Anwar et al v. Fairfield Greenwich Limited et al
Doc. 488 Att. 9

Exhibit I

Statement of Claim

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AMERICAN ARBITRATION ASSOCIATION
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

MIGUEL CALVO AND/OR MARIA LUISA CALVO, JHC INVESTMENT LTD, SHIVA ENTERPRISES LTD, WORLD GLOBAL ENGINEERS LTD, PRIMAVERA INTERNACIONAL, FERNANDO SELMAN-NAZAL, TOSSA DE MAR LTD, JULIO ACEVEDO DIAZ AND MARIA MAGDALENE COMMENTZ SALAMANCA, INVERSIONES MILLAPEL LIMITADA, MARIA LUCIA SKINNER AND HORACIO UNDURRAGA, JUAN LUIS ELTIT Z. AND PATRICIO ELTIT, GISSELLE KASSIS AND JORGE KASSIS, ASESORIAS ROGERS y COMPANIA LIMITADA f/k/a ROGERS Y COMPANIA LIMITADA, NORMA NARVAEZ, NELSON GAZALI, SERGIO GAZALI AND YAMILI ATISHA, GONZALO JAIME VEGA DE KUYPER, ALFONSO ROZAS OSSA, ELIANA RODRIGUEZ, ALFONSO ROZAS R. AND MARIA ELIANA ROZAS R., CECILIA IRENE PEREZ RAMIREZ, ILDEGARD ANA KUNZ PARRA AND/OR ILDEGARD VERONICA BUSTOS KUNZ, ARTURO MURÚA AND CARMEN PAZ DAZA, HANS KILLINGER B., BOXER LIMITED, SIMON ECHENIQUE AND PEDRO ECHENIQUE, GLDN CORPORATION LTD AND FUJIAN LTD,

Claimants,

-against-

STANDARD CHARTERED BANK, STANDARD CHARTERED INTERNATIONAL (USA) LTD. f/k/a AMERICAN EXPRESS BANK LTD., STANDARD CHARTERED BANK INTERNATIONAL (AMERICAS) LIMITED f/k/a AMERICAN EXPRESS BANK INTERNATIONAL, STANCHART SECURITIES INTERNATIONAL, INC., JOHN G. DUTKOWSKI AND RODOLFO L. PAGES.

Respondents.

STATEMENT OF CLAIM AND DEMAND FOR ARBITRATION

Miguel Calvo and/or Maria Luisa Calvo, JHC Investment Ltd, Shiva Enterprises Ltd, World Global Engineers Ltd, Primavera Internacional, Fernando Selman-Nazal, Tossa De Mar Ltd, Julio Acevedo Diaz and Maria Magdalene Commentz Salamanca, Inversiones Millapel Limitada, Maria Lucia Skinner and Horacio Undurraga, Juan Luis Eltit Z. and Patricio Eltit, Gisselle Kassis and Jorge Kassis, Asesorias Rogers Y Compania Limitada formerly known as Rogers Y Compania Limitada, Norma Narvaez, Nelson Gazali, Sergio Gazali and Yamili

Atisha, Gonzalo Jaime Vega de Kuyper. Alfonso Rozas Ossa, Eliana Rodriguez, Alfonso Rozas R. and Maria Eliana Rozas R., Cecilia Irene Perez Ramirez, Ildegard Ana Kunz Parra and/or Ildegard Veronica Bustos Kunz, Arturo Murúa and Carmen Paz Daza, Hans Killinger B., Boxer Limited, Simon Echenique and Pedro Echenique, GLDN Corporation Ltd and Fujian Ltd, (collectively, "Claimants" or individually, a "Claimant") submit this Statement of Claim and Demand for Arbitration.

This matter arises from Respondents' breach of duties owed by a broker to Claimants as customers. Respondents' breach of such duties included, among others, the failure to comply with (i) the duty to investigate a security before recommending it, (ii) the duty not to misrepresent material facts regarding an investment and (iii) the duty to disclose material information regarding the nature of risk of a security before recommending it. This proceeding involves claims related to Respondents' recommendation and sale to Claimants of shares of Fairfield Sentry Limited ("Fairfield Sentry"), a feeder fund to Bernard Madoff and his firm, Bernard L. Madoff Investment Securities LLC ("Madoff Securities").[1] Claimants make no claim that Respondents should have uncovered Madoff's multi-billion dollar Ponzi scheme. Claimants assert claims, as detailed herein, that Respondents engaged in unlawful and fraudulent practices with respect to the recommendation and sale of Fairfield Sentry to Claimants which included, among other things, the following:

- the false and deceptive marketing and sale of the Fairfield Sentry investment as a low risk, non-speculative investment when in fact the investment was speculative and involved a high degree of risk as expressly stated in the Fairfield Sentry Private Placement Memorandum;

[1] Bernard Madoff was the sole shareholder and investment manager of Bernard Madoff Investment Securities LLC.

- the failure to deliver to Claimants the required disclosure document (the Private Placement Memorandum) with respect to the Fairfield Sentry investment – the sole document by which Fairfield Sentry was permitted to be offered to investors; and

- the failure to conduct reasonable due diligence of the Fairfield Sentry investment prior to placing Fairfield Sentry on the firm-wide approved product list and recommending the investment to Claimants, which if conducted should have precluded Respondents' recommendation and sale of Fairfield Sentry to Claimants.

The aforementioned acts constituted fraud, breach of fiduciary duty and duties of reasonable care and fair dealing, breach of contract, as well as violations of federal and state securities laws. Due to Respondents' wrongdoing as detailed herein, Claimants are entitled to compensatory damages in the amount of $11,025,168 plus advisory fees paid and other relief.

All of the claims alleged herein involve common questions of law and fact arising out of substantially similar claims of fraud, breach of fiduciary duty and lack of reasonable due diligence with respect to the same security – Fairfield Sentry – recommended and sold by Respondents to the Claimants from the same Miami office of Respondents through its representative office in Santiago, Chile.

I. PARTIES

All of the individual Claimants, Miguel Calvo and/or Maria Luisa Calvo, Fernando Selman-Nazal, Julio Acevedo Diaz and Maria Magdalene Commentz Salamanca, Maria Lucia Skinner and Horacio Undurraga, Juan Luis Eltit Z. and Patricio Eltit, Gisselle Kassis and Jorge Kassis, Norma Narvaez, Nelson Gazali, Sergio Gazali and Yamili Atisha, Gonzalo Jamie Vega de Kuyper, Alfonso Rozas Ossa, Eliana Rodriguez, Alfonso Rozas R. and Marie Eliana Rozas R., Cecilia Irene Perez Ramirez, Ildegard Ana Kunz Parra and/or Ildegard Veronica Bustos Kunz, Arturo Murúa and Carmen Paz Daza, Hans Killinger B. and Simon Echenique and Pedro Echenique, reside in Chile and at all relevant times herein resided in Chile. Claimants JHC Investment Ltd, Primavera Internacional, Shiva Enterprises Ltd, World Global Engineers Ltd, Boxer Limited, Fujian Ltd., Tossa De Mar Ltd. and GLDN Corporation Ltd. are each organized and existing under the laws of Cayman Islands, British West Indies. Claimants Inversiones Millapel Limitada and Asesorios Rogers y Compania Limitada, formerly known as Rogers y Compania Limitada, are each organized and existing under the laws of Chile.

Respondent Standard Chartered Bank is a subsidiary of Standard Chartered PLC, and is organized and existing under the laws of the United Kingdom with its principal place of business at 1 Aldermanbury Square, London EC2V7SB, England. The Standard Chartered Private Bank at all relevant times herein was the private bank division of Standard Chartered Bank.[2] In February 2008, Standard Chartered PLC acquired American Express Bank Ltd. and its subsidiaries, including American Express Bank International, from American Express Company.

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[2] The name "The Standard Chartered Private Bank" appeared on Claimants' monthly account statements (together with other Standard Chartered affiliated entities) subsequent to the acquisition of the American Express entities in February 2008. Prior to the acquisition in February 2008 the monthly account statements included the name "American Express Private Bank" and also affiliated American Express entities. American Express Private Bank was identified as the global marketing name used by American Express Bank, Ltd., a subsidiary of American Express Company.

Respondent Standard Chartered International (USA) Ltd., formerly known as American Express Bank Ltd.[3], is a wholly-owned subsidiary of Standard Chartered PLC. Standard Chartered Bank International (USA) Ltd. at all relevant times herein maintained a principal place of business at 200 Vesey Street, New York, New York 10285.

Respondent Standard Chartered Bank International (Americas) Limited ("SCBI"), formerly known as American Express Bank International,[4] at all relevant times herein was a wholly owned subsidiary of Standard Chartered International (USA) Ltd., formerly known as American Express Bank, Ltd. At all relevant times herein SCBI offered private banking services, including broker-dealer services principally to high net worth individuals in Latin America. At all relevant times herein SCBI maintained offices at 1111 Brickell Avenue, Miami, Florida 33131.

Respondent StanChart Securities International, Inc. a Florida corporation and a subsidiary of Standard Chartered Bank, became a registered broker-dealer with the Securities and Exchange Commission and a member of Financial Industry Regulatory Authority ("FINRA") on February 29, 2008. In November 2008, the broker-dealer business of Respondent SCBI and affiliates was reorganized and thereafter conducted under StanChart Securities International, Inc., as a successor to the broker-dealer business of Respondent SCBI and affiliates. Respondent StanChart Securities International, Inc. maintains a principal place of business at 1111 Brickell Avenue, Miami, Florida 33131.

[3] On January 16, 2009 American Express Bank Ltd changed its name to Standard Chartered International (USA) Ltd.

[4] On May 30, 2008 American Express Bank International changed its name to Standard Chartered Bank International (USA) Limited and then to Standard Chartered Bank International (Americas) Limited on August 1, 2008.

Respondent John G. Dutkowski at all relevant times herein was Director-Investment Specialist for Respondent SCBI (formerly American Express Bank International) and its affiliates at the office located at 1111 Brickell Avenue, Miami, Florida 33131. Respondent Dutkowski is currently a Senior Director at Respondent Standard Chartered Bank. Since February 29, 2008, he has also been registered with Respondent StanChart Securities International, Inc. as a Registered Representative and as a General Securities Principal since April 2009.

Respondent Rodolfo L. Pages at all relevant times herein was Head of Sales and Relationship Management for Respondent Standard Chartered International (USA) Ltd. (formerly American Express Bank, Ltd.) and was also the Chief Executive Officer and a director of Respondent StanChart Securities International, Inc., positions he held from July 2007 until September 2009.

Respondents Standard Chartered Bank, Standard Chartered International (USA) Ltd., SCBI and StanChart Securities International, Inc. are hereinafter collectively referred to as the "Respondent Standard Chartered Entities" and together with Respondents John G. Dutkowski and Rodolfo L. Pages are hereinafter collectively referred to as the "Respondents" or individually a "Respondent".

