

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

_____)
SECURITIES AND EXCHANGE)
COMMISSION,)
)
	Plaintiff,)
)
v.)
)
)
)
NEW STREAM CAPITAL, LLC;)
NEW STREAM CAPITAL (CAYMAN), LTD.;)
DAVID A. BRYSON;)
BART C. GUTEKUNST;)
RICHARD PEREIRA; and)
TARA BRYSON,)
)
	Defendants.)
_____)

Civil Action No.

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges the following against defendants New Stream Capital, LLC (“New Stream”), New Stream Capital Cayman, Ltd. (“Cayman Adviser”), David A. Bryson (“David Bryson”), Bart C. Gutekunst (“Gutekunst”), Richard Pereira (“Pereira”), and Tara Bryson (collectively “Defendants”):

SUMMARY OF ALLEGATIONS

1. This case is about a hedge fund fraud that cost investors millions of dollars when the hedge fund failed in the fall of 2008, after the Defendants perpetrated a scheme to mislead investors about the capital structure of the hedge fund in order to keep the hedge fund afloat and their management fees flowing well into 2008.

2. New Stream was an unregistered investment adviser in Ridgefield, Connecticut that at one time managed a \$750-plus million hedge fund focused on illiquid investments in

asset-based lending. In March 2008, David Bryson and Gutekunst, New Stream's lead principals and co-owners, set in motion a scheme to secretly revise the hedge fund's capital structure to placate their largest investor, Gottex Fund Management Ltd. ("Gottex"), by giving Gottex and certain other preferred offshore investors priority over all the other investors in the event of a liquidation. Gottex had threatened to pull its money out of the New Stream hedge fund because a wholesale restructuring of the fund just a few months earlier had created two new feeder funds and granted equal liquidation rights to all of the investors, thereby eliminating the preferential liquidation rights previously enjoyed by the feeder fund through which Gottex had invested. Gottex's investment totaled nearly \$300 million.

3. At the direction of David Bryson and Gutekunst, New Stream's marketing department, led by Tara Bryson, fraudulently raised nearly \$50 million in new investor funds after March 2008 by continuing to use the now obsolete -- and thus materially misleading -- pre-March 2008 solicitation materials and without disclosing the March 2008 revisions to the capital structure to the new investors whose interests were materially impaired by those changes. In addition, Pereira, New Stream's CFO, falsified the hedge fund's operative financial statements to conceal the March 2008 revisions to the capital structure. Not only did the Defendants deceive new investors about the fund's true capital structure, but they also failed to tell existing investors in the two new feeder funds that, contrary to the representations originally made to them, New Stream had subordinated their positions in the capital structure.

4. Disclosure of the March 2008 changes to the capital structure would have made it far more difficult to continue to raise money through the new feeder funds and would have spurred redemptions from existing investors in the new feeder funds. As such, disclosure of the March 2008 changes would have adversely affected the Defendants' own pecuniary interests by,

among other things, jeopardizing the increased cash flow from a new, lucrative fee structure that they had implemented in the fall of 2007.

5. By the end of September 2008, as the U.S. financial crisis worsened, the New Stream hedge fund was facing \$545 million in redemption requests, causing it to suspend further redemptions and cease raising new funds. After several attempts at restructuring failed, New Stream and affiliated funds filed Chapter 11 bankruptcy petitions in March 2011. Based on current estimates, the defrauded investors, whose bankruptcy claims totaled approximately \$182 million, are expected to receive approximately five cents on the dollar -- substantially less than half the amount that Gottex and other investors in its preferred class are expected to receive.

6. By virtue of the conduct alleged herein, the Defendants, directly or indirectly, singly or in concert, violated and are otherwise liable for violations of the federal securities laws, as follows:

(a) New Stream, David Bryson and Gutekunst each violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]; Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8];

(b) The Cayman Adviser violated Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]; and Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8];

(c) Pereira and Tara Bryson each violated Section 17(a) of the Securities Act [15

U.S.C. §§ 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5];

(d) David Bryson, Gutekunst and Pereira are each also liable pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] as a controlling person for New Stream's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]; and David Bryson and Gutekunst are each further liable pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] as a controlling person for the Cayman Adviser's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]; and

(e) David Bryson, Gutekunst, Pereira, and Tara Bryson are each also liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)] for aiding and abetting each other's violations, and New Stream and the Cayman Adviser's violations, of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; David Bryson and Gutekunst are each further liable pursuant to Sections 209(d) and 209(f) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and (f)] for aiding and abetting each other's violations, and New Stream's violations, of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)]; and, in addition, David Bryson, Gutekunst, Pereira and Tara Bryson are each also liable pursuant to Sections 209(d) and 209(f) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and (f)] for aiding and abetting violations of Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] by New Stream, the Cayman Adviser, David Bryson and Gutekunst.

7. Unless the Defendants are permanently restrained and enjoined, they will again engage in the acts, practices, transactions and courses of business set forth in this complaint and

in acts, practices, transactions and courses of business of similar type and object.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. §§ 80b-9(d)], and seeks to restrain and permanently enjoin the Defendants from engaging in the acts, practices, transactions and courses of business alleged herein. The Commission also seeks a final judgment ordering each of the Defendants to disgorge the ill-gotten gains received as a result of the violations for which they are liable and pay prejudgment interest on those amounts; and ordering the Defendants to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Sections 209(e) and 209(f) of the Advisers Act [15 U.S.C. §§ 80b-9(e) and (f)].

