UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This document relates to:
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

NOTICE OF FILING

Plaintiff, JOAQUINA TERESA BARBACHANO HERRERO ("Barbachano"), by and through undersigned counsel, hereby gives Notice of Filing her Revised Third Amended Complaint for Damages pursuant to this Court's Order dated January 7, 2016 [D.E. 1534] against Defendants, STANDARD CHARTERED BANK INTERNATIONAL (AMERICAS) LIMITED and STANDARD CHARTERED PLC (collectively, the "Defendants").

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically served this 12th day of January, 2016 on Patrick B. Berarducci, Esquire, berarduccip@sullcrom.com; SULLIVAN & CROMWELL LLP, New York, New York, *Attorneys for Standard Chartered Bank International (Americas) Limited and Standard Chartered PLC.*

By: /s/ H. Eugene Lindsey III, Esq.
H. Eugene Lindsey III, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants. This document relates to: *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

[REVISED] THIRD AMENDED COMPLAINT[1]

Plaintiff, JOAQUINA TERESA BARBACHANO HERRERO ("Barbachano"), by and through undersigned counsel and pursuant to the Federal Rules of Civil Procedure, hereby files this revised Third 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 breach of fiduciary duty, gross negligence, and negligence. It arises from Defendants' failure (and/or the failure of Defendants' predecessor in interest) to conduct adequate due diligence of Fairfield Sentry Limited Fund ("Fairfield"), an investment that was a feeder fund for the massive Ponzi scheme perpetrated by Bernard Madoff. As a result of Defendants' tortious conduct, Barbachano lost the entirety of her investment in Fairfield, suffering damages in excess of $800,000.00.

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

[1] Revised pursuant to the Court's Order, dated January 7, 2016.

"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.[2]

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.

[2] 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.

The Fallout

29. Barbachano lost all monies invested in Fairfield when Madoff's Ponzi scheme was revealed on December 11, 2008.

30. 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.

31. 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. Del Vecchio also criticized Sierra's management of Barbachano's account.

32. 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.

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

COUNT I

BREACH OF FIDUCIARY DUTY (AGAINST ALL DEFENDANTS)

34. Barbachano realleges paragraphs 1-33 as if fully set forth herein.

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

36. Defendants entered into and had a fiduciary relationship with Barbachano. 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.

37. 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.

38. The Defendants further owed Barbachano fiduciary duties to review the investments contained in her investment portfolio, 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.

39. Defendants breached the fiduciary duties that they owed to Barbachano. Defendants ignored obvious red flags, failed to conduct reasonable due diligence, and adequately research the risks involved in Fairfield.

40. The Defendants, in breach of their fiduciary duties, also failed to monitor Barbachano's investments, including her investment in Fairfield, and often made investment decisions without obtaining Barbachano's written authorization, including the purchase of Fairfield securities.

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

42. Barbachano justifiably relied upon Defendants' investment advice, expertise, and skill and she suffered substantial damages as a result of Defendants' failure to conduct adequate due diligence of her investment in Fairfield.

43. 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.

44. 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 II

GROSS NEGLIGENCE
(AGAINST ALL DEFENDANTS)

45. Barbachano realleges paragraphs 1-33 as if fully set forth herein.

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

47. 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.

48. 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.

49. The Defendants further owed Barbachano duties to review the investments contained in her investment portfolio, 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.

50. Defendants breached the duties that they owed to Barbachano and were grossly negligent in failing to conduct reasonable due diligence and adequately research the risks involved in Fairfield.

51. 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, and by often making investment decisions without obtaining Barbachano's written authorization, including the purchase of Fairfield securities.

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

53. Barbachano justifiably relied upon Defendants' investment advice, expertise, and skill and she suffered substantial damages as a result of Defendants' failure to conduct adequate due diligence of her investment in Fairfield.

54. 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.

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

56. 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 III

NEGLIGENCE
(AGAINST ALL DEFENDANTS)

57. Barbachano realleges paragraphs 1-33 as if fully set forth herein. This is an action for negligence against Defendants.

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

59. 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 Exchange ("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 it 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 call premiums on the S&P 500 since 1986 as published by the Chicago Board of Options Exchange ("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 references 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.

60. 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

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

Respectfully submitted,

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