

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

PASHA ANWAR, *et al.*,

Barbachano,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This document relates to:

Joaquina Teresa Barbachano Herrero v. Standard Chartered Bank International (Americas) Limited and Standard Chartered PLC, 1:11-cv-03553-VM

Master File No. 1:09-cv-00118-VM-THK

NOTICE OF MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Please take notice that on the following Motion, Plaintiff, JOAQUINA TERESA BARBACHANO HERRERO (“Barbachano”), will move this Court, before the Honorable Theodore H. Katz, at a time and place to be determined by the Court, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, for an order pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure for leave to amend her Complaint (the “Motion”) and, for such further and other relief that the Court may deem just and proper.

MOTION

1. Barbachano respectfully requests leave of the Court to amend the Complaint to include additional factual allegations.
2. Barbachano filed the Complaint on December 9, 2010.
3. As of the date of this Motion, Defendants STANDARD CHARTERED BANK INTERNATIONAL (AMERICAS) LIMITED and STANDARD CHARTERED PLC (“Defendants”), have not filed a responsive pleading or any motion to dismiss under Rule 12.
4. When and if such responsive pleading or motion is filed, Rule 15(a)(1)(B), Federal Rules of Civil Procedure, provides that a party may amend its pleading once “as a matter of course” if the

“pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.”

5. Rule 15(a)(1)(B) has been described as an “absolute right to amend.” *See e.g. Lee v. Levino*, 2011 WL 62104, *1 (E.D. Mich. 2011) (noting that under Rule 15(a)(1), a party may amend the complaint once as a matter of course before being served with a responsive pleading, and that this Rule has been described as “absolute right to amend”); *Thomas v. Cumberland County Bd. of Educ.*, 2011 WL 3664891, *1 -2 (E.D. N.C. 2011) (holding that plaintiff had “an absolute right to amend [her] complaint ... and need not [have sought] leave of court to do so,” where Plaintiff filed her motion for leave to amend exactly twenty-one (21) days after Defendants filed their answer and motion to dismiss); *Plunkett v. Dept. of Justice*, 2011 WL 6396632, *2 (D. D.C. 2011) (explaining that under Rule 15(a)(1)(B), a party has an absolute right to amend its complaint at any time from the moment the complaint is filed until 21 days after the earlier of the filing of a responsive pleading or a motion under Rule 12(b), (e), or (f)).

6. The supposed futility of any proposed amendment pursuant to Rule 15(a)(1)(B) does not impact this absolute right to amend. *See Thomas*, 2011 WL 364891 at *2 (court allowed plaintiff to file amended complaint pursuant to Rule 15(a)(1)(B), despite the fact that the amended complaint suffered from at least one of the same defects as her original pleading).

7. Notwithstanding the above, undersigned counsel for Barbachano has conferred with counsel for Defendants and has been informed that the Defendants do not consent to this Motion.

8. Barbachano anticipates that granting the Motion will result in little to no additional discovery and that it will not delay the trial in this case. Accordingly, no parties are prejudiced by such amendment. Moreover, this motion is Barbachano’s first motion to amend and is made in good faith and not for the purpose of delay.

9. For the Court’s convenience, a copy of Barbachano’s proposed Amended Complaint is attached hereto as **Exhibit 1**.

WHEREFORE, Plaintiff, JOAQUINA TERESA BARBACHANO HERRERO, respectfully requests that this Court enter an Order granting Barbachano leave to Amend the Complaint and for such further relief as this Court deems just and proper.

KATZ BARRON SQUITERO FAUST
Attorneys for Plaintiff
2699 S. Bayshore Drive, 7th Floor
Miami, FL 33133
Telephone: 305-856-2444
Facsimile: 305-285-9227

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

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been served this 7th day of March, 2012, by PDF/email attachment, on:

SULLIVAN & CROMWELL LLP
New York, New York

Patrick B. Berarducci - berarduccip@sullcrom.com

*Attorneys for Standard Chartered Bank
International (Americas) Limited and Standard
Chartered PLC*

THE BRODSKY LAW FIRM
Miami, Florida

Richard Brodsky
rbrodsky@thebrodskylawfirm.com

Plaintiffs Steering Committee Liaison

CURRAN & ASSOCIATES
Miami, Florida

Laurence E. Curran, III lecurran@lecurran.com

Plaintiffs Steering Committee Member

RIVERO MESTRE LLP
Miami, Florida

Jorge A. Mestre jmestre@rmc-attorneys.com

Plaintiffs Steering Committee Member

AGUIRE, MORRIS & SEVERSON LLP
San Diego, California

Michael J. Aguire maguire@amslawyers.com
Maria C. Severson mseverson@amslawyers.com

Plaintiffs Steering Committee Member

KATZ BARRON SQUITERO FAUST
Attorneys for Plaintiff
2699 S. Bayshore Drive, 7th Floor
Miami, FL 33133
Telephone: 305-856-2444
Facsimile: 305-285-9227

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

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Exhibit 1

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

PASHA ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

Master File No. 1:09-cv-00118-VM-THK

This document relates to:

Joaquina Teresa Barbachano Herrero v. Standard Chartered Bank International (Americas) Limited and Standard Chartered PLC, 1:11-cv-03553-VM

FIRST AMENDED COMPLAINT

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

NATURE OF THE ACTION, THE PARTIES, JURISDICTION AND VENUE

1. This is an action for violation of state securities laws, breach of fiduciary duty, negligence and gross negligence. It arises from fraudulent and/or negligent investment advice and recommendations rendered by the Defendants and/or their predecessors in interest to Barbachano, which caused her assets to be invested in unsuitable securities that exposed those assets to substantial risk and, ultimately, million dollar losses, and which further caused other of Barbachano’s assets to be invested (and lost) in the massive Ponzi scheme perpetrated by Bernard Madoff.

2. Barbachano is a resident and citizen of Mexico. In late 1996, she became a client of American Express Bank, Ltd. and its subsidiary, American Express Bank International (collectively “AEBI”), in Miami, Florida, the predecessors of the Defendants. AEBI provided financial and investment

advice to Barbachano, assigning its employee, Jennifer Sierra, as Barbachano's "Relationship Manager." As a result, and continuing thereafter, Barbachano reposed her trust and confidence in AEBI and Sierra, which AEBI and Sierra accepted, entering in to a fiduciary relationship with Barbachano. Indeed, AEBI, by and through Sierra, eventually managed all aspects of Barbachano's personal finances and investments.

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

10. In 1994, Barbachano inherited approximately \$6 million following the death of her father.

11. In late 1996, Barbachano became a client of the Bank and Sierra was assigned as her Relationship Manager.

12. In that regard, Barbachano advised Sierra at the time she became a client of the Bank in 1996 that she had no knowledge of finances and investments and that her goal was to preserve her inheritance while making a modest return. In that regard, Barbachano advised Sierra that she (Sierra) should treat Barbachano like an old widow when making investment recommendations and not to gamble with her assets. Sierra advised Barbachano at that time that her investment risk factor was considered “moderate conservative” and that her overall investment position would be conservative, but when the market presented an opportunity Sierra would take some small risks.