9. This Court has jurisdiction over this action, pursuant to 28 U.S.C. §1331, Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d),77v(a)]; Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9, 80b-14].

10. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2), Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Many of the events constituting or giving rise to the alleged violations occurred in the District of Connecticut. In addition, New Stream, David Bryson, Gutekunst, Pereira and Tara Bryson, as well as the management of the Cayman Adviser, each maintained their principal offices in Connecticut during the relevant period. Moreover, David Bryson, Gutekunst, Pereira and Tara Bryson also lived in Connecticut

during the relevant period.

11. In connection with the conduct alleged in this complaint, the Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails.

DEFENDANTS

12. **New Stream** is a Delaware limited liability company organized in October 2002 with its principal place of business in Ridgefield, Connecticut. New Stream was registered with the Commission as an investment adviser from January 27, 2006 to January 8, 2007. During the relevant period, New Stream was the general partner and investment manager of New Stream Secured Capital, L.P. (“Master Fund”). It also served as investment manager for New Stream Capital Fund Limited (“Bermuda Feeder”) and as the managing member of New Stream Secured Capital (U.S.), LLC (“U.S. Feeder”). On March 13, 2011, New Stream, the Master Fund and other affiliates filed voluntary Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware. The Bankruptcy Court confirmed an Amended Joint Plan of Reorganization on April 23, 2012. New Stream was controlled, managed and indirectly owned by David Bryson and Gutekunst. David Bryson owned 100 percent of an LLC that, in turn, owned one-third of New Stream. Similarly, Gutekunst owned 100 percent of an LLC that, in turn, owned one-third of New Stream. Together, David Bryson and Gutekunst’s LLCs owned two-thirds of New Stream.

13. **Cayman Adviser** is a Cayman Islands exempted company organized on August 3, 2007 that managed New Stream Secured Capital Fund (Cayman), Ltd., which was comprised of one consecutively named company for each investor (collectively, the “Cayman Feeder”). The Cayman Adviser was controlled, managed and indirectly owned by David Bryson and

Gutekunst. David Bryson owned 100 percent of an LLC that, in turn, owned one-third of the Cayman Adviser. Similarly, Gutekunst owned 100 percent of an LLC that, in turn, owned one-third of the Cayman Adviser. Together, David Bryson and Gutekunst's LLCs owned two-thirds of the Cayman Adviser.

14. **David Bryson**, age 44, is an owner, managing partner, and a founder of New Stream. Upon information and belief, David Bryson resides in Ridgefield, Connecticut. David Bryson once held Series 3, 7, 63, and 65 licenses. Previously, David Bryson was a director of the asset management division of a major financial firm. Prior to his work at that firm, he was president of the alternative investment division of a registered broker-dealer.

15. **Gutekunst**, age 61, is an owner, managing partner, and a founder of New Stream. Upon information and belief, Gutekunst resides in Weston, Connecticut. Previously, Gutekunst was a Senior Vice President at a private equity fund. He has been Chairman of three companies and Vice Chairman and CFO of a fourth. He has also served on twelve boards. Mr. Gutekunst received an MBA and Masters in Finance from Ohio State University.

16. **Pereira**, age 40, was New Stream's CFO during the relevant period and is licensed as a CPA in New York. Upon information and belief, Pereira resides in Ridgefield, Connecticut. Pereira started his career as an auditor for a "Big Four" accounting firm and is currently the Managing Partner of his own capital advisory firm.

17. **Tara Bryson**, age 38, served as director of marketing and investor relations at New Stream during the relevant period. She is the sister of David Bryson and, upon information and belief, resides in West Suffield, Connecticut. Before joining New Stream, she served in the U.S. military as a member of the Army Bomb Squad. She currently works as a goat farmer.

RELEVANT ENTITIES

18. **Master Fund** is a Delaware limited partnership organized in 2002. The Master Fund was the primary investment vehicle for the New Stream hedge fund complex. The Master Fund commenced its investment activities in 2003.

19. **U.S. Feeder** is a Delaware limited liability company formed on September 21, 2007 that acted as a domestic feeder fund for the New Stream hedge fund complex. The U.S. Feeder invested in the Master Fund through a mixture of equity and debt instruments issued by the Master Fund. The U.S. Feeder was managed and governed by New Stream, its managing member.

20. **Cayman Feeder** is a series of consecutively named companies incorporated under the laws of the Cayman Islands. These companies together acted as an offshore feeder fund for the New Stream hedge fund complex. The Cayman Feeder invested in the Master Fund through a mixture of equity and debt instruments issued by the Master Fund. The Cayman Feeder was managed by the Cayman Adviser and governed by a board of directors consisting of two individuals located in the Cayman Islands.