II. SUMMARY OF STATEMENT OF CLAIM

During the period September 2005 to October 2008, Respondents recommended and caused Claimants to make aggregate investments of $11,025,168 in Fairfield Sentry. Fairfield Sentry was recommended and sold to Claimants as part of the investment program of the Respondent Standard Chartered Entities. This investment program included only securities approved for sale by an executive committee of the Respondent Standard Chartered Entities after purportedly conducting due diligence. Respondents' due diligence with respect to Fairfield Sentry and its exclusive investment manager – Bernard Madoff (Madoff Securities) – was totally deficient. Respondents apparently conducted little, if any, due diligence of Bernard Madoff and Madoff Securities notwithstanding the fact that the Fairfield Sentry Private Placement Memorandum stated that Madoff was "essential to the continued operation of the Fund, and its profitability, if any." Claimants do not contend that Respondents should have uncovered Madoff's multi-billion dollar Ponzi scheme, but rather that if Respondents had conducted reasonable due diligence they would have discovered a host of red flags which should have caused them not to place Fairfield Sentry on the firm-wide approved product list and not to recommend the sale of Fairfield Sentry to Claimants. If Respondents had conducted reasonable due diligence they would have discovered (i) that Fairfield Sentry and affiliated entities did not conduct the required due diligence of Bernard Madoff and Madoff Securities as represented in the Fairfield Sentry Private Placement Memorandum and that the hundreds of million dollars of fees received by affiliates of Fairfield Sentry (Fairfield Greenwich Group affiliated entities) from Fairfield Sentry's investment with Madoff created a conflict of interest with respect to their due diligence obligations, and (ii) numerous red-flags concerning Bernard Madoff and Madoff Securities barring such recommendation (see detailed description of red flags at pages 33 to 45 hereof). Such red flags included, among others, the following: (i) publicly available information

which raised serious questions about Bernard Madoff and Madoff Securities (including, among others, the legitimacy of his purported returns) which at the very least should have heightened Respondents' due diligence obligations, (ii) the highly unusual and suspicious fee structure of Madoff which included Madoff only charging commissions rather than performance and management fees which Madoff allowed affiliates of Fairfield Sentry to earn (far in excess of the norm for feeder funds) resulting in Madoff foregoing hundreds of millions of dollars, (iii) Madoff's auditors were ill-equipped, to say the least, to conduct an appropriate audit of a multi-billion dollar fund, a three person firm (one semi-retired) purportedly auditing one of the largest money management firms in the world and (iv) Madoff achieved returns that were highly unusual in their consistency and lack of volatility – no down year in 17 years and only 14 very small monthly losses having never experienced more than a one month losing streak – based on an investment strategy that was largely designed to correlate to the market.

Despite the numerous red flags, the Respondent Standard Chartered Entities approved Fairfield Sentry as an investment product to be recommended to its customers (including Claimants). The wrongdoing by Respondents did not stop there. Remarkably, Respondents proceeded to recommend and sell Fairfield Sentry to Claimants without delivery of the required disclosure document (the Private Placement Memorandum) – the sole document by which Fairfield Sentry was permitted to be offered to investors. The failure to deliver the Private Placement Memorandum constituted a violation of one of the most fundamental obligations of a broker to its customers when offering securities – full and fair disclosure of all material information pertaining to the security being recommended.

Having ignored their obligations to deliver the required disclosure document containing disclosure of the true nature and risk of the investment, Respondents proceeded to market and sell Fairfield Sentry in a totally false and deceptive manner. Respondents described the

investment to Claimants as a low risk, non-speculative investment – a "risk reducer" and often further described the investment as having a risk equivalent to that of treasury bonds – a false and misleading description as the Fairfield Sentry Private Placement Memorandum on its cover page declared that the shares offered by Fairfield Sentry were "speculative and involve a high degree of risk". If Respondents had disclosed to Claimants the true nature and risk of an investment in Fairfield Sentry as detailed herein, Claimants would not have made the investment.

As a result of Respondents' wrongdoing, including their fraudulent and deceitful practices detailed herein, Claimants seek compensatory damages of $11,025,168 plus advisory fees paid and other relief as requested herein.

III. BACKGROUND - FAIRFIELD GREENWICH GROUP – FAIRFIELD SENTRY / BERNARD MADOFF

In 1983, Walter M. Noel, Jr. founded Fairfield Greenwich Group ("FGG"), a global family of affiliated companies. FGG is controlled by three principals, Walter Noel, Jeffrey Tuchee and Andres Piedrahita. In its October 2008 marketing materials, FGG stated it has over 100 employees, had offices in New York, London, and Bermuda, and representative offices in the United States (including an office in Miami, Florida), Europe, Asia, and an office for a joint venture in Singapore. Prior to the discovery of Madoff's Ponzi scheme, FGG had approximately $14.1 billion in client and firm assets under its management and approximately $7.5 billion of such assets were invested in Fairfield Sentry. Fairfield Sentry is referred to as a "feeder fund" as it did not directly manage investors' funds – it simply collected funds from investors and allocated the funds to a single, exclusive investment manager – Madoff Securities[5]. Fairfield Sentry's $7.5 billion investment with Madoff made it the largest Madoff feeder fund and the largest Madoff investor. Fairfield Sentry's purported value added to its investors (upon which

[5] Fairfield Sentry was not a "fund of funds" which is an entity that allocates funds to a number of investment managers to achieve diversification.

the management and performance fees were based) was (a) the access to Madoff that it provided to its investors, (b) the purported due diligence FGG and affiliates performed on Madoff to ensure that Fairfield Sentry was an appropriate investment and (c) FGG's and affiliates' ongoing monitoring of Madoff's execution of his split-strike conversion strategy.

For more than twenty years, FGG had a business relationship with Madoff and Madoff Securities, which resulted in the payment of hundreds of millions of dollars of fees to FGG and its affiliates. As the 1990s progressed, and through as recently as December 2008, FGG, through affiliated entities, such as Fairfield Sentry, raised large sums of money to invest with Madoff and Madoff Securities. During the period 2002 to 2008 alone, Fairfield Sentry paid over $900 million in management and performance fees to FGG and its affiliates.[6]

On December 11, 2008, Madoff was arrested and charged in a criminal complaint by the United States Attorney's Office of the Southern District of New York for securities fraud for a multi-billion dollar Ponzi Scheme. Also on December 11, 2008, the SEC filed an action in the Southern District of New York, charging Madoff and Madoff Securities with securities fraud, and seeking, among other things, to halt their activities. (*SEC v. Bernard L. Madoff*, 08 Civ. 10791 (S.D.N.Y. Dec. 11, 2008).

On December 22, 2008, Fairfield Sentry issued an announcement that funds under the management of FGG and its affiliates would suspend the determination of their net asset value.

On February 20, 2009, Irving Picard, the court-appointed Trustee presiding over the liquidation of Madoff Securities announced that there was no evidence that Madoff Securities had conducted any securities transactions for its customers for the last thirteen years.

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[6] See paragraph 5 of the Complaint filed by Fairfield Sentry against FGG and affiliated parties in the Supreme Court of the State of New York, County of New York on May 29, 2009 (Index No. 09601687) (the "Fairfield Sentry Complaint against FGG").

On March 12, 2009, Madoff admitted to the massive fraudulent scheme and pled guilty to 11 felony counts. Madoff admitted, among other things, that (a) his "fraud began in the early 1990s", (b) he "misrepresented to clients, employees and others, that [he] purchased securities for clients in overseas markets," (c) he never "executed trades on behalf of [his] investment advisory clients," and (d) he falsified "trading confirmations and client account statements that reflected the bogus transactions and positions [he] created and sent to clients purportedly involved in the split strike conversion strategy." See United States of America v. Bernard L. Madoff, 09-CR-213 (S.D.N.Y), Docket No. 50 at 2-3. On June 29, 2009, U.S. District Judge Dennis Chin, citing the unprecedented nature of the multi-billion dollar fraud, sentenced Madoff to 150 years in jail.

IV. STATEMENT OF FACTS

At all relevant time herein, Claimants maintained brokerage accounts at the Miami office of Respondent SCBI[7] [8] through the representative office located in Santiago, Chile (the "Santiago Representative Office"). In accordance with applicable regulations in Chile, the Santiago Representative Office had restrictions on its activities which included among others, the inability to sell or execute securities transactions on behalf of customers (which activities were conducted solely by the Miami office) and its activities were limited to marketing, managing the

[7] All of the Claimants maintained accounts at the Miami office and were issued account statements from the Miami office except for Claimant Shiva Enterprises, Ltd. and Claimant Boxer Limited which were both sold Fairfield Sentry by representatives of the Miami office (the investment was also approved and executed by the Miami office) through the Santiago Representative Office, although the account statements were issued by Respondents' New York Office.

[8] The customer accounts were all opened with SCBI (formerly American Express Bank International). Section 9 of the applicable SCBI Brokerage Client Agreement, executed by each of the Claimants, provides that the Brokerage Client Agreement may be assigned to affiliates of SCBI or its successors upon a reorganization. In November 2008 the accounts were assigned to Respondent StanChart Securities International, Inc. as part of a reorganization of the broker-dealer business of SCBI and affiliates. Respondent StanChart Securities International, Inc. was a successor to the broker-dealer business of SCBI and its affiliates.

customer relationship and serving as a point of contact for Chilean clients[9]. At all relevant times herein, the Santiago Representative Office consisted of approximately 10-12 employees including 3 relationship managers (the "Santiago Relationship Managers"). The Miami office handled all communications and instructions regarding securities transactions and effected all securities transactions on behalf of the Claimants. The Miami office had full supervisory and compliance responsibility with respect to all securities transactions of clients of the Santiago Representative Office including transactions of Claimants.

The securities offered to Claimants were part of an asset allocation investment program designed for each client of the Santiago office by the Miami office. The client asset allocations were prepared and approved by the Miami office after receiving questionnaires containing relevant financial and investment information for each client from the Santiago Relationship Managers. Respondents only recommended securities products approved on a firm wide basis for each asset class (equities, fixed income, alternative investments, etc.) by a firm-wide executive committee purportedly after conducting appropriate investigation and due diligence of each approved security. The Santiago Relationship Managers would typically have weekly conference calls with the Miami office, including Respondent Dutkowski, to discuss particular firm-wide products within each asset class including Fairfield Sentry. At all relevant times herein, Fairfield Sentry was a firm-wide approved product within the alternative investment asset class.

All clients (including Claimants) who were sold Fairfield Sentry by Respondents were charged an advisory fee of .50% per annum, calculated monthly based on the month end net asset

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[9] As Respondent Standard Chartered Bank advised its clients on a regular basis in client communications "Some of the SCB entities and affiliates ... only act as representatives of the Standard Chartered Private Bank, and may not be able to offer products and services, or offer advice to clients. They serve as points of contact only" (As an example, see Standard Chartered Private Bank client letter, dated July 31, 2008).

value of the Fairfield Sentry shares and payable on a quarterly basis.[10] At all relevant times herein, Respondent John G. Dutkowski, Director-Investment Specialist for Respondent SCBI (and affiliated entities) at the Miami office, had responsibility for approval of all client (including Claimants) asset allocations and all products purchased within each asset class for clients of the Santiago Representative Office. Respondent Dutkowski's duties included approving all trade orders which were typically faxed to him from the Santiago Representative Office on a regular basis. At all relevant times herein, Respondent Rodolpho L. Pages, Head of Sales and Relationship Management for Respondent Standard Chartered Bank International (USA) Ltd. (formerly known as American Express Bank, Ltd.), was Respondent Dutkowski's supervisor.

Fairfield Sentry was a favorite investment product of Respondent Dutkowski. Respondent Dutkowski consistently pushed Fairfield Sentry to the Santiago Relationship Managers (particularly in 2008) to recommend for purchase by clients of the Santiago Representative Office. Furthermore, Respondent Dutkowski frequently travelled to Santiago and engaged in direct in-person meetings with Claimants (and their Santiago Relationship Managers) at which he aggressively recommended the purchase of Fairfield Sentry. Among other things, in order to induce the Santiago Relationship Managers to market the Fairfield Sentry investment, Respondent Dutkowski often mentioned to the Santiago Relationship Managers that the Respondent Standard Chartered Entities had allocation quotas for Fairfield Sentry and when the quota was filled the investment would not be available until it opened up again.

[10] In addition to the advisory fee, as of the date hereof (pending discovery) it is unknown if Respondent SCBI or other Respondent Standard Chartered Entities were paid placement agent fees or distribution fees from Fairfield Sentry (or affiliated entities) in connection with the sale of Fairfield Sentry to clients (including Claimants).

Respondent Dutkowski continually advised the Santiago Relationship Managers that they should market Fairfield Sentry as having a risk and volatility equivalent to that of time deposits with the benefit of significantly greater returns. One Santiago Relationship Manager said Respondent Dutkowski repeated to him this marketing pitch for Fairfield Sentry over 100 times during his tenure at the Santiago office. Respondent Dutkowski did not inform the Santiago Relationship Managers that Fairfield Sentry was just a feeder fund with no direct portfolio management authority for investor funds and that it engaged a single third party manager (Madoff Securities – Bernard Madoff). Respondent Dutkowski never mentioned to the Santiago Relationship Managers that Madoff Securities (Bernard Madoff) was the third party portfolio manager with sole investment authority. Remarkably, the Santiago Relationship Managers were never provided the Private Placement Memorandum – the sole document by which an investment in Fairfield Sentry was permitted to be made. In fact, the Santiago Relationship Managers did not understand that an investment in Fairfield Sentry was a private placement – or even what a private placement was!