13. During late 1996, Sierra recommended that Barbachano place a substantial part of her assets in a trust, which was subsequently created in the Cayman Islands, with AMEX International Trust (Cayman) Ltd., an affiliate of AEBI, acting as “Trustee,” and, later, with Standard Chartered Trust (Cayman) Ltd., an affiliate of the Defendants, acting as “Trustee.” The trust was initially named “Las Trojes,” and, later, re-named “Los Camotes,” with the assets transferred into the trust by Barbachano

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

14. Throughout their relationship, the Bank, by and through Sierra, made all investment decisions for Barbachano. In particular, Sierra would tout an investment to Barbachano, repeatedly advising Barbachano that the investments she recommended were not risky and that the Bank reviewed in detail all the investments that she (Sierra) recommended. Sierra would also show investment documents to Barbachano but would not necessarily leave them for Barbachano to review because, as Sierra said, she “would not understand them.” For example, in the Bank’s call report dated July 30, 2004, Sierra notes that “[Barbachano] is still in the process of learning the investment management of the account.”

15. In addition, Sierra became involved in all aspects of Barbachano’s finances. She managed withdrawals and deposits for Barbachano, caused the payment of bills for Barbachano’s Florida residence and credit cards, and ensured the payment of taxes. Sierra also befriended Barbachano, often meeting her for dinner and taking a vacation with her to Key West. When Barbachano decided to sell her Florida residence, Sierra caused her (Sierra’s) husband to act as Barbachano’s broker, thus obtaining a commission from the sale.

Fairfield Investments

16. In or about January 2004, the Bank, by and through Sierra, began touting to Barbachano investment in Fairfield Sentry Limited Fund (“Fairfield”), a feeder fund for Madoff’s Ponzi scheme. Sierra touted the investment in Fairfield as a “risk reducer” for Barbachano’s investment portfolio. She said that the Bank had investigated Fairfield, that Fairfield was not risky, and that Fairfield had “no volatility,” provided a six to seven percent annual return, and was a safe, conservative investment.

17. The Bank, by and through Sierra, only began touting investment in Fairfield after Fairfield agreed to pay a “trailer fee” to the Bank in the amount of one-half of one percent of each

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

investment per year. The Bank did not disclose the payment of this “trailer fee” to Barbachano at any time or the fact that the Bank only agreed to market Fairfield after Fairfield agreed to pay the “trailer fee.”

18. In 2004, on the recommendation of Sierra, upon which Barbachano justifiably relied, Barbachano invested approximately \$300,000.00 in Fairfield.

19. In 2005, Barbachano, through an investment account maintained with UBS, invested approximately \$100,000.00 in Fairfield. In late 2005/early 2006, Barbachano transferred her investments maintained at UBS to AEBI. In March 2006, Sierra reviewed her investments and recommended that the investment in Fairfield be kept in Barbachano’s portfolio as a “risk reducer,” a recommendation that Barbachano justifiably relied on.

20. Further, in July 2006, Sierra caused Barbachano to invest an approximately \$400,000.00 in Fairfield. Sierra told Barbachano that an investment in Fairfield was an opportunity for only a select number of investors. Sierra, however, did not obtain Barbachano’s written authorization for this additional investment.

21. Throughout 2004, 2005, and 2006, Sierra continued to tout the investment in Fairfield as a “risk reducer” for Barbachano’s investment portfolio. For example, in February 2006, Sierra presented Barbachano with an “Investment Proposal” which touted Fairfield as a “risk reducer.” See “Investment Proposal” dated February 2006, which is attached and incorporated herein as **Exhibit A**. Sierra also repeatedly advised Barbachano that Fairfield had “no volatility,” provided a six (6) to seven (7) percent annual return, and was a safe, conservative investment. Moreover, during their conversations, Sierra repeatedly told Barbachano that the investments in her portfolio were safe and properly investigated by the Bank.

22. At the time the Bank recommended the investments in Fairfield, Sierra did not advise Barbachano that Fairfield was a feeder fund for Bernard L. Madoff Investments Securities, LLC (“BLMIS”) and that the sole function of Fairfield, other than raising money from investors and extracting

healthy fees for its sponsor, Fairfield Greenwich Group (“FGG”), was to turn over those investments to BLMIS.

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

- a. In violation of its own internal policies, the Bank recommended the Fairfield investment without doing any initial or on-going due diligence on Fairfield’s sub-advisor, BLMIS; and
- b. The Bank ignored obvious red flags which should have put them on notice – and which made it reasonably foreseeable – that Madoff was engaged in a fraud, including but not limited to:
 - i. BLMIS’ invariable positive monthly return and low standard deviation;
 - ii. The lack of any comparable product with comparative returns;
 - iii. The fact that BLMIS performed both execution and custodial functions with the invested funds;
 - iv. The fact that BLMIS failed to file required SEC Form 13-Fs prior to February 2007, and, those that were filed after February 2007 evidenced discrepancies between amounts reported and amounts the company was supposedly managing;
 - v. The fact that financial institutions investing with BLMIS, including the Bank, were not generally allowed to go visit BLMIS for due diligence purposes;
 - vi. The fact that BLMIS’ financial audits were conducted by a two-man firm, Friedhling & Horowitz;

- vii. The fact that BLMIS did not charge an administrative fee for its services or a share of supposed profits;
- viii. The fact that BLMIS did not allow any real-time electronic access to trading; and
- ix. The fact that BLMIS utilized outmoded technology, including paper trading confirmations which were sent daily via U.S. mail to feeder funds such as Fairfield.

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

25. Barbachano reasonably relied on the Bank's representations regarding Fairfield and had Barbachano been aware that those representations were false, she would not have invested in Fairfield. Likewise, had Barbachano been aware that the Bank failed to conduct adequate due diligence concerning the Fairfield investment in violation of both the Bank's internal due diligence standards and those prevalent in its sector of the financial industry, that the Bank was receiving the "trailer fee" from Fairfield, and that Fairfield had failed to conduct adequate due diligence regarding BLMIS, Barbachano would not have invested in Fairfield.

Lack of Suitability

26. On June 6, 2007, Sierra and John Dutkowski ("Dutkowski"), the Senior Investment Specialist for the Americas, met with Barbachano and her husband, Hector Velasquez ("Velasquez"), in Mexico City. Sierra and Dutkowski recommended that Barbachano reallocate her assets based on then-existing market conditions, while maintaining her position with Fairfield. Dutkowski and Sierra advised that they would diversify her portfolio to minimize any risk, using an investment risk factor of "moderate conservative" for Barbachano's assets, and that she should expect earnings of five (5) to seven (7) percent

for 2008. When Barbachano asked what her losses could be, Sierra and Dutkowski advised that in the worst of cases she could suffer losses of ten (10) to twelve (12) percent.

27. During the June 6, 2007 meeting, Barbachano reiterated to Sierra and Dutkowski that she did not understand anything about investments and that she wanted to be clear that she did not want to risk her money in any way. This message was repeated to Sierra and Dutkowski during a subsequent meeting with Sierra, Dutkowski and Velasquez on September 26, 2007 in Mexico City. Further, during a February 28, 2008 meeting with Sierra, Carla Borelly (Sierra's assistant), Dutkowski, and Velasquez, Barbachano reminded the Bank "to be cautious in the event things turned worse instead of better," as reflected in the Bank's March 5, 2008 call report, authored by Sierra.