21. **Bermuda Feeder** is an investment company established under Bermuda law in 2005 that served as an offshore feeder fund for the New Stream hedge fund complex. The Bermuda Feeder invested in the Master Fund via debt instruments issued by the Master Fund. New Stream managed the Bermuda Feeder. Until mid-2008, David Bryson and Gutekunst were directors of the Bermuda Feeder.

22. **Gottex** is a Delaware corporation with headquarters in Boston, Massachusetts. Gottex has been registered with the Commission as an investment adviser since March 13, 2006. Gottex manages several funds of funds, including a number of funds that invested in the

Bermuda Feeder. These Gottex funds were collectively the single largest investor group in the Bermuda Feeder, accounting for approximately 67% of the Bermuda Feeder's total assets as of December 31, 2008.

FACTS

Background

23. The New Stream hedge fund complex was part of a small niche of asset-based hedge fund lenders that raised capital from investors and deployed that capital by making loans backed by real estate, life insurance policies (viatical settlements), oil and gas interests, and commercial assets such as accounts receivable. The primary investment vehicle for the New Stream hedge fund complex was the Master Fund.

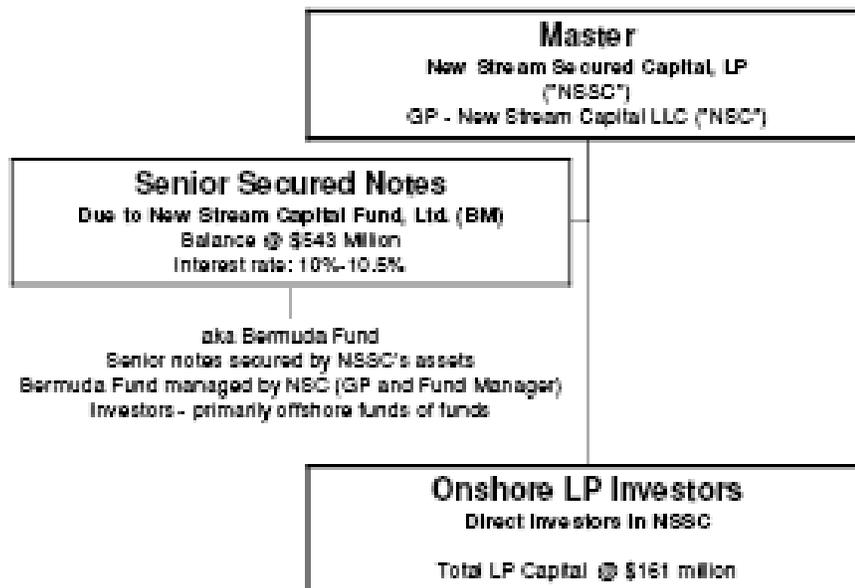
24. David Bryson and Gutekunst effectively controlled New Stream's key functions and decision-making. As the CFO, Pereira ran the accounting operations under the direction of David Bryson, a longtime personal friend. Tara Bryson ran the day-to-day marketing and investor relations operations under the direction of David Bryson and Gutekunst, both of whom guided and instructed her on what and how to communicate with current or prospective investors.

25. The New Stream hedge fund's investor base was primarily institutional investors, including pension funds, and other hedge funds, as well as some high-net worth individuals. In March 2003, the Master Fund began receiving its first equity investments, which investors placed directly with the Master Fund. In October 2005, New Stream created the Bermuda Feeder to be able to raise money from investors who were not subject to U.S. tax laws. These investors bought shares in different segregated accounts of the Bermuda Feeder, which then loaned the proceeds to the Master Fund, or in a few cases to a separate fund subsidiary of the

Master Fund. New Stream provided a high interest rate on those loans, typically 10% or more, and the loans were secured by the assets of the Master Fund. The Master Fund profited on the spread between the interest rate that the Master Fund paid to the Bermuda Feeder and the higher interest rate that New Stream charged commercial borrowers on loans made from the Master Fund.

26. This structure continued until the fall of 2007. As set forth in the following chart created by New Stream, U.S. tax paying investors made equity investments into the Master Fund, while non-U.S. tax paying investors made equity investments into the Bermuda Feeder, which then loaned those investor funds to the Master Fund in exchange for secured interest-bearing notes:

New Stream Secured Capital, LP Immediately Prior to 2007 Restructuring

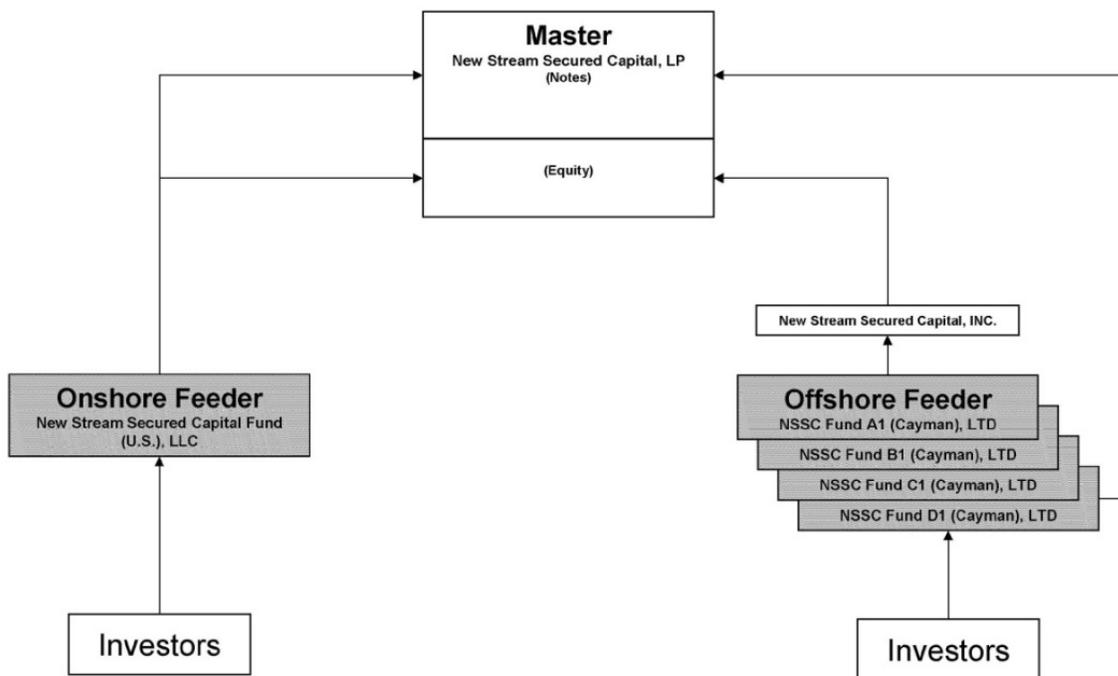


The November 2007 Restructuring Plan: The Disclosed Restructuring

27. The Bermuda Feeder investments grew exponentially faster than the direct equity investments into the Master Fund. By the fall of 2007, the Master Fund owed the Bermuda Feeder \$543 million, while the Master Fund had obtained only \$161 million in direct equity investments. In the fall of 2007, David Bryson decided to restructure the hedge fund so as to give all investors in the Master Fund the same investment profile. The restructuring also would provide New Stream with a new, and more lucrative, management fee structure due to a change in the formula for calculating management fees.

28. To accomplish this restructuring, New Stream created two new feeder funds that would invest directly in the Master Fund: the U.S. Feeder for U.S. taxpayers and the Cayman Feeder for investors not subject to U.S. tax. New Stream's plan was to convince the Master Fund investors to transfer their equity investments in the Master Fund to the U.S. Feeder and the Bermuda Feeder investors transfer their equity investments in the Bermuda Feeder to the Cayman Feeder. The U.S. Feeder and Cayman Feeder would then invest in the Master Fund on equal terms through a combination of 80% debt and 20% equity, with the debt component secured by the Master Fund's assets. Under this restructuring plan, the Bermuda Feeder would eventually be phased out as the Bermuda Feeder investors transferred their investments to the Cayman Feeder.

29. A chart created by New Stream during the fall of 2007 reflects what was intended to be the basic structure of its hedge fund after this restructuring, which took effect on December 1, 2007, as follows:



Confidential

30. The investors that were directly invested in the Master Fund via equity had ample incentive to transfer to the new U.S. Feeder, as the new debt component would, as a matter of course, increase their seniority in the overall capital structure. Supposedly to create additional incentive for the Bermuda Feeder investors to transfer to the new Cayman Feeder and to govern the treatment during this transition period of the debt owed to all the feeder funds in the event of a liquidation, David Bryson decided to put all of the new feeder fund debt on equal footing with the existing Bermuda Feeder debt. In the fall of 2007, David Bryson held a meeting at which he informed Gutekunst and Tara Bryson of his decision to make the new feeder debt *pari passu* with (*i.e.* equal to) the Bermuda Feeder debt in the capital structure in the event of a liquidation of the collateral securing the Master Fund's debt obligations to the three feeder funds. David Bryson stated that there would be no reason for investors to stay in the Bermuda Feeder if they

could potentially get a higher overall return in the Cayman Feeder, as a result of having both a debt and an equity investment, and no longer had the benefit of seniority to all of the U.S. (*i.e.* formerly pure equity) investors.

31. As a result of this decision by David Bryson, the lending and security agreements through which New Stream implemented the new fund structure provided that the three feeders that would be in existence as of December 1, 2007 -- Bermuda, U.S. and Cayman -- would share equally in the collateral securing their loans to the Master Fund in the event of a default. David Bryson and Gutekunst reviewed and approved all of these documents before they were executed. The operative loan agreements concerning the U.S. Feeder were signed by David Bryson and Gutekunst, while the operative loan agreements concerning the Cayman Feeder were signed by Gutekunst and the outside directors of the Cayman Feeder. Pereira and Tara Bryson signed certain of these loan documents with both the U.S. Feeder and the Cayman Feeder in a witness capacity.

32. The loan agreements between the Master Fund and the feeder funds, which were denoted "Loan and Security Agreements" in the case of the Bermuda Feeder and "Note Purchase Agreements" in the case of the U.S. and Cayman Feeders, each state that the debt owed to the feeder is subordinate only to a commercial line of credit. In other words, none of the feeder debt was subordinated to any other feeder debt.