Just as Respondent Dutkowski had misrepresented the nature and risk of the Fairfield Sentry investment to the Santiago Relationship Managers, he similarly misrepresented the investment to Claimants in direct meetings at which he pitched the investment to Claimants[11]. Neither Respondent Dutkowski, nor anyone else on behalf of the Respondent Standard Chartered Entities, delivered the Private Placement Memorandum – the required disclosure document – to any of the Claimants prior to the investment (or at any time). Absent delivery of the required disclosure document, Respondent Dutkowski was free to paint his own description of the

[11] Many of the Claimants had one or more in-person meetings with Respondent Dutkowski at which he recommended the purchase of Fairfield Sentry. As to those Claimants that did not have such in person meetings with Dutkowski, the sales pitch for Fairfield Sentry was delivered by the Claimant's Relationship Manager at the Santiago Representative Office (either alone or together with a Miami Relationship Manager) who received information regarding Fairfield Sentry directly from Respondent Dutkowski and/or other personnel from Respondents' Miami office.

Fairfield Sentry investment which was totally false and deceptive. In general terms, Respondent Dutkowski presented the Fairfield Sentry investment as a "risk reducer", a low risk, non-speculative, safe investment with risk equivalent to that of treasury bonds. In fact, Respondents' written investment proposals prepared for Claimants as part of the investment program listed the Fairfield Sentry investment under the header "Risk Reducer". For example, Mr. Dutkowski described the investment to Claimant Jose Antonio Eltit as the "safest investment in the world" and to Claimant Norma Narvaez as being "as good as cash". Respondent Dutkowski did not explain that Fairfield Sentry was just a feeder fund with no investment authority which simply funneled client money to one outside third party manager (Madoff). Remarkably, he never mentioned Bernard Madoff's name or that of Madoff Securities to any of the Claimants.

If Claimants had understood the true nature and risk of an investment in Fairfield Sentry as detailed herein, Claimants would not have made the investment.

On December 11, 2008, Bernard Madoff was arrested and charged with securities fraud as he admitted to a multi-billion dollar Ponzi scheme. Claimants who heard the news of Madoff's arrest had no idea that Madoff was connected to Fairfield Sentry. Nor did the Santiago Relationship Managers understand the connection. On December 11, 2008, the Miami office contacted the Santiago Representative Office and said there is a problem with Fairfield Sentry and all clients should be immediately contacted to sign redemption notices to liquidate the investment. By December 12. 2008, most of the Claimants had been contacted to immediately come to the Santiago office to sign a letter in a desperate and futile effort to redeem whatever was left of their investment in Fairfield Sentry. FGG had suspended the net asset value (NAV) for the Fairfield Sentry fund and all redemptions were also suspended. Beginning on December 11, 2008 and continuing for weeks thereafter, efforts were made on a daily basis by the Santiago Relationship Managers to contact Respondent Dutkowski for explanation as to how

the "safest investment in the world" could have imploded. Telephone calls (to office and home), e-mails and faxes were sent to Respondent Dutkowski – all to no avail. As to the Santiago Representative Office, Respondent Dutkowski disappeared, never to be heard from again - just like the value of Claimants' investment in Fairfield Sentry.

Following December 11, 2008, Claimants requested but did not receive adequate explanation as to what occurred with their investment in Fairfield Sentry.

On February 19, 2009, in an update letter to all clients who invested in Fairfield Sentry and the Fairfield Sigma[12] funds, Morteza Farzaneh, Global Head of Relationship Management of the Standard Chartered Private Bank, stated:

"Due Diligence of the Fairfield Sentry and Sigma Funds"

> "As some of our clients may recall, the relationship with FGG [Fairfield Greenwich Group] dates back to 2002, when American Express Bank ("AEB") commenced its relationship with FGG. At that time, Fairfield Sentry and Fairfield Sigma were well known and reputable hedge funds, with track records as far back as 1990. AEB performed appropriate due diligence on Fairfield Sentry and Fairfield Sigma funds before making the funds available to its clients. This due diligence was revalidated periodically in subsequent years. Until the events of December 2008, both funds continued to be regarded in the market as reputable hedge funds."
>
> "In 2008, Standard Chartered Bank ("SCB") acquired American Express Bank. Neither SCB nor AEB, which is now part of SCB, have or had, any direct relationship with Bernard Madoff or with BMIS [Madoff Securities]. An indirect relationship with BMIS arises from AEB's (and later SCB's) relationship with the Fairfield Greenwich Group as a distributor of the FGG's Fairfield Sentry and Fairfield Sigma funds. Fairfield Sentry and Fairfield Sigma appointed BMIS to implement their respective investment strategies, and BMIS was also appointed as their sub-custodian."

[12] Fairfield Sigma Limited, a similar Madoff feeder fund sponsored by FGG and primarily offered to European investors, invested substantially all of its funds in Fairfield Sentry. One Claimant (Shiva Enterprises, Ltd.) in addition to investing in Fairfield Sentry also was recommended and sold Fairfield Sigma by Respondents.

"Given the nature of these relationships, we are maintaining contact with the Fairfield Greenwich Group, and will keep monitoring the situation so that we can keep you informed about the relevant facts of this matter as it evolves."

During the period September 2005 – October 2008, Respondents saw fit to recommend and cause Claimants to invest an aggregate of $11,025,168 in Fairfield Sentry as summarized below:

Claimant Miguel Calvo, 75 years of age and engaged in the real estate and construction business, and *Claimant Maria Luisa Calvo*, his wife, opened an account with Respondent SCBI in June 2005. The account was handled by Mr. Calvo. SCBI was the first brokerage account ever opened by Mr. Calvo or his wife. Between September 2006 and March 2008, based upon the recommendations and presentations of Respondent Dutkowski, Mr. Calvo invested a total of $1,418,000 in Fairfield Sentry which consisted of a $200,000 investment in September 2006, $250,000 investment in September 2007, $260,000 investment in January 2008, $33,000 investment in February 2008 and a $675,000 investment in March 2008. Mr. Calvo was advised by Respondent Dutkowski that an investment in Fairfield Sentry was an investment consisting of treasury bonds and other short-term bonds. Mr. Calvo was only interested in purchasing low risk bonds (which he believed was the nature of the Fairfield Sentry investment) and had no interest in making an investment in equities because of the associated greater risk. Indeed, neither Mr. Calvo nor his wife ever invested in equities. Between September 2006 and March 2008, Respondent Dutkowski met with Mr. Calvo in Santiago on three to four occasions. Respondent Dutkowski told Mr. Calvo repeatedly that Fairfield Sentry was a "risk reducer" and a very safe, low-risk investment. Mr. Calvo was also informed by Respondent Dutkowski that Fairfield Sentry had the advantage of favorable trade executions to capitalize on market movements.

Claimant JHC Investment Ltd ("JHC"), an investment entity, opened an account with Respondent SCBI in May 2005. The principals of JHC were and continue to be Juan Eduardo Undurraga, Horacio Undurraga and Christian Chaigneau, each a resident of Chile. Between July 2006 and April 2008, based upon the recommendations and representations of Respondent Dutkowski and JHC's Santiago Relationship Manager, JHC invested an aggregate $1,168,000 in Fairfield Sentry which consisted of a $100,000 investment in July 2006, $113,000 investment in October 2006, $40,000 investment in September 2007, $200,000 investment in March 2008, $250,000 investment in April 2008, $340,000 investment in June 2008 and a $125,000 investment in July 2008. Claimant JHC consistently increased its Fairfield Sentry holdings in an effort to materially decrease the risk of its portfolio as it was advised that Fairfield Sentry was a low risk investment primarily in treasury bonds. As part of JHC's portfolio review, Respondent Dutkowski travelled to Santiago, Chile to meet with the principals of JHC on 4-5 occasions. Respondent Dutkowski and JHC's Santiago Relationship Manager repeatedly told the principals of Claimant JHC that Fairfield Sentry was a low-risk investment, a "risk reducer" and a safe investment because it was largely invested in treasury bonds. Claimant JHC was also informed by Respondent Dutkowski that Fairfield Sentry had the advantage of favorable trade executions to capitalize on market movements.

Claimant Shiva Enterprises Ltd. ("Shiva"), an investment entity, opened an account with Respondent SCBI in January 2003. The principal of Shiva was and continues to be Roberto Jaras-Fleischman. Mr. Jaras requested that the Shiva account contain low risk, safe investments. Between June 2007 and October 2008, based upon the recommendations and representations of his Santiago Relationship Manager and Respondent Dutkowski, Shiva invested an aggregate of $1,615,000 in Fairfield Sentry and Fairfield Sigma Limited[13]. The investments included a $455,000 investment in Fairfield Sentry on June 2007, a $400,000 investment in Fairfield Sentry in July 2008 and a $760,000 in Fairfield Sigma Limited in October 2008. In January 2008, the first Fairfield Sentry position was sold, at the recommendation of Shiva's Santiago Relationship Manager, resulting in proceeds to Shiva of $469,616. Roberto Jaras met Respondent Dutkowski, as a part of Shiva's portfolio review, on four to five occasions. Respondent Dutkowski and Shiva's Santiago Relationship Manager told Mr. Jaras that Fairfield Sentry was a very conservative investment, "risk reducer" and the best place to invest because it was "very safe". Indeed, Respondent Dutkowski represented to Mr. Jaras that the Fairfield Sentry investment was the safest place for one to put his investment funds. Mr. Jaras believed he was investing in a safe mutual fund.

Claimant World Global Engineers Limited ("World Global"), an investment entity organized at the suggestion of Respondent SCBI, opened an account with Respondent SCBI in August 2005. The principal of World Global was and continues to be Roberto Fuenzalida, age 64, and formerly in the newspaper business. Mr. Fuenzalida is a resident of Chile and he currently heads an organization of Latin American newspapers. In September 2005 and September 2008, Claimant World Global invested an aggregate $1,000,000 in Fairfield Sentry which consisted of a $500,000 investment in September 2005 and an additional $500,000 investment in September 2008. In September 2005, Mr. Fuenzalida was informed by one of his Santiago Relationship Managers that an investment in Fairfield Sentry was a low risk, very secure investment in a fund similar to a bond fund. The $500,000 investment in Fairfield Sentry recommended by his Santiago Relationship Manager and approved by the Miami office was made in Claimant World Global's Geneva (Switzerland) account maintained with an affiliate of the Respondent Standard Chartered Entities. With respect to the September 2008 investment in Fairfield Sentry, Mr. Fuenzalida met with Respondent Dutkowski and his Relationship Managers several times in August 2008 and September 2008 to discuss the decline in value of World Global's account. A number of times, Respondent Dutkowski and his Santiago Relationship Manager stated to him that the "jewel" of the account was Fairfield Sentry. Respondent Dutkowski also told Mr. Fuenzalida that Fairfield Sentry was a better investment than others he had and would provide a steady, consistent return with low risk. Based upon the strong recommendation and representations of Respondent Dutkowski and the Relationship Managers at the Santiago Representative Office, Mr. Fuenzalida made an additional $500,000 investment in Fairfield Sentry in September 2008.

Claimant Primavera Internacional ("Primavera"), an investment entity, opened an account with Respondent SCBI in November 2006. The owners of Primavera Internacional were and continue to be Maria Cecilia Figueroa, Carlos Alberto Figueroa, Sergio Cristian Figueroa, Jose Eugenio Figueroa and Maria Angelica Figueroa, all residents of Chile. When the account was first opened Respondent Dutkowski and Primavera's Santiago Relationship Manager recommended an investment in Fairfield Sentry but Primavera was subsequently informed that the investment

[13] Fairfield Sigma Limited, a similar Madoff feeder fund sponsored by FGG and primarily offered to European investors, invested substantially all of its funds in Fairfield Sentry.

was "closed." In February 2007 (after being informed that the investment was now open) and based upon the recommendation and representations of Respondent John Dutkowski and other representatives of Respondents, Primavera invested $1,000,000 in Fairfield Sentry. Respondent Dutkowski and the other representatives of Respondents represented to Claimant Primavera that Fairfield Sentry was a risk reducer, was not volatile and a low-risk investment. They further advised the principals of Claimant Primavera on several occasions that Fairfield Sentry had superior knowledge of the market, would trade in advance based on special information and would provide positive income in difficult times.