28. However, by 2008, Barbachano's portfolio was heavily allocated in "equities" and had very little fixed income allocation. For example, approximately forty-one (41) percent of Barbachano's portfolio was invested in Signature Global Equities – an investment which the Bank failed to advise Barbachano was rated four out of five on the risk matrix used by the Bank (with five being the most risky and one being the most conservative). Moreover, by 2008, nearly fifteen (15) percent of Barbachano's account was invested in Fairfield – an investment that was a fraud.

29. Meanwhile, the Bank continued to assure Barbachano that her assets were not at risk. Thus, during a June 2, 2008 meeting with Barbachano, Sierra, Velasquez, and Dutkowski in Mexico City, Barbachano repeatedly asked Sierra if everything was under control with her accounts and Sierra continuously assured Barbachano that everything was fine and that Barbachano had nothing to worry about since Sierra was taking care of everything and her investments were not risky.

30. During June 2008, Barbachano also advised Sierra that she wanted to withdraw approximately \$2 million from the investments managed by the Bank in order to purchase property in Mexico. Sierra actively discouraged Barbachano from doing so and, instead, persuaded Barbachano to obtain a multi-million dollar loan from the Bank. Specifically, Sierra convinced Barbachano that a loan

from the Bank was a better option since Barbachano could make more money from investments than it would cost to take out the loan from the Bank. Sierra also told Barbachano that she did not need to worry about risking her money because Barbachano had a very secure portfolio. When Barbachano raised the possibility of only taking a loan for half the amount, Sierra insisted that a full loan was a better option. Barbachano was reluctant to go forward with the loan and sought further assurances from Sierra that her investments were not at risk, which Sierra assured her they were not, again stating that the bank reviewed all the investments that Sierra recommended. Sierra would benefit, in terms of compensation from the Bank, if Barbachano were to obtain a loan from the Bank rather than reduce the amount of her portfolio, and Sierra failed to so advise Barbachano when recommending that Barbachano obtain a loan rather than liquidate part of her portfolio.

The Fallout

31. In 2008-09, Barbachano suffered losses of approximately forty-three (43) percent in her portfolio, including all \$800,000 invested in Fairfield when Madoff's Ponzi scheme was revealed on December 11, 2008. Even excluding the investment in Fairfield, Barbachano lost approximately twenty-six (26) percent of the value of her portfolio – losses that Barbachano would not have suffered if the Bank had managed her portfolio consistent with Barbachano's risk level and objectives.

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

33. On or about September 9, 2009, the Bank, by and through its representative and Barbachano's new relationship manager, Jose del Vecchio ("Del Vecchio"), met with Barbachano in Mexico City. Del Vecchio told Barbachano that her portfolio had been mismanaged and, rather than having investments in the "moderate conservative" range, many of her assets had actually been placed in high-risk investments and that Barbachano's portfolio was aggressive, which was the reason Barbachano lost so much money. Del Vecchio also criticized Sierra's management of Barbachano's account.

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

35. Thereafter, Del Vecchio attempted to have Barbachano execute documents releasing the Bank from liability for her losses. The Defendants also demanded that Barbachano repay in full the loan before releasing her assets.

36. In or about April 2010, Barbachano closed her accounts with the Bank.

COUNT I

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

37. Barbachano realleges paragraphs 1-36 as if fully set forth herein.

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

39. Section 517.301 provides in relevant part that:

It is unlawful and a violation of the provisions of [Chapter 517] for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment . . . , directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;
2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

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

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

41. The shares of Fairfield were a “security” as that term is used in the Act.

42. Defendants rendered investment advice to Barbachano and did so in connection with her purchase of Fairfield securities. In addition, Defendants rendered investment advice to Barbachano in connection with the other investment recommendations made to her.

43. In so doing, Defendants employed a device, scheme, or artifice to defraud; Defendants obtained money or property by means of untrue statements of a material fact and/or failure to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or Defendants engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon Barbachano.

44. In particular, Defendants, by and through Bank employees working from the Bank's Miami, Florida, location, recommended and caused Barbachano to make investments unsuited to her investment objectives and risk allocation, recommended and caused Barbachano to obtain a multi-million dollar loan from the Defendants rather than liquidating part of her investments, and often made investment decisions without obtaining Barbachano's written authorization. The Defendants knew or should have known that the investments were unsuitable for Barbachano; the Defendants recommended the investments to Barbachano notwithstanding the unsuitability thereof and her lack of investment sophistication; and the Defendants, fraudulently and/or negligently, made material misrepresentations of material facts and failed to disclose material information relating to the suitability of the investments that they recommended.

45. Moreover, Defendants failed to conduct adequate due diligence in connection with their recommendation that Barbachano purchase Fairfield securities, while fraudulently and/or negligently representing to Barbachano that they had reviewed in detail all the investments recommended to her, and while fraudulently and/or negligently touting the investment in Fairfield as a "risk reducer" for Barbachano's investment portfolio and fraudulently and/or negligently representing that Fairfield had "no volatility," would provide a six (6) to seven (7) percent annual return, and was a safe, conservative investment.

46. The Defendants also failed to disclose to Barbachano that Fairfield paid the Defendants the "trailer fee" for her investment in Fairfield. Defendants also fraudulently and/or negligently failed to disclose to Barbachano that Fairfield paid Defendants such "trailer fee."

47. Barbachano justifiably relied upon Defendants' misrepresentations and omissions, following their investment recommendations and decisions.

48. The Defendants, by and through Bank employees working from the Bank's Miami, Florida, location, solicited the purchases by Barbachano of Fairfield for their financial gain and are

therefore jointly and severally liable to Barbachano for her losses under section 517.211(2) on this basis. Furthermore, the Defendants acted as Fairfield's agent in soliciting these purchases, receiving the undisclosed "trailer fee" from Fairfield for their efforts. The Defendants are therefore jointly and severally liable to Barbachano on this basis as well.

49. Furthermore, Defendants were agents of Barbachano in connection with rendering investment advice to her, as well in connection with the purchase and/or sale of securities and investments in her accounts.

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

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

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

COUNT II

BREACH OF FIDUCIARY DUTY (AGAINST ALL DEFENDANTS)

52. Barbachano realleges paragraphs 1-36 as if fully set forth herein.

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

54. Defendants entered into and had a fiduciary relationship with Barbachano, and Defendants and Barbachano shared a relationship whereby Barbachano reposed her trust and confidence in Defendants regarding their investment recommendations and decisions. In particular, Defendants rendered investment advice to Barbachano and directed her investments. Moreover, Sierra became

involved in all aspects of Barbachano's finances and befriended Barbachano, obtaining Barbachano's trust and confidence in Sierra's recommendations.

55. As such, Defendants owed Barbachano fiduciary duties of loyalty and care, including duties to make suitable investment recommendations and decisions only after conducting reasonable due diligence, researching potential investments, and disclosing all material facts, including the risks involved in any investment. Defendants further owed Barbachano a fiduciary duty not to make material misrepresentations of fact or to omit material facts.

56. Further, Defendants owed Barbachano a fiduciary duty to render investment advice suitable to her, taking into consideration Barbachano's investment objections, risk tolerance, and asset allocation.

57. Defendants breached the fiduciary duties that they owed to Barbachano by failing to conduct reasonable due diligence, disclose material facts, and adequately research and/or disclose the risks involved in Fairfield, which investment Defendants fraudulently and/or negligently touted as a "risk reducer" for Barbachano's investment portfolio and fraudulently and/or negligently represented as having "no volatility," as providing a six (6) to seven (7) percent annual return, and as a safe, conservative investment.