33. In addition to the new loan agreements with the U.S. Feeder and the Cayman Feeder, which were signed on December 1, 2007, New Stream personnel, acting in accordance with David Bryson's instructions to make all the feeder fund debt *pari passu*, created a new Collateral Agency Agreement, dated November 16, 2007 ("November 2007 CAA"), which made clear that the three feeder fund debts would be treated *pari passu* in a liquidation scenario. The

November 2007 CAA sets forth how the Master Fund collateral will be handled in the event of a default and states that upon the liquidation of any collateral, the collateral agent is to pay the proceeds to each of the three feeder funds on a “pro-rata” basis. Gutekunst signed the November 2007 CAA on behalf the Bermuda Feeder and David Bryson signed it on behalf of the Master Fund. At that time, New Stream also made a UCC filing on behalf of the Master Fund with the Delaware Secretary of State’s Office in which New Stream referenced the November 2007 CAA, thereby acknowledging it as the controlling document.

Communications With Investors About the New Structure

34. New Stream personnel had extensive communications with investors about the new structure before it was launched. Tara Bryson and members of the marketing staff were the point persons for those communications, but the other defendants were also involved. David Bryson approved the content of the communications, including written communications, and guided the process by which New Stream sought to convince investors to transfer to the new feeder funds.

35. New Stream formally announced the restructuring to investors in an e-mail sent by Tara Bryson on November 28, 2007, which attached, among other offering materials, the private placement memoranda (“PPMs”) for the two new feeders and an organizational chart detailing the new fund structure. David Bryson, Gutekunst and Pereira reviewed multiple drafts of the e-mail, with David Bryson making edits along the way. David Bryson and Gutekunst signed off on the PPMs and the other offering materials before they were used.

36. The November 28, 2007 e-mail sent by Tara Bryson stated that the investors needed to move to the new structure in order to remain invested in the Master Fund. In addition, the e-mail stated that as of December 1, 2007, both the Bermuda Feeder and the Master Fund would be closed “to new direct investments,” and that all transfers to the new feeder funds

“should be completed by January 1, 2008.” In following up on this e-mail, Tara Bryson and members of her staff at New Stream spoke directly to investors about the restructuring and told them that the Bermuda Feeder was effectively being shut down and that after the restructuring went into effect, the only investors left in the Master Fund would be the Cayman and U.S. Feeders.

37. The Bermuda Feeder did not appear anywhere on the organizational chart attached to the November 28, 2007 e-mail. The PPMs also made no mention of the Bermuda Feeder. The November 28, 2007 e-mail also stated, consistent with the November 2007 CAA and the new loan agreements with the feeders, that the new fund structure “ensures that all investors (U.S. and non-U.S.) will have the same risk-reward profile, the same portfolio exposures and the same pre-tax return.” Similarly, the new PPMs stated that, going forward, the only debt that would encumber the Master Fund’s assets, other than the new feeder debt itself, would be commercial bank debt. Both PPMs state that the “use of margin and other leverage *may be* a component of the [U.S./Cayman Feeder] and/or the [Master] Fund’s investment strategy,” and that “[U.S./Cayman Feeder] and the [Master Fund] are authorized to borrow from banks and other financial institutions in order to employ investment leverage” (emphasis added).

38. In addition, Tara Bryson told existing and prospective investors that all the investors would be *pari passu* in the capital structure, and she did so because that is what David Bryson conveyed to her about the capital structure. Tara Bryson was involved in numerous meetings and conference calls with investors in which she made statements to that effect. Gutekunst participated in many of those meetings and calls. For example, in one meeting, an investor expressly asked Gutekunst and Tara Bryson what would happen if Gottex, New Stream’s largest investor, did not switch to the Cayman Feeder. Gutekunst and Tara Bryson told

this investor that it did not matter because all the fund investors stood *pari passu* in the new structure.

39. The transition to the new structure did not go as planned. Although all the U.S. investors redeemed their direct equity investments from the Master Fund and subscribed to the new U.S. Feeder by January 31, 2008, certain offshore investors had not yet redeemed their investments from the Bermuda Feeder and subscribed to the new Cayman Feeder by that date. In fact, representatives of Gottex told David Bryson at some point during the fall of 2007 that Gottex preferred to remain invested in the Bermuda Feeder. David Bryson initially responded by saying that New Stream was lining up investors to replace Gottex in the new structure, but the Gottex stake was so large -- nearly \$300 million at the time -- that David Bryson could not find another investor to effectively buy out Gottex's position. While Gottex remained on the fence about the restructuring, telling New Stream that Gottex's internal investment committee would review the new structure, David Bryson and the other defendants pushed forward with the restructuring and with soliciting new investors for the U.S. and Cayman Feeders.