Claimant Fernando Selman-Nazal, age 52 and engaged in the real estate business, opened an account with Respondent SCBI in December 2002. In May 2008, based upon the recommendation and representations of his Santiago Relationship Manager, Mr. Selman invested $313,918 in Fairfield Sentry. His Santiago Relationship Manager represented to him that the investment in Fairfield Sentry was a very good, low-risk investment, that it was a superior product, very safe, stable and a particularly appropriate investment for difficult markets. Mr. Selman believed he was investing in a type of mutual fund.

Claimant Tossa De Mar Ltd. ("Tossa"), the principals of which are Maria Lourdes Perez and Jose Rio Rodriguez, both residents of Chile, opened an account with the Respondent SCBI in July 1993. In June 2008, based upon the recommendation of Respondent Dutkowski and Tossa's Santiago Relationship Manager, Tossa invested $424,000 in Fairfield Sentry. Prior to the investment, Respondent Dutkowski and the Santiago Relationship Manager had called Ms. Perez and requested that she come into the office to discuss her investments. At the office meeting, Ms. Perez informed them that she sought a secure and conservative investment. Both Respondent Dutkowski and the Santiago Relationship Manager recommended Fairfield Sentry to her as they represented it was a safe, low-risk investment that "protected against the ups and downs of the market." At a later meeting, in late November or early December 2008, Respondent Dutkowski and the Santiago Relationship Manager spoke again with Ms. Perez and her son and recommended an additional investment in Fairfield Sentry in the amount of $170,000 stating that Fairfield Sentry was the most secure and conservative investment available to them at that time. That investment never took place as the Ponzi scheme involving Bernard Madoff was revealed before the investment could be made.

Claimant Julio Acevedo Diaz, age 77 and a physician, and *Claimant Maria Magdalena Commentz Salamanca*, age 72, husband and wife, opened an account with Respondent SCBI in May 2008. In October 2008, based upon the recommendation of their Santiago Relationship Manager, they invested $105,000 in Fairfield Sentry. Mr. Acevedo met with his Santiago Relationship Manager and told him that he was in the process of retiring and was looking for low-risk investments appropriate for a retiree. His Santiago Relationship Manager recommended Fairfield Sentry to him as a very good, safe and low-risk investment. The Santiago Relationship Manager also presented Mr. Acevedo, at this meeting, with graphs demonstrating that Fairfield Sentry provided consistent and safe returns.

Claimant Inversiones Millapel Limitada ("IML"), the principals of which were and continue to be Horacio Undurraga and Maria Lucia Skinner (husband and wife), opened an account with Respondent SCBI in January 2007. In March 2008, based upon the recommendation and representations of Respondent Dutkowski and IML's Santiago Relationship Manager, IML invested $230,000 in Fairfield Sentry. Prior to the Fairfield Sentry investment, IML expressed interest in investing in a fixed income type investment. IML's Santiago Relationship Manager

proposed an investment in Fairfield Sentry and represented that Fairfield Sentry was safe, a risk reducer that would provide steady returns. It was further stated that Fairfield Sentry represented a limited risk and that it occupied a very safe niche in the market. In addition, as a partner of another customer, Claimant JHC Investment Ltd., Mr. Undurraga had also learned about a presentation of Fairfield Sentry made by Respondent Dutkowski to the other principals of JHC Investment Ltd. wherein Respondent Dutkowski described Fairfield Sentry as, among other things, a risk reducer. The principals of IML believed the investment in Fairfield Sentry was essentially an investment in U.S. treasury bonds.

Claimant Maria Lucia Skinner, age 68 and a homemaker, together with her husband *Claimant Horacio Underraga*, age 71 and engaged in the mining services business, opened an account with Respondent SCBI in September 2006. In October 2006, Ms. Skinner and Mr. Underraga, based upon the recommendation and representations of their Santiago Relationship Manager, invested $125,000 in Fairfield Sentry. Ms. Skinner first became aware of Fairfield Sentry during a conversation she had with her Santiago Relationship Manager when she told him she wanted a safe, low-risk investment that would produce income to meet her expenses and to assist her brother who was sick and could not work. Her Santiago Relationship Manager advised her to invest in Fairfield Sentry, stating it was a safe, low-risk investment and produced approximately 8% income per year.

Claimant Juan Luis Eltit Z, Claimant Jose Antonio Eltit J. and Claimant Juan Patricio Eltit J. opened accounts with an affiliate of the Respondent Standard Chartered Entities in Geneva (Switzerland) in May 1993 and with Respondent SCBI in Miami in May 1995. In May 2006, based upon the recommendation and representations of Respondent Dutkowski and their Santiago Relationship Manager, the Eltits invested $350,000 in Fairfield Sentry (Geneva account). In April, 2008, again based upon the recommendations and representations of Respondent Dutkowski and their Santiago Relationship Manager, the Eltits invested an additional $100,000 in Fairfield Sentry (Miami account). The Eltits met with Respondent Dutkowski several times and Respondent Dutkowski told them that Fairfield Sentry was a low-risk investment. Respondent Dutkowski also told Jose Antonio Eltit that Fairfield Sentry was the "safest investment in the world." The Eltits believed they were investing in a fixed income fund that included U.S. government securities.

Claimant Gisselle Kassis, together with her brother, *Claimant Jorge Kassis*, opened an account with Respondent SCBI in September 2003. In August 2008, based on the recommendation and representations of their Santiago Relationship Manager, Claimant Jorge Kassis, on behalf of the account owners, invested $200,000 in Fairfield Sentry. He was introduced to the Fairfield Sentry investment during a meeting he had with the account's Santiago Relationship Manager. During that meeting, the Santiago Relationship Manager informed Mr. Kassis that Fairfield Sentry was a low risk investment in a very safe fund. Mr. Kassis understood that the Fairfield Sentry investment was an investment in a mutual fund.

Claimant Asesorias Rogers y Compania Limitada ("Rogers") f/k/a Rogers y Compania Limitada, a holding company for a company engaged in the sale of mining, forestry and industrial equipment, opened an account with Respondent SCBI in July 2001. The principal of Claimant Rogers was and continues to be Miguel Rogers Squella, a resident of Chile. In September 2007, based upon the recommendation and representations of its Santiago Relationship Manager, Claimant Rogers invested $250,000 in Fairfield Sentry. The Santiago Relationship Manager informed Mr. Rogers that Fairfield Sentry was a good and stable investment with low risk. The

Relationship Manager further stated that the investment would never be a big hit but would never do badly and would compose a safe portion of his portfolio. Mr. Rogers also met with Respondent Dutkowski in August 2008, at which time Respondent Dutkowski reaffirmed the statements of the Santiago Relationship Manager concerning the Fairfield Sentry investment. Mr. Rogers understood that he was buying a diversified fund with an excellent track record of stable returns.

Claimant Norma Narvaez, age 37 and an employee of Agrocommerce, S.A., a business engaged in the importation of food products, opened an account with Respondent SCBI in 2000. In June 2008, based upon the recommendation and representations of Respondent Dutkowski and her Santiago Relationship Manager, Ms. Narvaez invested $120,000 in Fairfield Sentry. Ms. Narvaez was first introduced to the Fairfield Sentry investment in May 2008 when she met Respondent Dutkowski and her Santiago Relationship Manager at the office of Agrocommerce, S.A. Respondent Dutkowski and her Santiago Relationship Manager told her that Fairfield Sentry was a very safe investment, that it did not do extremely well in good times but did not do badly in bad times. They further informed her it was a low-risk investment, a "risk reducer" and that the investment was akin to an investment in treasury bonds. Ms. Narvaez had an existing loan with the bank and sought assurances that Fairfield Sentry would constitute good collateral. She was assured by Respondent Dutkowski that the Fairfield Sentry investment was "as good as cash."

Claimant Sergio Gazali, age 78 and engaged in the fabric business, opened an account with Respondent SCBI in May 2002 on behalf of himself, his wife, *Claimant Yamili Atisha*, and his son, *Claimant Nelson Gazali*. In September 2008, based upon the representations and recommendation of his relationship manager at the Miami office, Nelson Gazali, on behalf of all the account owners, invested $100,000 in Fairfield Sentry. His relationship manager in Miami told Mr. Gazali that Fairfield Sentry was a low-risk investment – a mutual fund invested largely in fixed income securities with expertise in when to buy and sell securities. Mr. Gazali purchased Fairfield Sentry as part of his expressed desire to reduce risk in the account. Mr. Gazali's Santiago Relationship Manager similarly informed him that Fairfield Sentry was a low risk investment based on information he received from the Miami office. By letter dated November 7, 2008, Claimant Nelson Gazali requested, among other things, that Respondents sell the position in the Fairfield Sentry investment. Thereafter, he was informed by his Santiago Relationship Manager that the sale would be effective November 30 and the proceeds received shortly thereafter. However, Respondents failed and refused to honor the request to sell the Fairfield Sentry investment and the investment was lost.

Claimant Gonzalo Jaime Vega De Kuyper opened an account with Respondent SCBI in approximately 1992. In May 2007, based on the recommendation of his Santiago Relationship Manager, Mr. Vega invested $700,000 in Fairfield Sentry. This investment was sold in January 2008, again upon the recommendation of his Santiago Relationship Manager. In May, 2008, based upon the recommendation and representations by Respondent Dutkowski and Mr. Vega's new Santiago Relationship Manager (his prior Santiago Relationship Manager was no longer employed at Respondent SCBI) during a meeting that took place at Mr. Vega's office, Mr. Vega invested $600,000 in Fairfield Sentry. Respondent Dutkowski told Mr. Vega that it was a mistake to sell Fairfield Sentry as it was a very secure and conservative investment that would produce an average return of 6%. Mr. Vega understood from his meeting with Respondent. Dutkowski that the investment in Fairfield Sentry was similar to a mutual fund type of investment.

Claimant Alfonso Rozas Ossa, age 85 and retired, together with *Claimant Eliana Rodriguez, Claimant Alfonso Rozas R. and Claimant Maria Eliana Rozas R.*, opened an account with Respondent SCBI in May 2007. Because of Mr. Rozas Ossa's age, his account was overseen, with his consent, by his son Alfonso Rozas R. In September 2007, based upon the recommendation and representations of their Santiago Relationship Manager, Claimant Alfonso Rozas R. invested, on behalf of the account, $230,000 in Fairfield Sentry. The Santiago Relationship Manager told Claimant Alfonso Rozas R. that Fairfield Sentry was a very safe investment, as safe as treasury bonds. He also informed Alfonso Rozas R. that his own family had invested in Fairfield Sentry. Alfonso Rozas R. informed the Relationship Manager that his father was looking for a "safety net". He understood he was investing in something similar to treasury bonds.

Claimant Cecilia Irene Perez Ramirez, together with *Claimant Ildegard Ana Kunz Parra* and *Claimant Ildegard Veronica Bustos Kunz*, opened an account with Respondent SCBI in August 2003. Claimant Perez is currently 95 years old. Her account at Respondent SCBI was overseen by her daughter-in-law, Claimant Ildegard Anna Kunz Parra, pursuant to a power of attorney. In August 2008, based upon the recommendation and representations of her Santiago Relationship Manager, Mrs. Kunz, on behalf of her mother-in-law, authorized the investment in Fairfield Sentry in the amount of $150,000. The Santiago Relationship Manager told Mrs. Kunz that Fairfield Sentry was a very good and stable investment, had good historic returns, had lost money only two months in the last six years, was low-risk and was better than other investments. Mrs. Kunz understood from the Santiago Relationship Manager that Fairfield Sentry was an investment in a stable investment fund similar to a mutual fund.