58. Furthermore, Defendants breached their fiduciary duties of care and loyalty that they owed to Barbachano by accepting the "trailer fee" from Fairfield and by failing to disclose the same to Barbachano.

59. In addition, Defendants breached the fiduciary duties that they owed to Barbachano by causing her to make investments unsuited to her investment objections and risk allocation, by causing Barbachano to obtain a multi-million dollar loan from the Defendants rather than liquidating part of her investments, and by often making investment decisions without obtaining Barbachano's written authorization. The Defendants knew or should have known the investments were unsuitable for

Barbachano; the Defendants recommended investments to Barbachano notwithstanding the unsuitability thereof and her lack of investment sophistication; and the Defendants fraudulently and/or negligently made material misrepresentations and failed to disclose material information relating to the suitability of the investments.

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

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

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

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

COUNT III

NEGLIGENCE (AGAINST ALL DEFENDANTS)

63. Barbachano realleges paragraphs 1-36 as if fully set forth herein.

64. This is an action against the Defendants for negligence.

65. Defendants acted as investment advisors for Barbachano and, accordingly, owed her duties of care to make suitable investment recommendations and decisions only after conducting reasonable due diligence, researching potential investments, and disclosing all material facts, including the risks involved in any investment. Defendants further owed Barbachano a duty not to make material misrepresentations of fact or to omit material facts.

66. Defendants breached the duties that they owed Barbachano by negligently failing to conduct reasonable due diligence, disclose material facts, and adequately research and/or disclose the risks involved in Fairfield, which investment Defendants negligently touted as a “risk reducer” for Barbachano’s investment portfolio and negligently represented as having “no volatility,” as providing a six (6) to seven (7) percent annual return, and as a safe, conservative investment. Also, Defendants breached the duties that they owed Barbachano by accepting the “trailer fee” from Fairfield and by negligently failing to disclose the same to Barbachano.

67. In addition, Defendants breached the duties that they owed to Barbachano by causing her to make investments unsuited to her investment objections and risk allocation, by causing Barbachano to obtain a multi-million dollar loan from the Defendants rather than liquidating part of her investments, and by often making investment decisions without obtaining Barbachano’s written authorization. The Defendants knew or should have known the investments were unsuitable for Barbachano; the Defendants recommended investments to Barbachano notwithstanding the unsuitability thereof and her lack of investment sophistication; and the Defendants negligently made material misrepresentations and failed to disclose material information relating to the suitability of the investments.

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

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

70. As a direct and proximate result of Defendants’ negligence, Barbachano has suffered damages.

71. Defendants’ conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of Barbachano. Defendants’ conduct constitutes gross negligence,

as defined in section 768.72, Fla. Stat. Accordingly, Barbachano reserves the right to amend the Complaint to seek punitive damages.

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

PLAINTIFF'S DEMAND FOR JURY TRIAL

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

Dated: _____

Respectfully submitted,

H. Eugene Lindsey III
Florida Bar No. 130338
New York Bar No. 2421923
hel@katzbarron.com
KATZ BARRON SQUITERO FAUST
2699 S. Bayshore Drive, 7th Floor
Miami, Florida 33133-5408
Telephone: (305) 856-2444
Facsimile: (305) 285-9227
Attorneys for Plaintiff

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EXHIBIT A

A Proposal For Teresa Barbachano

Prepared By Jennifer Sierra
Tel. (305) 530-2558
Presented On February 2006

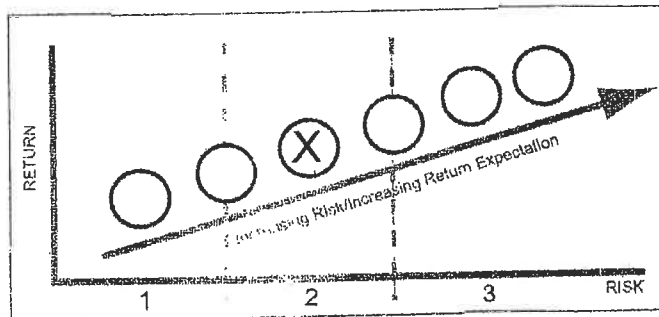
American Express Private Bank

AMERICAN
EXPRESS

American Express Private Bank is a global marketing name used by American Express Bank Ltd. (a subsidiary of American Express Company) and its subsidiaries.
TB002383

Investment Objectives

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



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



TB002384

American Express

Your Objectives

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

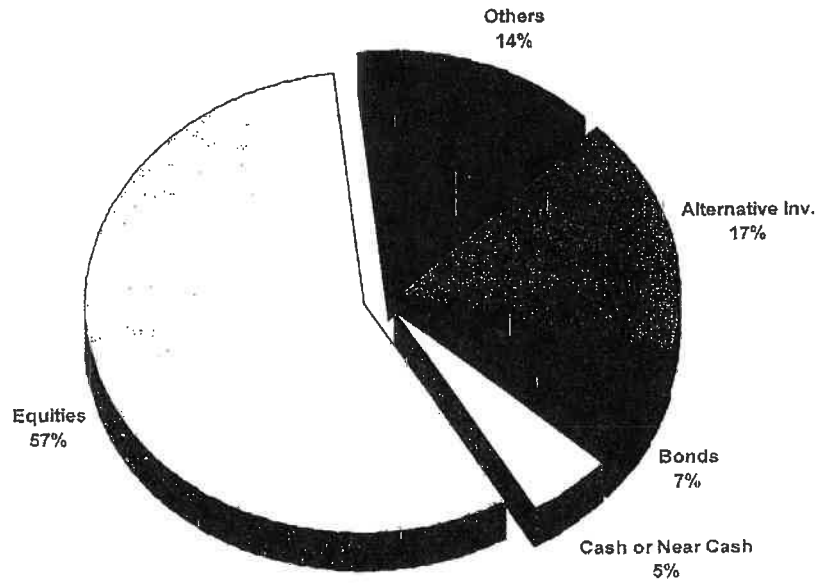
Investment Objective:	Moderate Growth
Risk Tolerance:	Moderate
Time Horizon:	7 Years
Reference Currency:	US Dollars
Booking Location:	Geneva



TB002385

Current Asset Allocation

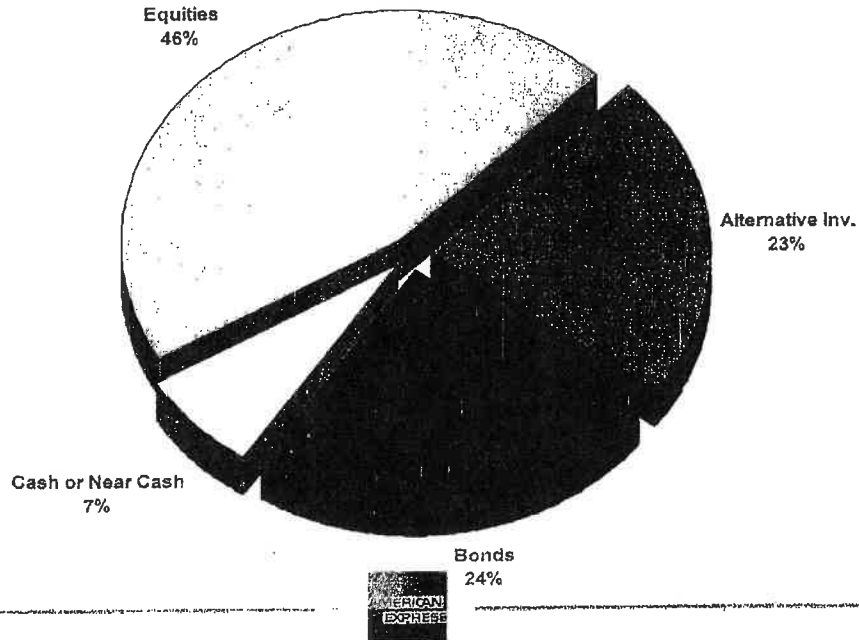
The pie chart below illustrates your current asset allocation.