40. David Bryson and Gutekunst had a strong pecuniary interest in moving forward with the restructuring despite the uncertainty surrounding Gottex. One key element of the restructuring was a new method of calculating advisory fees based on total assets -- the gross amount invested in the Master Fund including the feeder loans -- rather than just the Master Fund's net asset value, as New Stream had previously done. The new method dramatically boosted the management fee income that flowed through to David Bryson and Gutekunst. For example, in November 2007, New Stream earned \$34,643 in management fees from the Master Fund. In April 2008, following the restructuring, New Stream earned \$318,561 in management fees from the Master Fund, an 820% increase. In addition, for the three months prior to the

restructuring, the average “reimbursement” that New Stream received from the Master Fund was \$887,652 per month. From June through August of 2008, New Stream received an average of \$2,217,979 per month in “reimbursement.” Reimbursement included all costs and expenses associated with the operations of the U.S. and the Cayman Feeders.

41. As of the end of 2007, Gottex had not yet made a final decision about investing in the new structure, and matters with Gottex soon came to a head. As detailed below, when senior Gottex officials found out that the Bermuda Feeder debt was now *pari passu* with the new feeder debt, Gottex protested and immediately put in a redemption request for its entire position; the Defendants’ fraud ensued.

The Defendants’ Fraudulent Scheme

The March 17, 2008 Meeting With Gottex

42. On March 17, 2008, senior Gottex representatives met at New Stream’s offices with Gutekunst and Tara Bryson for one of their periodic investment monitoring meetings. According to Gottex’s due diligence report, the “meeting took a very unexpected and disturbing turn” when the parties began discussing the 2007 restructuring. At the meeting, Gutekunst told the Gottex representatives that New Stream had made the Bermuda Feeder debt *pari passu* with the U.S. and Cayman Feeder debt during the November 2007 restructuring. The senior Gottex official at the meeting strongly expressed his displeasure and dismay that New Stream had made such a change without Gottex’s consent, and Gottex immediately submitted a redemption request for all of its investments in the Bermuda Feeder. At the time, Gottex’s investments with New Stream totaled approximately \$300 million, representing over 40% of New Stream’s total assets under management.

43. Gottex’s reaction to the meeting at New Stream’s offices caused panic among the Defendants. David Bryson, Gutekunst and Tara Bryson exchanged several e-mails about the

blowup and how to respond. For example, Tara Bryson wrote to David Bryson and Gutekunst stating that the “Gottex meeting today did not go well” and that Gottex “is demanding subordination” of the new feeder funds in order to keep its money invested with New Stream. Gutekunst responded by stating that the Gottex representative “clearly implied that he would stay in Bermuda with on-shore and Cayman beneath him.” David Bryson then weighed in by email. Looking to buy time to formulate a response to Gottex, he stated as follows: “I stand by my original position – say nothing, do nothing, delay delay delay.”

44. The Gottex redemption request placed enormous pressure on New Stream. For example, David Bryson told others at New Stream, including one or more of the defendants, that if Gottex did not withdraw its redemption request, New Stream’s hedge fund business would “tank.” To maximize its leverage, Gottex refused to withdraw the request until all the issues were resolved to its satisfaction.

45. The solution devised by David Bryson and the other defendants was to appease Gottex, first by falsely pretending that Gutekunst had not meant what he said at the March 17, 2008 meeting about the new capital structure and then by capitulating to Gottex’s demand that the new feeder debt be subordinated to the Bermuda Feeder debt.

Misrepresentations to Gottex and the Undisclosed Restructuring

46. The scheme concocted by Bryson and implemented by the other defendants was discussed and agreed upon the following day, on March 18, 2008, at New Stream in a meeting attended by, among others, David Bryson, Gutekunst and Tara Bryson. The first part of the fraudulent scheme was a cover-up plan to deceive Gottex. David Bryson and Gutekunst decided to take the false position that the Bermuda Feeder had always been senior in the capital structure and that Gutekunst was somehow “confused” when he told Gottex otherwise.

47. David Bryson and Gutekunst first conveyed this position to Gottex representatives over the telephone on March 18, 2008. Gutekunst then followed up those telephone calls with an e-mail to Gottex in which Gutekunst stated that he was writing to “clear up some confusion [and noting that] it is, and always has been, our intent that your Bermuda investment would remain senior.” David Bryson prepared the initial draft of this e-mail. The second paragraph of David Bryson’s draft of the e-mail to Gottex falsely stated, among other things, that Gottex’s “position in our fund is senior to the new Cayman and U.S. Feeders.”

48. The statements made by David Bryson and Gutekunst to and about Gottex were knowingly false. There was no genuine confusion or uncertainty on the part of Gutekunst. He did not in any way act confused at the March 17, 2008 meeting when he told Gottex that the Bermuda Feeder debt was *pari passu* with the U.S. Feeder and Cayman Feeder debt; nor did he have any cause to be confused. That was a true statement at the time, and as a senior hedge fund executive with vast experience in finance and fund management, Gutekunst was well versed in the basic debt structure of his own debt-focused hedge fund. Moreover, David Bryson and Gutekunst had signed the operative loan and security agreements just a few months earlier, and these documents clearly showed that the Bermuda Feeder debt was *pari passu* with the U.S. and Cayman Feeder debt. Gutekunst had also participated in multiple meetings and calls with investors in which he and Tara Bryson told investors that all investors were *pari passu* in the new structure. Indeed, on March 4, 2008, less than two weeks before the meeting with Gottex, Gutekunst was copied on an e-mail from Tara Bryson to an investor in which Tara Bryson stated that the Bermuda Feeder debt “is currently *pari passu*.” Gutekunst did not disagree with or object to that statement. In fact, Gutekunst complimented Tara Bryson on her e-mail. Tara Bryson reviewed the substance of this e-mail with David Bryson before sending it.