Claimant Arturo Murua and *Claimant Carmen Paz Daza* opened an account with Respondent SCBI in December 2005. The account was handled primarily by Mr. Murua who is 57 years of age and is an industrial designer and restaurant owner. In September 2008, based upon the recommendation and representations of the account's relationship manager in Miami, Mr. Murua invested $450,000 in Fairfield Sentry. Prior to the investment in Fairfield Sentry, Mr. Murua expressed concern about the decline and risk of his account. The Miami relationship manager recommended Fairfield Sentry as a low risk investment to reduce risk in the account. He further stated that the Fairfield Sentry investment was safe and would not decline in difficult times. Mr. Murua believed he was investing in a very secure investment, which was similar in nature to a mutual fund investment with a good history and what his Miami relationship manager referred to as "intelligent, low risk."

Claimant Hans Killinger B., age 69, opened an account with Respondent SCBI in June 1999. Mr. Killinger is in the fruit production business. He was interested in low-risk, non-speculative investments. Prior to June 2008, the risk profile on the account indicated a "Conservative Investor" as did the investment proposal for the account prepared by the Miami office. In June 2008, based upon the representations and recommendations of his relationship manager at the Miami office (the "Miami Relationship Manager") and his Santiago Relationship Manager, Mr. Killinger invested $250,000 in Fairfield Sentry. The Miami Relationship Manager and the Santiago Relationship Manager represented that a Fairfield Sentry investment was a low-risk, highly secure way to invest his money and that the investment had a long history of profitability. They further represented that Fairfield Sentry was the most secure product in the market. Mr. Killinger understood he was investing in a highly secure product with good profitability. Following the purchase of Fairfield Sentry in July 2008, the Respondents unilaterally changed

the risk profile for the account to "Balanced Investor With an Emphasis on Capital Appreciation."

Claimant Boxer Limited ("Boxer"), the principals of which were and continue to be four siblings, Heriberto Urzua, Matias Urzua, Maria Urzua and Maria Loreto Urzua, opened an account with Respondent SCBI in December 1991. Between October 2006 and June 2008, based upon the recommendations and representations of its Santiago Relationship Manager, Boxer invested an aggregate $516,250 in Fairfield Sentry, which consisted of a $100,000 investment in October 2006 and an additional investment of $416,250 in June 2008. The $100,000 investment in Fairfield Sentry was sold, at the direction of Heriberto Urzua, on behalf of Boxer, as part of the liquidation of the entire account in May 2008 as Boxer no longer wanted any securities holdings. In June 2008, Heriberto and Matias Urzua had a meeting with their Santiago Relationship Manager and a representative from the Miami office of Respondent SCBI (the "Miami Representative") and the Miami Representative and the Santiago Relationship Manager recommended that Boxer invest in Fairfield Sentry since the account was all cash with little appreciation. They represented to Boxer's representatives that Fairfield Sentry was a very conservative investment with consistent returns of approximately 5-10% per annum in an average market environment and would maintain positive returns even in a difficult market environment. They also represented that Fairfield Sentry was not impacted by the market in any significant way and that it was a low risk and safe investment. They further stated that Fairfield Sentry was a very liquid investment similar to a bond fund or a time deposit.

Claimant Simon Echenique, age 76 and a bakery owner, and his brother, *Claimant Pedro Echenique, age 58*, opened an account with Respondent SCBI approximately 30 years ago. In June 2008, based upon the recommendation and representations of his relationship manager from the Miami office of Respondent SCBI, Mr. Echenique invested $250,000 in Fairfield Sentry. The Miami relationship manager introduced Mr. Echenique to Fairfield Sentry during a meeting with him at the Santiago Representative Office. During the meeting, the Miami relationship manager and Mr. Echenique spoke about potential investments. The Miami relationship manager represented to Mr. Echenique that the investment in Fairfield Sentry was low-risk and safe.

Claimant GLDN Corporation Ltd. ("GLDN"), an investment entity, opened an account with Respondent SCBI in February 2006. The principals of GLDN are and continue to be Gabriel Leon B. and Lorraine Gibbons H., husband and wife, both residents of Chile. In June, 2006, based upon the recommendation and representations of GLDN's Santiago Relationship Manager, Claimant GLDN invested $130,000 in Fairfield Sentry. The Santiago Relationship Manager told Mr. Leon that Fairfield Sentry was a very conservative, safe, low-risk fund which was difficult to gain access to. He further stated that Fairfield Sentry was an investment that performed well in bad times and satisfactorily in good times. Mr. Leon understood he was investing in a safe, low-risk fund for the medium to long term.

Claimant Fujian Ltd., an investment entity, opened an account with Respondent SCBI in November 2004. The principal of Claimant Fujian was and continues to be Sebastian Lama, a resident of Chile. In August 2008, based upon the recommendation and representations of Respondent Dutkowski and Fujian's Santiago Relationship Manager, Fujian invested $500,000 in Fairfield Sentry. Sebastian Lama met with Respondent Dutkowski on two occasions, once in 2007 and a second time in 2008. During the 2008 meeting, Respondent Dutkowski recommended that Claimant Fujian invest in Fairfield Sentry and stated it was a low-risk, safe investment with a reasonable return. Mr. Lama understood that an investment in Fairfield Sentry

was similar to a time deposit and mutual fund. In late October 2008, Mr. Lama requested in writing the sale in full of Fujian's Fairfield Sentry investment. Fujian's Santiago Relationship Manager assured Mr. Lama that his Fairfield Sentry investment had been liquidated and the cash proceeds would be forthcoming but after the events of December 2008, Mr. Lama was informed that there was no sale and his investment was lost.

In summary, as a result of the aforementioned actions of Respondents, Claimants suffered out-of-pocket losses of $11,025,168 plus advisory fees paid.

V. ANALYSIS

A. Respondents Defrauded Claimants With Respect To the Fairfield Sentry Investment

1. *Broker Disclosure Obligations*

A broker's duty to its customers when recommending a security includes a duty not to misrepresent any material fact with respect to the security.[14] The U.S. Supreme Court (in *TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)*) defined a material fact as a fact that a reasonable investor would view "as having significantly altered the total mix of information made available". A broker owes his customer not only a duty not to misrepresent but also an affirmative duty to disclose all material information regarding a security when recommending a security to the customer.[15] Such disclosure obligation, when the broker is recommending a security, includes a duty to disclose the particular risks related to the purchase of a security.

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[14] See *Norman S. Poser and James A. Fanto -Broker Dealer Law and Regulation (Fourth Edition)* at Chapter 16 - page 93; Clayton Brokerage Co. v. Commodity Futures Trading Comm'n, 794 F.2d 573, 580 (11th Cir. 1986); United States v. Dial, 757 F.2d 163, 168 (7th Cir.), *cert. denied*, 474 U.S. 838 (1985); Prudential Bache Sec., Inc. v. Pitman, [1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,170, at 90,929 (N.D. Ga. 1991); Leib v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 461 F. Supp. 951, 953 (E.D. Mich. 1978), *aff'd*, 647 F.2d 165, (6th Cir. 1981).

[15] See *Norman S. Poser and James A. Fanto -Broker Dealer Law and Regulation (Fourth Edition)* at Chapter 16 – page 96; United States v. Santoro, 302 F.3d 76, 80 (2d Cir. 2002); Geman v. SEC, 334 F.3d 1183, 1189 (2d Cir. 2003) ("Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith and full and fair disclosure of all material facts, as well as an affirmative obligation 'to employ reasonable care to avoid misleading his customers.") (*quoting* SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963)); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cheng, 901 F.2d 1124, 1128 (D.C. Cir. 1990); Magnum Corp. v. Lehman Bros. Kuhn Loeb, Inc., 794 F.2d 198, 200 (5th Cir. 1986); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Perelle, 356 Pa. Super. 165, 183, 514 A.2d 552, 561 (1986).

With respect to a private placement of securities, such as the Fairfield Sentry offering, the customer is required to be furnished with a Private Placement Memorandum which is a disclosure document designed to achieve disclosure of all material information and risks regarding the investment. However, it has been held that even providing the risk disclosure document (e.g., the Private Placement Memorandum), which did not take place in the instant action, does not relieve the broker of his or her obligation to explain the risks.[16]

2. Respondents Failed to Deliver the Required Disclosure Document With Respect to the Purchase of Fairfield Sentry.

A fundamental tenet of securities law is that with respect to a securities offering (such as the Fairfield Sentry private placement) investors are required to receive all material information with respect to the investment prior to making an investment decision. Respondents failed to deliver to any of the 24 Claimants the required Private Placement Memorandum (a 41 page disclosure document plus appendix – see **Exhibit A** hereto for a copy of the Fairfield Sentry Private Placement Memorandum, dated August 14, 2006) for Fairfield Sentry which set forth all material information, including risk factors, with respect to the investment[17]. Among the disclosures in the Fairfield Sentry Private Placement Memorandum (the "PPM") were the following:

> "THE SHARES OFFERED HEREBY ARE SPECULATIVE AND INVOLVE A HIGH DEGREE OF RISK" (See **Exhibit A** hereto - cover page of PPM); AND
>
> "The Shares offered hereby (the "Shares") will be issued *only* on the basis of the information in this Private Placement Memorandum and any attachments hereto (the "Memorandum"). No other information about Fairfield

[16] See *Norman S. Poser and James A. Fanto -Broker Dealer Law and Regulation (Fourth Edition)* at Chapter 16-pg. 102; *Gochnauer v. A.G. Edwards & Sons, Inc., 810 F.2d 1042, 1049 (11th Circuit 1987); Clayton Brokerage, 794 F.2d 573, 580.*

[17] The references to the Fairfield Sentry Private Placement Memorandum in this Statement of Claim refer to the Private Placement Memorandum, dated August 14, 2006, which was amended from time to time.

> Sentry Limited (the "Fund") has been authorized" (See **Exhibit A** "Certain General Information" section of PPM) (Emphasis Added).

The PPM also contained disclosure of 23 risk factors with respect to the investment (See pages 17-22 of the PPM annexed as **Exhibit A** hereto). As expressly set forth in the PPM as referenced above, an offering of the shares of Fairfield Sentry could *only* be made to Claimants pursuant to the PPM.

Remarkably, the PPM for Fairfield Sentry was not even available at the Santiago Representative Office and the Santiago Relationship Managers never saw or heard of the document, nor did they understand that an investment in Fairfield Sentry could *only* be made by prior delivery of the PPM to clients.

3. Not Only Did Respondents Fail to Deliver the Required Disclosure Document to Claimants, But They Also Made Material Misrepresentations and Omissions to Claimants Regarding the Investment in Fairfield Sentry.

(i) Respondents marketed the Fairfield Sentry investment in a false and deceptive manner as a low risk, non-speculative investment – a "risk reducer" with a risk equivalent to treasury bonds.

Having ignored their duty to deliver the required PPM to Claimants, which (on the first page) disclosed that the shares of Fairfield Sentry were "*speculative and involve a high degree of risk*" and also contained disclosure of 23 risk factors with respect to the investment, Respondents embarked on a fraudulent scheme to market the speculative, high risk investment in Fairfield Sentry as a low risk, non-speculative investment with a risk equivalent to that of treasury bonds. Respondents' written investment proposals prepared for Claimants listed Fairfield Sentry under the header "Risk Reducer".

If Respondents had disclosed to Claimants the true nature and risk of an investment in Fairfield Sentry as detailed herein, Claimants would not have made the investment.

(ii) Respondents did not disclose that Fairfield Sentry was simply a "feeder fund" for Madoff and that Madoff was the exclusive investment manager for Fairfield Sentry.

Respondents' material misstatements to Claimants with respect to the Fairfield Sentry investment also included the failure to disclose that Fairfield Sentry was simply a feeder fund for Madoff with no investment authority and that Madoff was the exclusive investment manager for Fairfield Sentry with full authority to implement his purported "split-strike" investment strategy. Respondents falsely presented Fairfield Sentry to Claimants not as a "feeder fund" but as the entity that determined and implemented the investment strategy for the fund. Not one time during the Fairfield Sentry oral presentations to the 24 Claimants did Respondents disclose to Claimants that Bernard Madoff was the actual investment manager, or for that matter that Madoff had any connection to Fairfield Sentry. This despite the clear disclosure in the PPM — "The Split-Strike Conversion strategy is implemented by Bernard L. Madoff Investment Securities LLC ("BLM")..... The services of BLM and its personnel are *essential* to the continued operation of the Fund, and its profitability, if any (See PPM annexed hereto as **Exhibit A** – page 10)."