TB002386

Proposed Asset Allocation

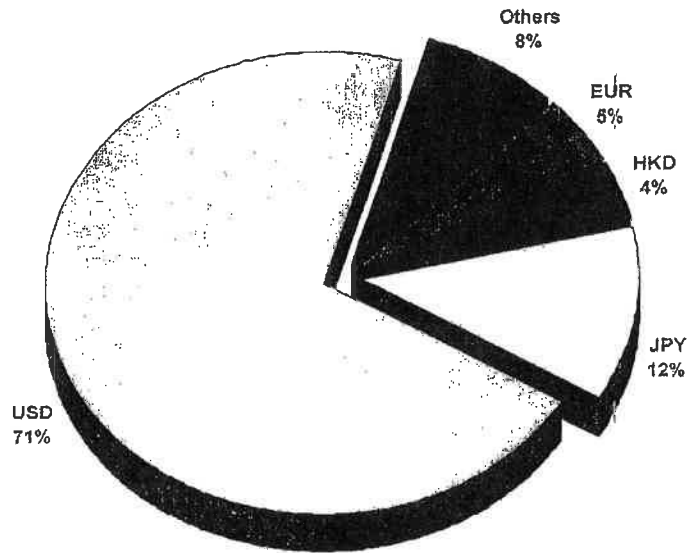
We propose to invest your financial assets in a global portfolio that will diversify your investment risk between asset classes and markets. The objective of this proposal is to develop for you a US-based portfolio coherent with a moderate tolerance for investment risk. It is designed to be held for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



TB002387

Current Exposure By Currency

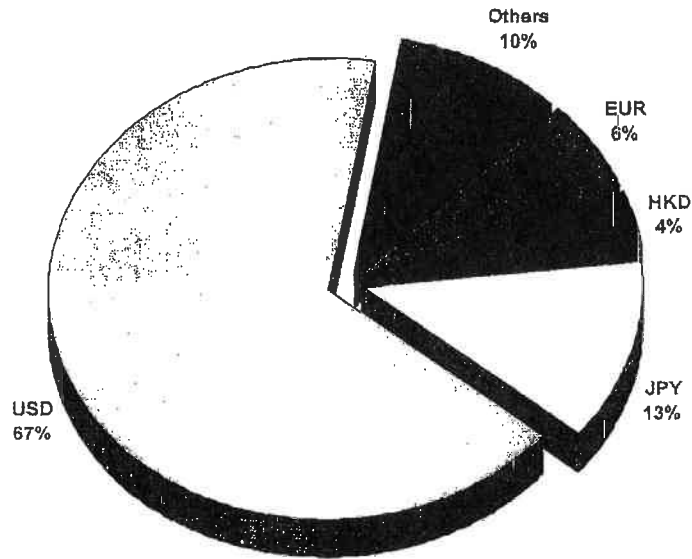
Based on our understanding, the pie chart below illustrates your current exposure by currency.



TB002388

Proposed Exposure By Currency

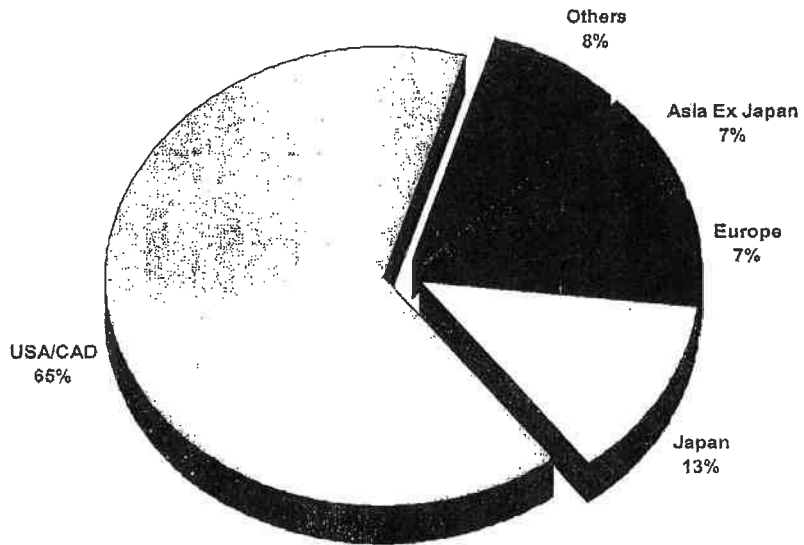
We propose to re-allocate your assets across the currencies illustrated below.



TB002389

Current Geographic Exposure

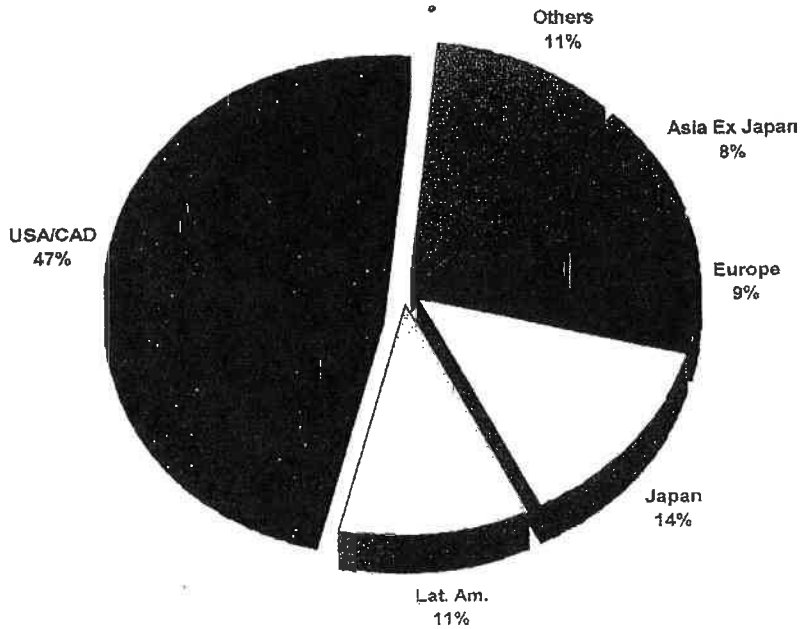
Based on our discussions, the pie chart below illustrates your current geographic exposure.