49. In the second part of the fraudulent scheme, David Bryson and Gutekunst, in order to satisfy Gottex, agreed to allow Gottex to remain invested in the Bermuda Feeder rather than transfer to the Cayman Feeder. David Bryson and Gutekunst also had the operative loan and security documents quickly amended to make the Bermuda Feeder debt senior to the U.S. Feeder and Cayman Feeder debt. Specifically, the November 2007 CAA was amended so as to place the Bermuda Feeder debt in a position of seniority over the debt of the U.S. Feeder and the Cayman Feeder in the event of a default. The subordination clauses of the Master Fund's note purchase agreements with the U.S. Feeder and the Cayman Feeder were also amended to reflect that the loans from those two feeder funds were now subordinate to the Bermuda Feeder debt. On March 18, 2008, New Stream's general counsel e-mailed an amended Collateral Agency Agreement and revised U.S. Feeder and Cayman Feeder note purchase agreements to David Bryson, Gutekunst, Pereira and Tara Bryson. In the e-mail, the general counsel stated that these attached documents "reflect the changes necessary to subordinate the Cayman and U.S Feeder Funds to the Bermuda Fund. Please review the changes." Consistent with their general practice, David Bryson, Gutekunst and Pereira reviewed these documents and approved them before the general counsel finalized them for execution.

50. The Defendants had complete and unfettered control over the U.S. Feeder and were therefore able to unilaterally impose the new change in the capital structure on the U.S. Feeder and its investors. However, because the Cayman Feeder had two independent directors, the Defendants needed to have those directors consent to the new change in the capital structure on behalf of the Cayman Feeder before implementing it. Accordingly, Tara Bryson called the directors of the Cayman Feeder to obtain their consent to the subordination of the Cayman Feeder debt to the Bermuda Feeder debt. She told the Cayman Feeder directors that if they did

not agree to this change in the capital structure, Gottex would redeem its investment in the Bermuda Feeder and that this would likely force the Master Fund into liquidation. As set forth in a Cayman Feeder board resolution, the directors agreed to subordinate the Cayman Feeder debt to the Bermuda Feeder debt in exchange for an increase in the interest rate on the Cayman Feeder debt.

51. The new loan and security agreements were then executed by David Bryson and Gutekunst, and by a Cayman director on behalf of the Cayman Feeder. Gutekunst signed the amended Collateral Agency Agreement, dated March 26, 2008 (“March 2008 CAA”), on behalf of the Bermuda Feeder. David Bryson signed the March 2008 CAA on behalf of the Master Fund and the U.S. Feeder. A director of the Cayman Feeder signed the March 2008 CAA on behalf of each relevant Cayman Feeder entity. Gutekunst signed the amended note purchase agreements with the U.S. Feeder on behalf of the Master Fund, and another New Stream officer signed them on behalf of the U.S. Feeder. Gutekunst also signed the amended note purchase agreements with the Cayman Feeder on behalf of the Master Fund, and a Cayman director signed them on behalf of the Cayman Feeder. All of the operative amended note purchase agreements were executed and in effect as of April 1, 2008.

52. As a result of the foregoing, the Defendants had, by the end of March 2008, implemented a second restructuring of the Master Fund’s debt arrangements by eliminating the *pari passu* status of the outstanding classes of debt owed by the Master Fund to the three feeder funds and instead subordinating the U.S. and Cayman Feeders’ debt to a massive amount of debt owed to the Bermuda Feeder. However, this second capital restructuring in March 2008 and the Defendants’ concomitant decision to retain the Bermuda Feeder was never disclosed to investors.

53. Pursuant to David Bryson’s plan to persuade Gottex to withdraw its redemption

request, the Defendants implemented these material changes to the Master Fund's structure without informing the existing investors in the U.S. or Cayman Feeders that the new feeder debt was now subordinate to the Bermuda Feeder and that the Bermuda Feeder would continue to exist. These existing investors had invested in the new feeders based on representations that all the debt classes would be treated equally and that the Bermuda Feeder would no longer exist. In addition, as detailed below, the Defendants defrauded new investors after March 2008 by continuing to raise money for the Master Fund without disclosing the existence and seniority of the Bermuda Feeder debt to prospective investors in the U.S. and Cayman Feeders.

Material Misrepresentations to New Investors After March 2008

54. Even though the Defendants knew with certainty that the Bermuda Feeder would now remain in existence and its debt now had priority over the U.S. and Cayman Feeder debt, the Defendants continued to use the offering and other marketing materials created during the 2007 restructuring to solicit new investors. These documents were materially misleading because they contained no disclosure at all about the Bermuda Feeder and made it appear that the Master Fund was not presently leveraged -- *i.e.* it owed no debt to anyone -- beyond the new feeder debt or a commercial line of credit. Following the March 17, 2008 meeting with Gottex, neither the Defendants nor anyone else affiliated with New Stream told prospective investors about the Bermuda Feeder's existence, the large debt owed to it by the Master Fund and the seniority of that debt in the capital structure to the other feeder debt. To the contrary, New Stream, the Cayman Adviser, David Bryson, Gutekunst and Tara Bryson continued to pitch the November 2007 restructuring to new investors as if the Bermuda Feeder debt did not exist at all.