Respondents also saw fit not to disclose to Claimants certain other material information which included, among others, the failure to explain the "split-strike" investment strategy and to advise Claimants that the Fairfield Sentry investment was a private placement of securities subject to restrictions on resale.[18]

[18] As disclosed on the cover page of the PPM – "THE SHARES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE FUND'S ARTICLES OF ASSOCIATION".

B. If Respondents Had Conducted Reasonable Due Diligence of Fairfield Sentry and Bernard Madoff They Should Not Have Recommended the Fairfield Sentry Investment to Claimants

It is well established that a broker-dealer has a duty to investigate a security before recommending the security to its clients (See *Norman S. Poser and James A. Fanto - Broker-Dealer Law & Regulation (Fourth_Edition) Chapter 16 at pg. 100* and *Lieb v. Merrill Lynch, 461 F.Supp 951, 953 (E.D. Mich 1978; aff'd without opinion, 647 F2d 165 (6th Cir. 1981)*. Accordingly, Respondents had a clear duty to properly investigate the security prior to placing Fairfield Sentry on the firm-wide approved product list and recommending the purchase of Fairfield Sentry to each Claimant. Reliance on third parties, such as the issuer of the securities (Fairfield Sentry), does not excuse the broker from its own due diligence obligation (See *Norman S. Poser and James A. Fanto – Broker-Dealer Law Regulation* (Fourth Edition) Chapter 16-97; citing *Sorrell v. SEC, 679 F.2d 1323, 1327 (9th Cir. 1982); Hanly v. SEC, 415 F.2d 589, 597 (2d Cir. 1969)*. Respondents' due diligence obligations should not have been simply limited to Fairfield Sentry but also should have included Bernard Madoff and Madoff Securities because Fairfield Sentry was simply a "feeder fund" to Madoff – the investment was essentially a pass-thru investment in Madoff Securities and, as disclosed in the PPM, Madoff's services were "essential to the continued operation of the Fund, and its profitability, if any". Claimants contend that if Respondents had conducted reasonable due diligence they should have discovered a host of red flags which taken together should have caused them not to place Fairfield Sentry on the firm-wide approved product list and recommend the sale of Fairfield Sentry to Claimants.

Due Diligence of Fairfield Sentry/FGG

Respondents' initial due diligence of Fairfield Sentry/FGG and its affiliates certainly should have included review of the PPM and marketing materials for Fairfield Sentry and FGG including their affiliates. In addition, Respondents' obligations to Claimants to conduct appropriate due diligence of Fairfield Sentry should have encompassed verifying that FGG and affiliates were actually conducting the due diligence on Madoff that was expressly represented in the PPM and other FGG materials.

Fairfield Sentry made certain representations to its investors regarding the high degree of due diligence FGG and its affiliates conduct with respect to the selection and monitoring of their investment managers, the transparency of those managers, and the oversight that would be maintained over the "split-strike conversion" strategy. Such representations in the PPM included, among others, the following:

a. "FGBL's [Fairfield Greenwich (Bermuda) Ltd] core product business model is the investment management and oversight of the split strike conversion strategy ..... Working with one of its affiliates (Fairfield Greenwich Advisors LLC ...), FGBL conducts a detailed manager selection and due diligence process, analyzing such important issues as liquidity management, market and credit risks, management quality (which includes on-site visit(s), background, and reference checks), and operational, compliance, and regulatory risks." (PPM, Appendix A, Item 4.C.(7).)

b. "FRS [Fairfield Risk Services, Ltd] primarily conducts both the pre-and post-investment quantitative analyses of hedge fund managers, monitors the market risk and provides the quantitative analyses supporting the asset allocation decisions across the firm's multi-strategy funds .... An important component of the FGG product platform is

the position level transparency that we receive from all single managers which are included in our multi-strategy funds." (PPM, Appendix A, Items 4.A(5) and 4.B.(8).)

FGG repeatedly emphasized the supposedly "in-depth" and "multi-faceted" due diligence on Fund managers:

a. FGG would seek "to dissect a candidate manager's investment performance, how they generate alpha, and what risks are taken in doing so";

b. FGG "seeks a sound understanding of whether a hedge fund possesses key controls in the areas of portfolio management, conflicts of interest, segregation of duties, and compliance";

c. FGG "carefully assesses the controls and procedures that managers have in place," and would seek "to determine actual compliance with those procedures, often suggesting modifications, separation of responsibilities, and remedial service provider, technology, or staff additions"; and

d. FGG would examine "[i]ndependent prime broker trading records", a key aspect to transparency.[19]

FGG further represented that, after manager selection, FGG would maintain "deep, ongoing joint venture relationships" with its Fund managers, and FGG would review for each Fund manager, on an ongoing basis:[20]

a. "audited financials and auditor's management letter comments";

[19] See the following FGG marketing material: "FGG – The Firm and Its Capabilities (September 2008) at pages 15-16 and "FGG – Due Diligence and Risk Monitoring" at page 4.

[20] See "FGG, Due Diligence and Risk Monitoring" at page 7 and "FGG – The Firm and Its Capabilities" at page 18.

b. "accounting controls: from trade execution; to trade capture; to trade reconciliation with the Street, administrator, and fund; to fund's books and records";

c. "bank reconciliations for irregular or outstanding items"; and

d. "broker reconciliations to ensure completeness and existence of all securities".

Notwithstanding the above representations, FGG and its affiliated entities totally failed in their due diligence obligations of Madoff Securities and Bernard Madoff and a reasonable level of due diligence of Fairfield Sentry by Respondents would have determined this.

Conflict of Interest

In addition, Respondents should have understood that the hundreds of millions of dollars in fees (approximately $919 million was paid by Fairfield Sentry to FGG and affiliates in performance and management fees for the period 2002 to 2008)[21] received by FGG from the purported profits of Madoff created a conflict of interest such that Respondents should have questioned the independence of any due diligence conducted by FGG and its affiliates on Madoff. In April 2009 the State of Massachusetts filed an administrative complaint against FGG affiliates[22]. The complaint states:

> "The Division's investigation attempted to discern how Fairfield possibly could not have discovered the fraud during their eighteen-year relationship [with Madoff]. The answer, quite simply, is that they were blinded by the fees they were earning [hundreds of millions of dollars], did not engage in meaningful due diligence and turned a blind eye to any fact that would have burst their lucrative bubble."

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[21] See paragraph 5 of the Complaint in action entitled Fairfield Sentry Limited *v.* Fairfield Greenwich Group (Supreme Court of the State of New York, filed May 29, 2009).

[22] Commonwealth of Massachusetts, Office of the Secretary of the Commonwealth Securities Division – In the Matter of Fairfield Greenwich Advisors LLC and Fairfield Greenwich (Bermuda) Ltd.

This total lack of due diligence of Madoff by FGG and its affiliates and the clear conflict of interest as a result of the hundreds of million dollars of fees paid to FGG and affiliates should have caused Respondents to heighten their due diligence obligations – particularly with respect to Bernard Madoff and Madoff Securities.

Due Diligence of Bernard Madoff and Madoff Securities

Respondents had an obligation to conduct reasonable due diligence of Bernard Madoff and Madoff Securities as the sole exclusive investment manager for Fairfield Sentry.[23] The significance of Bernard Madoff's (Madoff Securities') relationship with Fairfield Sentry and the clear obligation of Respondents to conduct reasonable due diligence of Bernard Madoff and Madoff Securities was confirmed by the very disclosure in the PPM, as follows:

> "The "split-strike conversion" strategy is implemented by Bernard L. Madoff Investment Securities LLC ("BLM"), a broker-dealer registered with the Securities and Exchange Commission, through accounts maintained by the Fund at that firm....The services of BLM and its personnel are *essential* to the continued operation of the Fund, and its profitability, if any."

Notwithstanding the duty of Respondents to investigate and conduct reasonable due diligence of Bernard Madoff and Madoff Securities, Respondents apparently limited whatever due diligence they conducted to Fairfield Sentry. As Respondent Standard Chartered Bank stated to its Fairfield Sentry investors (including Claimants) in its letter, dated February 19, 2009 (subsequent to the public disclosure that Madoff was engaged in a Ponzi scheme) —

> "As some of our clients may recall, the relationship with FGG [Fairfield Greenwich Group] dates back to 2002, when American Express Bank ("AEB") commenced its relationship with FGG. At that time, Fairfield Sentry and Fairfield Sigma were well known and reputable hedge funds, with track records as far back as 1990. AEB performed appropriate due diligence on Fairfield Sentry and Fairfield Sigma funds before making the funds available to its clients. This due diligence was revalidated periodically in subsequent years. Until the events of December 2008, both funds continued to be regarded in the market as reputable hedge funds."

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[23] The obligation to conduct reasonable due diligence of Bernard Madoff and Madoff securities was in addition to Respondents due diligence obligations with respect to Fairfield Sentry discussed on pages 29 to 32 hereof.

"In 2008, Standard Chartered Bank ("SCB") acquired American Express Bank. Neither SCB nor AEB, which is now part of SCB, have or had, any direct relationship with Bernard Madoff or with BMIS. An indirect relationship with BMIS arises from AEB's (and later SCB's) relationship with the Fairfield Greenwich Group as a distributor of the FGG's Fairfield Sentry and Fairfield Sigma funds. Fairfield Sentry and Fairfield Sigma appointed BMIS to implement their respective investment strategies, and BMIS was also appointed as their sub-custodian."

Reasonable due diligence by Respondents of Fairfield Sentry, a feeder fund (which by definition has no direct investment authority), undoubtedly should include appropriate investigation of its sole exclusive investment manager – Bernard Madoff (Madoff Securities) – whose services were "essential to the continued operation of the fund [Fairfield Sentry] and its profitability, if any" (See PPM at page 10).

Respondent Standard Chartered Bank asserts that it as well as American Express Bank Ltd. (now called Respondent Standard Chartered International (USA) Ltd.) conducted "appropriate due diligence" of Fairfield Sentry which was "revalidated periodically in subsequent years". If Respondents had conducted such "appropriate due diligence", such diligence should have included Madoff and Madoff Securities, and Respondents should have discovered numerous red flag warnings which should have caused them not to place Fairfield Sentry on the firm-wide approved product list and not to recommend Fairfield Sentry to Claimants or any of their other clients. Such red flag warnings included, among others, the following:

1. ***Available Public Information Raised Concerns About Madoff***

A first step of reasonable and prudent due diligence by Respondents of Fairfield Sentry certainly should have included review of publicly available information pertaining to Bernard Madoff and Madoff Securities as the sole exclusive investment manager of Fairfield Sentry. Several published reports in respected publications raised serious questions about Madoff including, among others, the legitimacy of his purported returns.

In May 2001, an article appeared in *Barrons* entitled "*Don't Ask, Don't Tell: Bernie Madoff Is So Secretive, He Even Asks Investors To Keep Mum*". The article reported that three options strategists at major investment banks told Barrons that they could not understand how Madoff churns out such stunning double digit returns. The Article quoted a former Madoff investor as stating, "Anybody who's a seasoned hedge-fund investor knows the split-strike conversion is not the whole story. To take it at face value is a bit naïve". Madoff, in the article, brushed aside questions regarding how he achieved consistently high returns, stating "It's a proprietary strategy. I can't go into it in great detail". Madoff added, "Whoever tried to reverse-engineer, he didn't do a good job. If he did, these numbers would not be unusual". The article further noted the highly unusual nature of Madoff's fee structure in only charging commissions and not performance fees and a management fee.