TB002390

Proposed Geographic Exposure

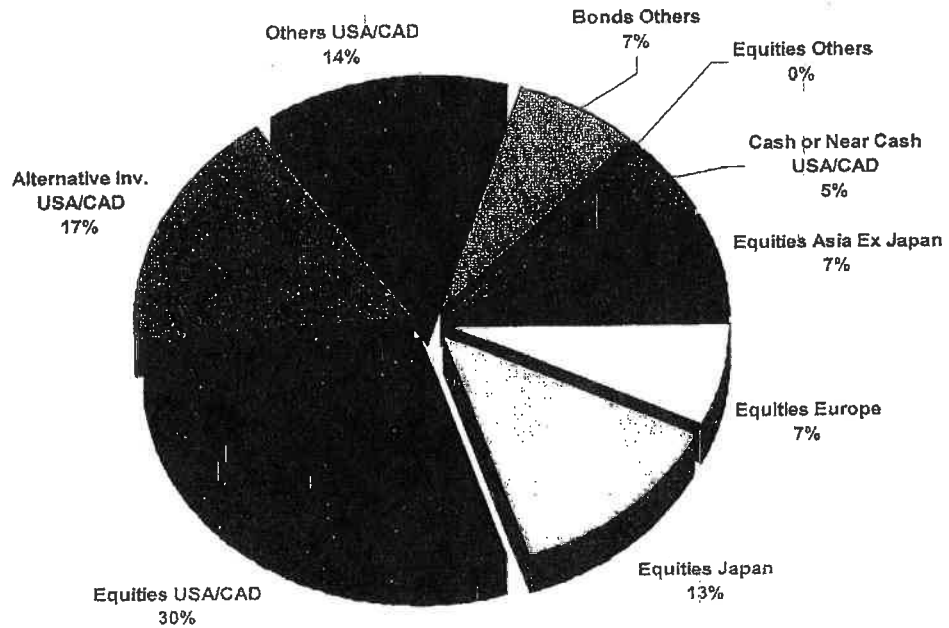
After a careful analysis of your goals, we propose the geographic allocation illustrated below.



TB002391

Current Distribution Of Assets By Region

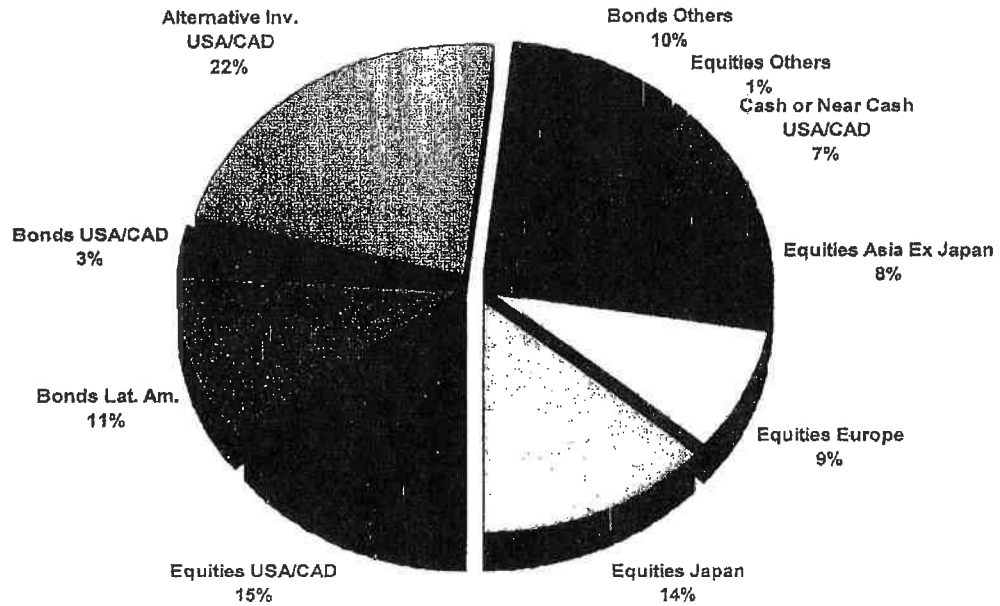
Based on our discussions, this pie chart illustrates the distribution of assets by region that you currently hold.



TB002392

Proposed Distribution Of Assets By Region

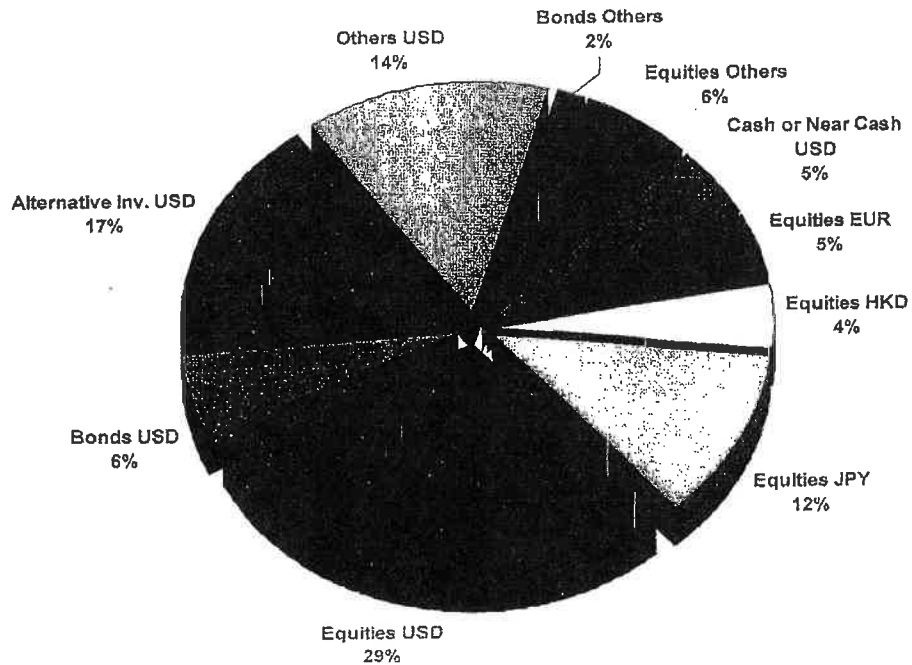
We recommend allocating your assets to reflect the distribution below.



TB002393

Current Distribution Of Assets By Currency

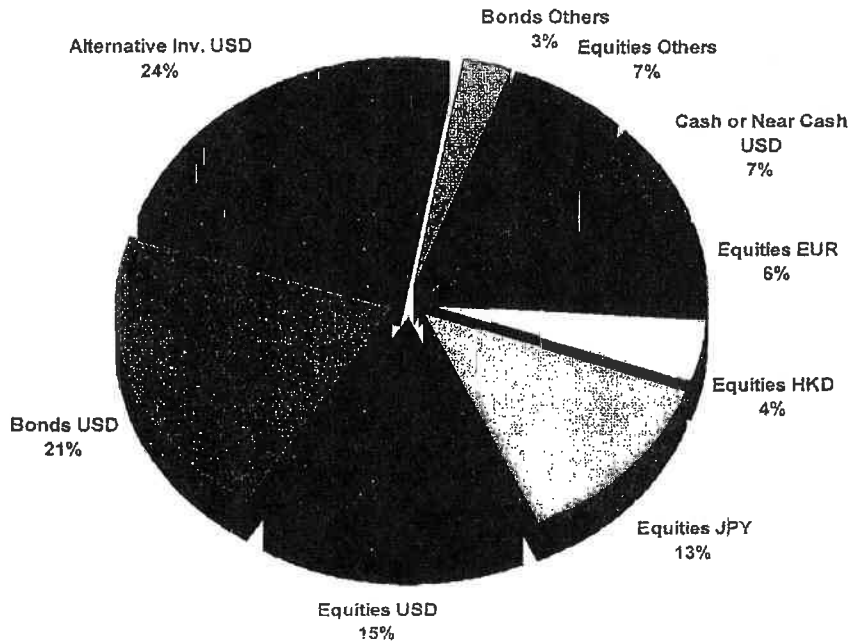
Currently, the assets in your portfolio are distributed according to the illustration below.



