the one property she is negotiating to keep will cost her $1MM. She plans to finance the purchase with a loan from our Institution collateralized by her investments held with us as well. She will contact the undersigned sometime in March/April to request the loan. In the meantime we are preparing the documentation and the line of credit to have everything ready.

During this meeting we took the opportunity for her and her husband to sign the new Platinum Card application as they have the domestic card. We discussed the possibility of obtaining the Centurion Card which we will explore later on.

After reviewing the client's background information in the client file, there are no significant changes with regard to the client's source of wealth information.

INVESTMENTS:
The IS provided a summary of the markets, positive and negatives, and realistic market expectations. The changes agreed on in January have not settled in the portfolio so we must wait until beginning of April to analyze the impact of such changes. Neither one of the clients were nervous, however, they reminded us to be cautious in the event thing turned worse instead of better.

FOLLOW-UP:
Meet with clients again in April/May 2008.

RM NAME: Jennifer Sierra
SIGNATURE

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**Asset Allocation analysis:**

**June 2006:**

| Position | Type | Amount | Cash | Bonds | Equities | Alt |
|---|---|---|---|---|---|---|
| Cash | Cash | 1,336,066 | 1,336,066 | | | |
| Calyon Fin Products (Guernsey) Ltd | Bonds | 202,219 | | 202,219 | | |
| Amer Express Emerging Mkt Debt | MF | 70,357 | | 70,357 | | |
| Amer Express GL EM Mkt Short TM Bonds | MF | 319,456 | | 319,456 | | |
| Signature Portfolios - Global Equities | Portfolio | 1,744,723 | | | 1,744,723 | |
| Discretionary Traditional Global Moderate | Portfolio | 969,984 | | 387,994 | 581,990 | |
| Amer Express Alt Inv Fund - Global Mkt Neutral | Alt | 295,378 | | | | 295,378 |
| Permal FX Financials & Futures Ltd | Alt | 404,377 | | | | 404,377 |
| Fairfield Sentry Ltd | Alt | 454,010 | | | | 454,010 |
| Totals | | 5,796,572 | 1,336,066 | 980,027 | 2,326,714 | 1,153,766 |
| Asset Allocation percentages - June 2006 | | | 23% | 17% | 40% | 20% |
| | | | 40% | | 60% | |

**December 2007:**

| Position | Type | Amount | Cash | Bonds | Equities | Alt |
|---|---|---|---|---|---|---|
| Cash | Cash | 2,985 | 2,985 | | | |
| Discretionary Dynamic Global Asset Allocation | Portfolio | 276,896 | 2,769 | 74,762 | 185,520 | 13,845 |
| Signature Portfolios - Global Equities | Portfolio | 2,721,945 | | | 2,721,945 | |
| Discretionary Traditional Global Moderate | Portfolio | 1,316,979 | | 526,792 | 790,188 | |
| Permal Fixed Income Holdings | Alt | 280,248 | | | | 280,248 |
| Permal Fixed Income Special Opportunities | Alt | 530,887 | | | | 530,887 |
| Permal FX Financials & Futures Ltd | Alt | 458,814 | | | | 458,814 |
| Fairfield Sentry Ltd | Alt | 955,802 | | | | 955,802 |
| Totals | | 6,544,555 | 5,754 | 601,554 | 3,697,653 | 2,239,595 |
| Asset Allocation percentages - December 2007 | | | 0% | 9% | 57% | 34% |
| | | | 9% | | 91% | |

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June 2008:

| Position | Type | Amount | Cash | Bonds | Equities | Alt |
|---|---|---|---|---|---|---|
| Cash | Cash | 25,215 | 25,215 | | | |
| Amer Express GL EM Mkt Absolute Return | MF | 148,752 | | 74,376 | 74,376 | |
| Signature Portfolios - Global Equities | Portfolio | 2,705,216 | | | 2,705,216 | |
| Discretionary Dynamic Global Asset Allocation | Portfolio | 411,322 | 4,113 | 111,057 | 275,586 | 20,566 |
| Discretionary Traditional Global Moderate | Portfolio | 1,271,677 | | 508,671 | 763,006 | |
| Permal Fixed Income Holdings | Alt | 279,686 | | | | 279,686 |
| Permal FX Financials & Futures Ltd | Alt | 482,860 | | | | 482,860 |
| Fairfield Sentry Ltd | Alt | 983,300 | | | | 983,300 |
| Totals | | 6,308,028 | 29,329 | 694,104 | 3,818,184 | 1,766,412 |
| Asset Allocation percentages - June 2008 | | | 0% | 11% | 61% | 28% |
| | | | | 11% | | 89% |