In May 2001, another article entitled "*Madoff Tops Charts; Skeptics Ask How*" appeared in *MAR/Hedge*, a semi-monthly newsletter widely read within the fund of fund and hedge fund industry. The article also raised significant questions about how Madoff's so called split-strike strategy could achieve such consistent double digit returns. The article made the following references:

- "But it's a safe bet that relatively few Wall Street professionals are aware that Madoff Securities could be categorized as perhaps the best risk-adjusted hedge fund portfolio manager for the last dozen years. Its $6-7 billion in assets under management, provided primarily by three feeder funds, currently would put it in the number one or two spot in the Zurich (formerly MAR) database of more than 1,100 hedge funds, and would place it at or near the top of any well-known database in existence defined by assets."
- "More important, perhaps, most of those who are aware of Madoff's status in the hedge fund world are baffled by the way the firm has obtained such consistent, nonvolatile returns month after month and year after year."
- "These individuals, more than a dozen in all, offered their views, speculation and opinions on the condition that they wouldn't be identified. They noted that others who use or have used the strategy -- described as buying a basket of stocks

closely correlated to an index, while concurrently selling out-of-the-money call options on the index and buying out-of-the-money put options on the index—are known to have had nowhere near the same degree of success."

- "What is striking to most observers is not so much the annual returns—which, though considered somewhat high for the strategy, could be attributed to the firm's market making and trade execution capabilities—but the ability to provide such smooth returns with so little volatility."
- "The best known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period."
- "Skeptics who express a mixture of amazement, fascination and curiosity about the program wonder, first, about the relative complete lack of volatility in the reported monthly returns."
- "But among other things, they also marvel at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative; and the related ability to buy and sell the underlying stocks without noticeably affecting the market."
- "In addition, experts ask why no one has been able to duplicate similar returns using the strategy and why other firms on Wall Street haven't become aware of the fund and its strategy and traded against it, as has happened so often in other cases; why Madoff Securities is willing to earn commissions off the trades but not set up a separate asset management division to offer hedge funds directly to investors and keep all the incentive fees for itself, or conversely, why it doesn't borrow the money from creditors, who are generally willing to provide leverage to a fully hedged portfolio of up to seven to one against capital at an interest rate of Libor-plus, and manage the funds on a proprietary basis."

In addition, if Respondents had conducted reasonable due diligence the fact that Madoff and Madoff Securities were connected to an SEC enforcement action would have also come to their attention. As far back as December 16, 1992, an article in the *Wall Street Journal*, which was readily accessible to Respondents, reported an SEC investigation of two accountants – Frank Avellino and Michael Bienes – who had illegally raised money for Madoff and Madoff Securities. The SEC charged the two accountants with operating an unregistered investment company and making unlawful sales of unregistered securities. As reported, Messers. Avellino and Bienes had raised some $440 million from investors (one of the largest ever sales of unregistered securities) and issued notes to investors promising annual returns of 13.5% to 20%

which were obtained by turning the money over to Madoff. According to the *Wall Street Journal*, Madoff said he did not know the money he was managing was raised illegally.

The aforementioned published reports raised serious concerns regarding Madoff and should have caused Respondents to have serious concerns about approving Fairfield Sentry for sale to clients. At the very least, such published reports should have caused Respondents to perform heightened due diligence with respect to Fairfield Sentry and Madoff.

2. *Unusual and Suspicious Fee Structure*

The manner in which Madoff Securities was compensated for its investment services was highly unusual and should have also raised serious concerns by Respondents. The sole form of compensation received by Madoff Securities was commissions charged on each trade rather than the 20% performance fee and 1% management fee. Madoff Securities allowed the feeder funds (such as Fairfield Sentry) to charge the 20% performance fee and 1% management fee normally charged by the manager. According to a *Wall Street Journal* article (dated December 19, 2008), the 20% share of profits was about "double the norm" for firms that farm out clients' money to a variety of managers. This highly unusual fee model should have raised suspicions by Respondents. Why would Madoff Securities forfeit hundreds of millions of dollars of performance fees and management fees each year and let a few third party distributors (like Fairfield Sentry) receive such fees for simply funneling money to Madoff?

As Harry Markopolos stated in his letter to the SEC, dated November 7, 2005, titled "The World's Largest Hedge Fund is a Fraud" in identifying 29 red flags of highly suspicious activity of Madoff Securities –

- "Why would B[ernie] M[adoff] settle for charging only undisclosed commissions when he could earn standard hedge fund fees of 1% management fee, + 20% of the profits?"

- "Why is Bernie Madoff borrowing money at an average rate of 16.00% per anum [*sic*] and allowing these third party hedge fund, fund of funds to pocket their 1% and 20% fees bases [*sic*] upon Bernie Madoff's hard work and brains? Does this make any sense at all? Typically FOF's [fund of funds] charge only 1% and 10%, yet BM allows them the extra 10%."

3. ***Obscure and Ill-equipped Auditors***

A reasonable due diligence review of Madoff (Madoff Securities) by Respondents should also have included a review of his auditors to be satisfied with the legitimacy of his returns and operations. Respondents failed to investigate the obvious inadequacy of the auditors of Madoff Securities. Madoff Securities, which purportedly ran one of the largest hedge funds in the world, was "audited" by Friehling & Horowitz ("F&H"), which firm consisted of a semi-retired partner (Jerome Friehling) in his late 70's living in Florida, a secretary and one active accountant (David Friehling). The firm operated in a 13-by-18 square foot office in Rockland County, New York. A financial institution of the size of Madoff is typically audited by a big-four accounting firm or another large reputable auditor. Furthermore, while F&H purportedly audited Madoff, it had not been subject to peer review by the American Institute of Certified Public Accountants ("AICPA") since 1993 and had avoided such peer review by reporting to the AICPA that it did not even perform audits. On March 18, 2009, the SEC charged the auditors of Madoff Securities, David G. Friehling and F&H with committing securities fraud by representing that they had conducted legitimate audits, when in fact they had not. According to the SEC, F&H enabled Madoff's Ponzi scheme by falsely stating, in annual audit reports, that F&H had audited the financial statements of Madoff Securities when in fact, F&H "merely pretended to conduct minimal audit procedures," and "failed to document his purported findings" which would have shown BLMIS [Madoff Securities] owed "tens of billions of dollars in additional liabilities to its customers and was therefore insolvent." See, SEC Charges Madoff Auditors with Fraud, Litigation Release No. 20959 (March 18, 2009).

4. *Unusually Consistent Non-Volatile Returns*

Respondents, as investment professionals, should have viewed Fairfield Sentry's (Madoff's) track record as suspect because it exhibited unusual consistency and extraordinarily low volatility (relative to returns) as well as minuscule down periods. Fairfield Sentry during the 18 year period from 1991 through 2008 had an average annual net of approximately 10% per year, with no down year and only 14 very small monthly losses (out of 215 months or 6.5%) – the largest monthly loss was 0.44%. Fairfield Sentry/Madoff never had more than a one month losing streak! For the same 18 year period, the S&P 500 had a total of 77 months which generated negative returns, equal to 36% of the total number of months during such period. In addition, during this 18 year period there were also 28 instances when the S&P 500 experienced two months of consecutive losses, 7 instances of three or more months of consecutive losses and one instance of 5 months of consecutive losses. Other entities using a similar split-strike conversion strategy could not duplicate the Madoff performance. Gateway, the best known public entity using the split-strike conversion strategy, experienced far greater volatility and lower returns during the same period.

The split-strike conversion strategy supposedly followed by Madoff may be summarized as follows:

Madoff promised customers that their fund would be invested in a basket of common stocks within the S&P 100 Index, which is a collection of the 100 largest publicly traded companies. The basket of stocks would be intended to mimic the movement of the S&P 100 Index. Madoff asserted that he would carefully time purchases and sales to maximize value, but this meant that the customers' funds would intermittently be out of the market. During these times, Madoff asserted that funds would be invested in United States-issued securities (treasuries). The second part of the split-strike conversion strategy was the hedge of such purchases with option contracts (creating a collar). Madoff purported to purchase and sell option

contracts corresponding to the stocks in the basket, thereby controlling the downside risk (as well as the upside) of price changes in the basket of stocks.

A split-strike conversion strategy can be profitable over periods of time but it will also experience some down months and exhibit significant volatility – which was not the case with Madoff's purported performance which experienced very few down months and extremely low volatility which could not be duplicated by any other split-strike conversion manager. As Markopolos wrote in his 2005 letter to the SEC - "It is mathematically impossible for a strategy using index call options and index put options to have such a low correlation to the market where its returns are supposedly being generated from. This makes no sense!"

5. ***Failure to Identify Structural Impossibility of Trading Strategy***

In addition, Respondents failed to identify the structural impossibilities of the split-strike conversion strategy purportedly utilized by Madoff. As sophisticated securities professionals, Respondents should have been capable of determining that Madoff's investment strategy would have been impossible to execute based on the size of the funds managed by Madoff.[24] The number of put and call options that Madoff securities would have had to buy or sell on any given day often exceeded the number of put and call options bought or sold *in the entire market* on those days. In fact, there were not enough put option contracts available to enable anyone to hedge a fund the size of Madoff Securities the way Madoff claimed to be doing. In addition, Madoff Securities' operations and purported trades failed to make any impact on the OTC index options market, which would have been surprising given the volume of trades that Madoff Securities was supposedly making.

[24] In January 2008, Madoff Securities filed a publicly available Uniform Application for Investment Adviser Registration (Form ADV) which stated that it had approximately $17.1 billion under management. Prior to 2008, Respondents certainly understood (or should have understood) that Madoff was managing multi-billions just from the size of Fairfield Sentry as well as other feeder funds.

In addition, the type of options Madoff Securities purported to purchase and sell was counter-intuitive. The Respondents, as securities professionals, were undoubtedly aware that investors are required to pay elevated transaction fees for the customization features and secrecy offered by OTC options purportedly used by Madoff, and that Madoff could have utilized less exotic but fully transparent options at considerable cost savings, yet elected not to do so.

6. *Lack of Segregated Functions*

Respondents should have been concerned by the lack of independent segregated functions at Madoff Securities. A typical hedge fund uses a network of service providers to perform different functions which normally includes an investment manager to manage the assets, one or several brokers to execute trades, a fund administrator to calculate the NAV, and some custodian(s)/prime broker(s) to custody the positions. These service providers work together but should normally be independent of each other and their functions segregated as this segregation plays a major role to reduce the risk of fraud. In a few cases, such as some more complex or less liquid strategies, investors may accept some dependence between service providers, but the potential conflicts of interest should then be mitigated by the implementation of regular external independent controls and documented procedures.

With Madoff, all the above-mentioned functions were performed *internally and with no third party independent oversight*. Madoff had an affiliated broker-dealer, which executed and cleared trades. More importantly, all assets were custodied and administered within his organization, which also produced all documents showing the underlying investments. In

addition, key positions of control at Madoff Securities were held by family members[25] which raised further questions of independence.

7. *Lack of Transparency; No Electronic Access – Paper Tickets*

While most brokers provide their customers with timely electronic access to their accounts, which is typically required for institutional investors (such as Fairfield Sentry), Madoff never did so. Direct investors with Madoff, including Fairfield Sentry, were only able to receive paper tickets by mail at the end of the day. On some occasions, the paper tickets reportedly had no time stamps, so that the exact order of the purported transaction was unclear. This, combined with the lack of segregation of key functions noted above, provided the end-of-the day ability to manufacture trade tickets that confirmed investment results.

8. *Lack of Staff*

In its regulatory filing (Form ADV) in January 2008, Madoff Securities stated that it had approximately $17.1 billion of assets under management and yet it employed only between one and five employees who performed investment advisory functions, including research. Such a large sum of money managed by such a small group of people should have raised additional concerns.