TB002394

Proposed Distribution Of Assets By Currency

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



TB002395

Current Investment Portfolio

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

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

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



TB002396

Proposed Investment Portfolio*

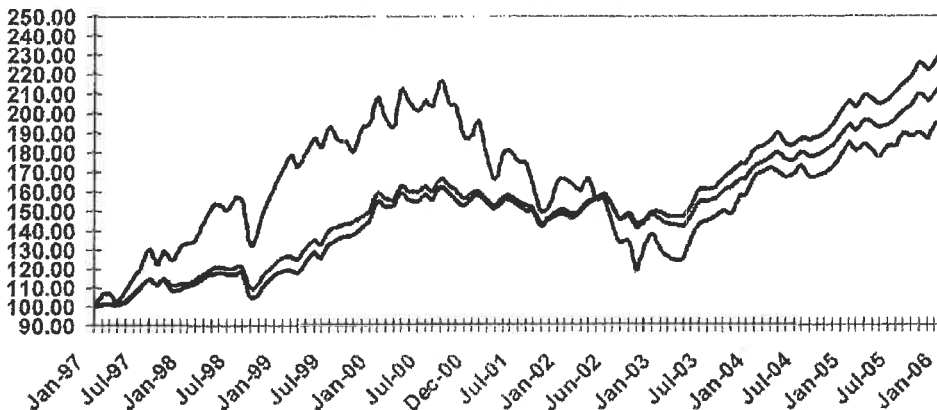
Here's our recommendation including the products, investment percentages, and the amount in your reference currency we propose to allocate to each product and asset class.

Recommended Products	% Assets	Investable Amount (USD)	Recommended Products	% Assets	Investable Amount (USD)
Cash or Near Cash	0.52%	25,648	Equities	36.26%	1,790,860
Money Market	0.52%	25,648	Sig Global Eq	36.26%	1,790,860
Bonds	10.12%	500,000	Yield Enhancers	18.22%	900,000
Glo Emerg Mkt S-Term Bonds	10.12%	500,000	AEF Emer Mkt Debt	10.12%	500,000
Global Products	20.24%	1,000,000	Permal FX Fin & Futures	8.10%	400,000
DP Trad Global Mod	20.24%	1,000,000	Total	100.00%	4,939,551
Risk Reducers	14.64%	723,043			
Fairfield Sentry	8.89%	439,284			
Global MN Cons FoF	5.74%	283,759			



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

Historical Performance



— S&P 500 — Current Portfolio — Proposed Portfolio

	S&P 500	Current Portfolio	Proposed Portfolio
Return p.a.	7.53%	8.83%	9.73%
Risk	16.07%	8.31%	8.87%
Sharpe Ratio	0.23	0.59	0.66
Ending Value	194.07	216.47	233.40
Portfolio currency	USD		
Starting date	Jan-97		



Chart represents the actual performance of the American Express Bank investment products included in the proposal, where available. Where unavailable (i.e., prior to the inception date of any of the investment products) the chart uses, as a proxy for actual performance, indices that parallel the investment strategy of these investment products. For a listing of the inception dates for the investment products and information on indices used, please refer to the Appendix I. Past performance does not guarantee a similar outcome.

Proposed Investment Portfolio*

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

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Risk Reducers	14.64%	723,043			
Fairfield Sentry	8.89%	439,284			
Global MN Cons FoF	5.74%	283,759			



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

TR002399

Current Investment Portfolio

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

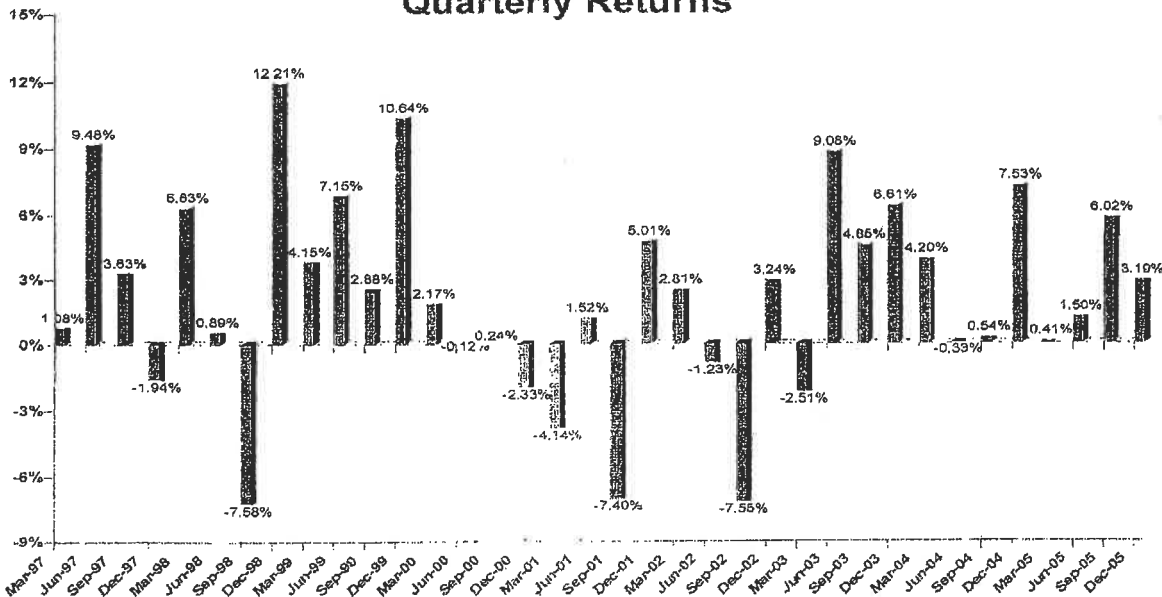
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Permal FX Fin & Futures	2.11%	104,033
Structured Products	14.17%	699,940
Total	100.00%	4,939,551



Current Portfolio Historical Return Analysis

Quarterly Returns



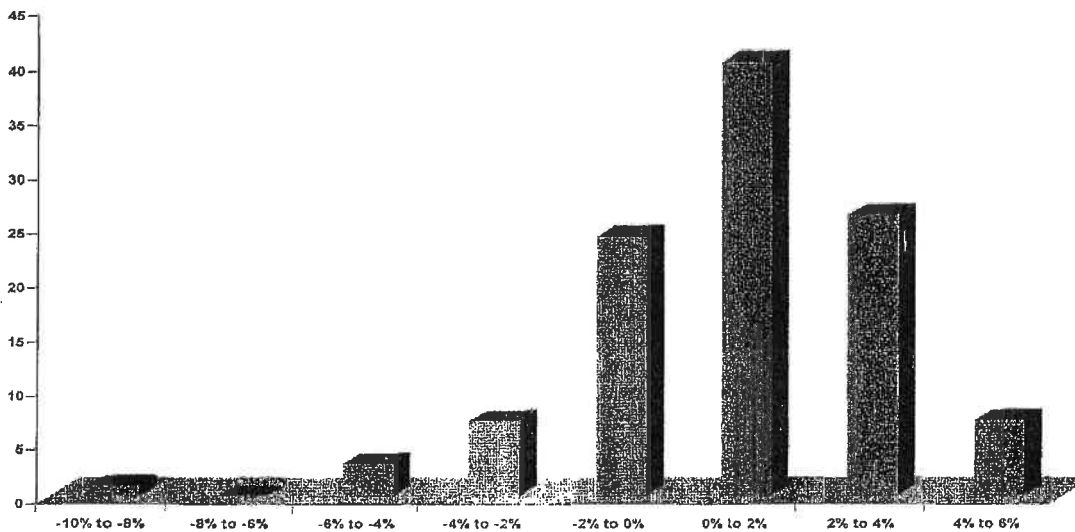
Past performance is not an indicator of future performance.