September 2008:

| Position | Type | Amount | Cash | Bonds | Equities | Alt |
|---|---|---|---|---|---|---|
| Cash | Cash | 15,281 | 15,281 | | | |
| Amer Express GL EM Mkt Absolute Return | MF | 115,544 | | 57,772 | 57,772 | |
| Signature Portfolios - Global Equities | Portfolio | 2,418,745 | | | 2,418,745 | |
| Discretionary Dynamic Global Asset Allocation | Portfolio | 370,694 | 3,707 | 100,087 | 248,365 | 18,535 |
| Discretionary Traditional Global Moderate | Portfolio | 1,150,489 | | 460,196 | 690,293 | |
| Permal Fixed Income Holdings | Alt | 268,672 | | | | 268,672 |
| Permal Macro Holdings Ltd | Alt | 454,693 | | | | 454,693 |
| Fairfield Sentry Ltd | Alt | 996,796 | | | | 996,796 |
| Totals | | 5,790,913 | 18,988 | 618,055 | 3,415,175 | 1,738,696 |
| Asset Allocation percentages - September 2008 | | | 0% | 11% | 59% | 30% |
| | | | | 11% | | 89% |

December 2008:

| Position | Type | Amount | Cash | Bonds | Equities | Alt |
|---|---|---|---|---|---|---|
| Cash | Cash | 1,011,691 | 1,011,691 | | | |
| World Express GL EM Mkt Absolute Return | MF | 42,511 | | 21,256 | 21,256 | |
| Signature Portfolios - Global Equities | Portfolio | 1,874,904 | | | 1,874,904 | |
| Discretionary Dynamic Global Asset Allocation | Portfolio | 302,243 | 3,022 | 81,605 | 202,503 | 15,112 |
| Discretionary Traditional Global Moderate | Portfolio | 7,963 | | 3,185 | 4,778 | |
| Permal Fixed Income Holdings | Alt | 229,010 | | | | 229,010 |
| Permal Macro Holdings Ltd | Alt | 435,468 | | | | 435,468 |
| Fairfield Sentry Ltd | Alt | 7 | | | | 7 |
| Totals | | 3,903,796 | 1,014,713 | 106,046 | 2,103,440 | 679,597 |
| Asset Allocation percentages - December 2008 | | | 26% | 3% | 54% | 17% |
| | | | 29% | | 71% | |

September 2009:

| Position | Type | Amount | Cash | Bonds | Equities | Alt |
|---|---|---|---|---|---|---|
| Cash | Cash | 510,359 | 510,359 | | | |
| Amer Express GL EM Mkt Absolute Return | MF | 5,269 | | 2,635 | 2,635 | |
| Signature Portfolios - Global Equities | Portfolio | 2,395,803 | | | 2,395,803 | |
| Signature Portfolios - US Multi Sector Fixed Inc | Portfolio | 1,076,899 | | 1,076,899 | | |
| Discretionary Dynamic Global Asset Allocation | Portfolio | 636,430 | 6,364 | 146,379 | 483,687 | |
| Totals | | 4,624,760 | 516,724 | 1,225,913 | 2,882,124 | 0 |
| Asset Allocation percentages - September 2009 | | | 11% | 27% | 62% | 0% |
| | | | 38% | | 62% | |

The Standard Chartered
Private Bank

# Investment Proposal for 4652

Relationship Manager: Jose Del Vecchio
Investment Specialist: John Dutkowski

October 2009

[redacted] Asset Allocation

| Asset Class | Amount ($) | Curent Allocation(%) | | Products | Proposed Allocation (%) | | Amount ($) |
|---|---|---|---|---|---|---|---|
| Cash or Near Cash | $ 510,480 | 11.4% | 11.4% | Demand | 0.4% | 0.4% | $ 16,132 |
| Fixed Income | $ - | 0.0% | 0.0% | PIMCO Global Bonds | 61.6% | 37.9% | $ 1,700,000 |
| | $ 1,063,907 | 23.7% | | Sig. US Multi-Sector Fixed Income | | 23.7% | $ 1,063,907 |
| Equity | $ 2,295,652 | 51.2% | 51.2% | Sign. Global Equities | 24.3% | 24.3% | $ 1,090,000 |
| Multi Asset | $ 609,776 | 13.6% | 13.6% | Dynamic Global Asset Alloc. | 13.6% | 13.6% | $ 609,776 |
| Absolute Return | $ 5,123 | 0.1% | 0.1% | GBLEM Absolute Return | 0.1% | 0.1% | $ 5,123 |
| Total | $ 4,484,939 | 100.0% | 62.6% | Total | 100.0% | 100.0% | $ 4,484,939 |

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