9. *Cash at Quarter/Year End*

In the U.S., investment managers who exercise investment discretion over $100 million or more of certain specified equity securities must make quarterly disclosures of their holdings on a 13F form with the SEC. These 13F Forms, which are publicly available, contain the names

[25] Madoff's brother Peter joined the firm in 1965. He was a senior managing director, head of trading and the chief compliance officer for the investment advisor and the broker-dealer businesses. Madoff's nephew, Charles Wiener, joined in 1978 and served as the director of administration. Bernard Madoff's oldest son, Mark, joined the family team in 1986 and was a director of listed trading. His youngest son, Andrew, started in 1988 and was director of Nasdaq. Peter's daughter and Bernard's niece, Shana, joined the firm in 1995 and served as the in-house legal counsel and rules compliance attorney for the market-making arm on the broker-dealer side.

and class of the securities, the CUSIP number, the number of shares owned and the total market value of each security. Curiously, while Madoff purportedly had over $17 billion of positions, his 13F form usually contained only scatterings of small positions in small (non-S&P 100) equities. Madoff's apparent explanation was that his strategy was mostly in cash at the end of each quarter to avoid publicizing information concerning the securities he was trading on a discretionary basis. This is not credible. As Mr. Markopolos stated in his November 7, 2005 letter to the SEC "BM [Bernard Madoff] goes to 100% cash for every December 31st year-end according to one FOF (fund of funds) invested with BM. This allows for "cleaner financial statements" according to this source. Any unusual transfers or activity near a quarter-end or year-end is a red flag for fraud."

10. *Extreme Secrecy*

According to investors, access to Madoff's offices for on-site due diligence was very limited or even denied. Madoff reportedly refused to answer questions about his business or about his investment strategies. He never provided any explanations or monthly performance, even informally, and even threatened to expel some investors who asked too many questions. Such an attitude is very unusual in the hedge fund world. Even the most secretive hedge funds are usually willing to demonstrate to investors that they have quality operations and provide operational transparency. None of this was available with Madoff.

11. *Investment Professionals That Conducted Adequate Due Diligence on Madoff Would Not Invest*

While Respondents failed in their due diligence obligations to recognize the numerous red flags, a number of other investment professionals who advised investors about potential investments with Madoff warned their clients to stay away. Such investment professionals include, among others, the following:

- *Aksia, LLC*, an independent hedge fund research end advisory firm in 2007 warned clients to stay away from Madoff because of a number of red flags including, among others:

  a. The Madoff feeder funds marketed a purported "Spit-Strike Conversion" strategy that is remarkably simple; however, its returns could not be nearly replicated by our quant analyst;

  b. It seemed implausible that the S&P100 options market that Madoff purported to trade could handle the size of the combined feeder funds' assets which we estimated to be $13 billion;

  c. The feeder funds had recognized administrators and auditors but substantially all of the assets were custodied with Madoff Securities. This necessitated Aksia checking the auditor of Madoff Securities, Friehling & Horowitz (not a fictitious audit firm). After some investigating, we concluded that Friehling & Horowitz had three employees, of which one was 78 years old and living in Florida, one was a secretary, and one was an active 47 year old accountant (and the office in Rockland County, NY was only 13ft x 18ft large). This operation appeared small given the scale and scope of Madoff's activities;

  d. There was at least $13 billion in all the feeder funds, but our standard 13F review showed scatterings of small positions in small (non-S&P100) equities. The explanation provided by the feeder fund managers was that the strategy is 100% cash at every quarter end;

  e. Madoff's website claimed that the firm was technologically advanced ("the clearing and settlement process is rooted in advanced technology") and the feeder managers claimed 100% transparency. But when we asked to see the transparency during our onsite visits, we were shown paper tickets that were sent via U.S. mail daily to the managers. The managers had no demonstrated electronic access to their funds accounts at Madoff. Paper copies provide a hedge fund manager with the end of the day ability to manufacture trade tickets that confirm the investment results;

  f. Conversations with former employees indicated a high degree of secrecy surrounding the trading of these feeder fund accounts. Key Madoff family members (brother, daughter, two sons) seemed to control all the key positions at the firm. Aksia is consistently negative on firms where key and control positions are held by family members; and

  g. Madoff Securities, through discretionary brokerage agreements, initiated trades in the accounts, executed the trades, and custodied and administered the assets. This seemed to be a clear conflict of interest and a lack of segregation of duties is high on our list of red flags.

- *Pi Capital* – According to an article in the *Wall Street Journal*, dated December 19, 2008, Fairfield Sentry and FGG had actual knowledge that investors were skeptical of Madoff's purported returns. David Giampaolo, chief executive officer of Pi Capital, attended a meeting with Andres Piedrahita of FGG, and while Piedrahita "stressed the fund's years of steady and attractive performance", according to Giampaolo as reported by the Journal, the performance was thin on details about the investment strategy – "there was no deep scientific or intellectual response" to explain the fund's performance.

- *Credit Suisse Group AG* – according to a news account provided by *Bloomberg News* on January 7, 2009, at a meeting in 2000 of Bernard Madoff, representatives of the FGG and representatives of Credit Suisse Group AG ("Credit Suisse"), representatives of Credit Suisse raised concerns about Madoff's use of a little known auditor who had just one client, the fact Madoff served as custodian of his clients assets and why he would not disclose how much money he managed. Based on this meeting, as reported by *Bloomberg*, Credit Suisse "urged customers more than eight years ago to withdraw cash from his firm because the bank couldn't determine how he made money." The article stated that Credit Suisse clients "proceeded to redeem about $250 million from Madoff-run funds" (presumably including Fairfield Sentry).

- *Acorn Partners* – According to the December 13, 2008 article in the *New York Times*, Robert Rosencranz, principal of the Hedge find adviser Acorn Partners stated "Our due diligence, which got into both account statements of [Madoff's] customers, and the audited statements …., made it seem highly likely that the account statements themselves were just pieces of paper that were generated in connection with some sort of fraudulent activity".

- *Castle Hall Alternatives* – According to a December 13, 2008 article in the *Wall Street Journal* – Chris Addy, founder of Castle Hall Alternatives, which vets hedge funds for clients, stated "There was no independent custodian involved who could prove the existence of assets … There's a clear and blatant conflict of interest with a manager using a related party broker-dealer. Madoff is enormously unusual in that this is not a structure I've seen."

- Société Générale ("SocGen") – As reported by the *New York Times* on December 16, 2008 in an article entitled, *European Banks Tally Losses Linked To Fraud,* Madoff did not pass SocGen's due diligence. SocGen's due diligence "was conducted by three people who visited Mr. Madoff's headquarters in the red-granite skyscraper on Third Avenue in Manhattan." The bankers concluded that "Something wasn't right". They explained, "It's a strategy that can lose sometimes, but the monthly returns were almost all positive."

- *Atlantic Trust* – According to a January 13, 2009 article in the *Boston Globe*, Jeffrey S. Thomas, chief investment officer at Atlantic Trust, which manages $13.5 billion, said that on several occasions over the years it had "reviewed and declined to invest with Madoff." In studying where to place its clients' funds, the firm said it spotted a number of "red flags" in Madoff's operation. Chief among those was a

lack of an outside firm to handle trades and accounting for the funds, and the inability to document how Madoff made profits.

Based on the aforementioned discussion, Respondents breached their duty owed to Claimants to conduct reasonable due diligence with respect to the recommendation and sale of Fairfield Sentry. Had Respondents conducted reasonable due diligence they should have discovered, among other things, numerous red flags that should have precluded Fairfield Sentry from placement on the firm-wide approved securities list and the recommendation and sale of Fairfield Sentry to Claimants.

VI. CLAIMS FOR RELIEF AND DAMAGES

Based on the foregoing, Respondents: (a) breached their fiduciary duties owed to Claimants; (b) breached their common law duties owed to Claimants; (c) are liable for fraud under Rule 10b-5 of the Securities Exchange Act; (d) are liable for common law fraud; (e) breached their contractual duties owed to Claimants; (f) are liable for negligence; and (g) are liable for negligent misrepresentation, all of which entitles Claimants to compensatory damages and other relief.

Compensatory Damages

Claimants are entitled to recover actual compensatory damages which include loss of their entire investment in Fairfield Sentry plus advisory fees paid with respect to the investment.

Claimants are entitled to compensatory damages in an aggregate amount of $11,025,168 plus advisory fees paid (the exact amount to be determined at the arbitration hearing.)

Based on the foregoing, Claimants demand judgment against Respondents as follows:

Claimant Miguel Calvo and/or Maria Luisa Calvo

(a) actual damages in the amount of approximately $1.418 million plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant JHC Investment Ltd

(a) actual damages in the amount of approximately $1.168 million plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Shiva Enterprises Ltd.

(a) actual damages in the amount of approximately $1.145 million plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant World Global Engineers Ltd

(a) actual damages in the amount of approximately $1.0 million plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Primavera Internacional

(a) actual damages in the amount of approximately $1.0 million plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Fernando Selman-Nazal

(a) actual damages in the amount of approximately $313,918 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Tossa De Mar Ltd

(a) actual damages in the amount of approximately $424,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Julio Acevedo Diaz and Maria Magdelene Commentz Salamanca

(a) actual damages in the amount of approximately $105,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Inversiones Millapel Limitada

(a) actual damages in the amount of approximately $230,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Maria Lucia Skinner and Horacio Undurraga

(a) actual damages in the amount of approximately $125,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Juan Luis Eltit Z. and Patricio Eltit

(a) actual damages in the amount of approximately $450,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Gisselle Kassis and Jorge Kassis

(a) actual damages in the amount of approximately $200,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Asesorias Rogers y Compania Limitada

(a) actual damages in the amount of approximately $250,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Norma Narvaez

(a) actual damages in the amount of approximately $120,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Nelson Gazali, Sergio Gazali and Yamili Atisha

(a) actual damages in the amount of approximately $100,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Gonzalo Jaime Vega de Kuyper

(a) actual damages in the amount of approximately $600,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Alfonso Rozas Ossa, Eliana Rodriguez, Alfonso Rozas R. and Maria Eliana Rozas R.

(a) actual damages in the amount of approximately $230,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Cecilia Irene Perez Ramirez, Ildegard Ana Kunz Parra and Ildegard Veronica Bustos Kunz

(a) actual damages in the amount of approximately $150,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon: such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Artua Murua and Carmen Paz Daza

(a) actual damages in the amount of approximately $450,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon: such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Hans Killinger B.

(a) actual damages in the amount of approximately $250,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon: such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Boxer Limited

(a) actual damages in the amount of approximately $416,250 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Simon Echenique and Pedro Echenique

(a) actual damages in the amount of approximately $250,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel:

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant GLDN Corporation Ltd

(a) actual damages in the amount of approximately $130,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon: such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

Claimant Fujian Ltd

(a) actual damages in the amount of approximately $500,000 plus advisory fees paid, the exact amount to be determined at the arbitration hearing together with interest thereon; such amount to be determined based upon the proof of specific damages presented before the Arbitration Panel;

(b) all of the costs, expenses and disbursements, including reasonable attorneys' fees, of Claimant in pursuing this arbitration proceeding; and

(c) such other relief as the arbitration panel deems just and proper.

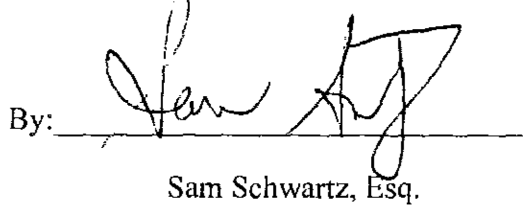
DEMAND FOR ARBITRATION

Based upon the foregoing, Claimants demand arbitration of its dispute with Respondents before an arbitration panel in New York, New York of the International Centre for Dispute of the American Arbitration Association.

Dated: September 17, 2009

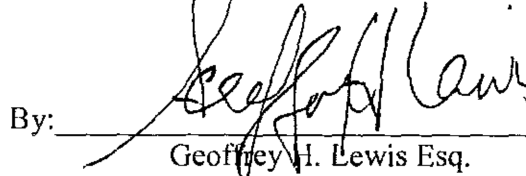
Respectfully submitted,

EISEMAN LEVINE LEHRHAUPT & KAKOYIANNIS, P.C.



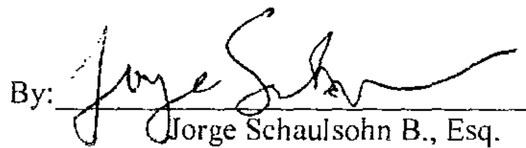
By:____________________
Sam Schwartz, Esq.

KERSTEIN COREN & LICHTENSTEIN LLP



By:____________________
Geoffrey H. Lewis Esq.

ALLAMAND & SCHAULSOHN



By:____________________
Jorge Schaulsohn B., Esq.