TB002401

Current Portfolio Historical Return Analysis

Distribution of Monthly Returns

Number of periods

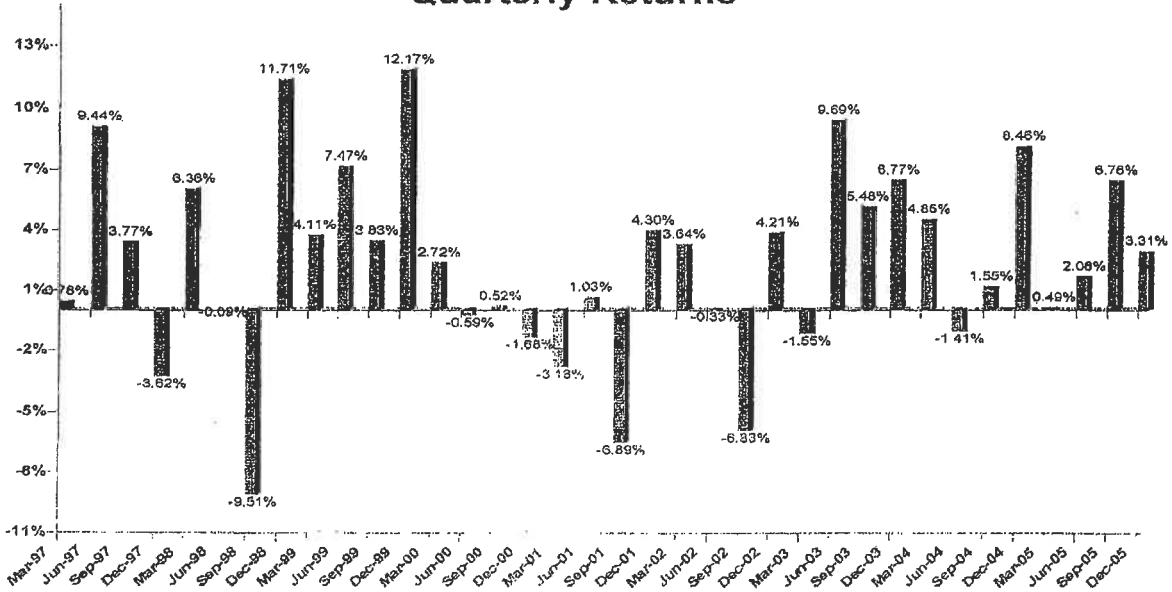


Past performance is not an indicator of future performance.

TB002402

Proposed Portfolio Historical Return Analysis

Quarterly Returns

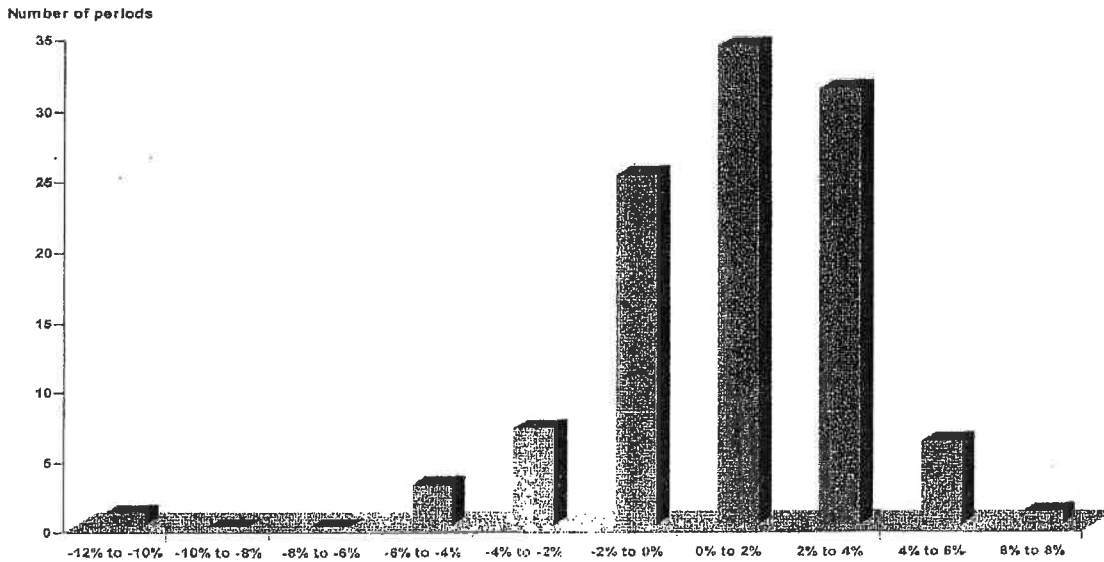


Please refer to Appendix I at the end of this proposal for information on the inception dates of products included in the portfolio as well as the use of benchmark data prior to these inception dates in the performance chart.

TB002403

Proposed Portfolio Historical Return Analysis¹

Distribution of Monthly Returns



TB002404

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

Current Portfolio Correlation Matrix

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



Proposed Portfolio Correlation Matrix

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



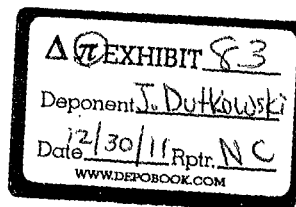
EXHIBIT B



Investment Proposal for 4652

Relationship Manager: Jose Del Vecchio
Investment Specialist: John Dutkowski

October 2009



Asset Allocation

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

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Hedge funds are speculative investments and are not suitable for all investors, nor do they represent a complete investment program. Hedge funds are not subject to the same regulatory requirements as mutual funds. An investment in a hedge fund involves the risk inherent in an investment in securities, as well as specific risks associated with limited liquidity, the use of leverage, short sales, options, futures, derivative instruments, "junk" bonds and illiquid investments. There can be no assurances that a manager's strategy, hedging or otherwise, will be successful or that a manager will use this strategy with respect to all or a portion of the portfolio. For a more complete description of the risks associated with any hedge fund investment, please read the Offering Document which can be obtained by contacting your Relationship Manager.

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With any investment the value may fall as well as rise and in some circumstances you may not get back the full amount invested. You are not certain to make a profit, and may lose money. Changes in rates may cause the value of investments to go up or down. If your base currency is other than the base currency of the underlying assets, changes in rates of exchange may have an adverse effect on the value of your investments. Past performance should not be seen as an indication of future performance. The level, rates and bases of, and relief from, taxation are those currently available and may change in the future. This presentation does not purport to disclose all of the risks associated with investment products.

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