55. One glaring example of their misrepresentations to investors involved the use of the now outdated organizational chart excerpted above in paragraph 28 to solicit new investors after March 2008. As shown above, New Stream personnel prepared this chart in the fall of

2007 to illustrate the November 2007 restructuring, and the Bermuda Feeder was omitted from the chart.

56. David Bryson reviewed this chart, as he did with all of Tara Bryson's written communications with investors, and he approved its use to solicit investors. David Bryson and Gutekunst were also aware through e-mail correspondence of what documents were being sent by New Stream's marketing personnel to investors after March 2008, including the use of this chart to raise new investor money after David Bryson and Gutekunst agreed to keep the Bermuda Feeder in existence and subordinate the other feeder debt to the Bermuda Feeder debt. For example, in an e-mail dated April 1, 2008, a member of New Stream's marketing staff responds to David Bryson's request for the current marketing materials by sending David Bryson the chart and other outdated, and now materially false and misleading, marketing documents for David Bryson to use at a meeting with a prospective investor.

57. New Stream's marketing staff transmitted this obsolete, and materially false and misleading, organizational chart numerous times to prospective investors after March 2008, including in e-mails sent as late as October 2008, after New Stream had suspended redemptions in the fund. A number of these investors expressly asked New Stream for details about the feeder fund structure and believed they were receiving an accurate diagram of the current structure when they received the outdated chart. When some of these investors later confronted New Stream about the chart's omission of the Bermuda Feeder and its senior debt position, Tara Bryson sent an email response, prepared by others, in which New Stream claimed that the marketing staff had somehow misunderstood the investors' question to be seeking information only about the "tax structure." That claim was false, as the chart had nothing to do with taxes. These and other U.S. and Cayman Feeder investors were materially misled by the Defendants'

use of this outdated chart, because such investors would not have invested or, at a minimum, would have insisted on a much higher interest rate on their feeder's debt, if they had known that there was a third feeder fund owed over \$500 million of debt that was senior to the debt of their feeder.

58. New Stream also made misrepresentations through the marketing staff about the hedge fund's structure in written responses to due diligence questionnaires sent by prospective investors. For example, in August 2008, a potential investor asked if there had been any changes to the structure of the New Stream hedge fund since its inception. In a written response, New Stream mentioned only the launch of the new feeder funds in November 2007, attached the false and misleading organizational chart that omitted the Bermuda Feeder, and otherwise stated that nothing had changed in terms of the business structure.

59. Investors who asked about the Master Fund's overall leverage were also misled by New Stream personnel. For example, in August 2008, a potential investor specifically asked whether, and how much, leverage existed in the Master Fund. Tara Bryson responded to the question without disclosing the Bermuda Feeder's massive debt position in the Master Fund. Based on Tara Bryson's misleading response, this investor made a \$2.5 million investment in the Cayman Feeder on September 1, 2008.

60. In addition, New Stream personnel made materially false statements to investors about the status of redemptions after Gottex submitted its massive redemption request in March 2008. When asked by prospective investors about redemption levels, New Stream personnel purposely did not include the Gottex redemptions, which threatened New Stream's survival. For example, in June 2008, Gutekunst told an investor in the U.S. Feeder that there was nothing remarkable about the level of redemptions that had been received and that there were no liquidity

concerns. This was plainly false and misleading as Gottex did not withdraw most of its March 2008 redemption requests until August 20 and August 21, 2008.

61. When the existence of the Bermuda Feeder debt later came to light, the investors who had asked about leverage also confronted New Stream about its prior representations to the contrary. For example, the investor that had invested \$2.5 million in the Cayman Feeder in September 2008 stated in an email to Tara Bryson that “[w]e . . . asked you on several occasions if there is any leverage in the structure which you have consistently denied.” As was the case with other investors that complained, Tara Bryson, acting at David Bryson’s direction, falsely claimed that “most investors do not view [the Bermuda Feeder’s] debt as traditional ‘leverage’, but rather a tax position.” David Bryson had previously told Tara Bryson not to use the term “leverage” in connection with the Bermuda Feeder when talking to investors. Underscoring the materially false and misleading nature of New Stream’s representations, the investor replied that “in our world there is leverage and no leverage and you have explicit[ly] told us that the fund we invest in ha[s] no leverage which is obviously incorrect.”

False and Misleading Financial Statements

62. As detailed above, part of the scheme concocted by David Bryson to appease Gottex was the false cover story that the Bermuda Feeder’s debt had all along been senior to the U.S. and Cayman Feeder debt. In order to prevent the scheme and the March 2008 changes to the capital structure from being exposed, Pereira re-did the Master Fund’s 2007 year-end financial statements, which were already close to being finalized when Gottex submitted its redemption request, to make it appear that the Bermuda Feeder debt was senior in the capital structure as of December 31, 2007. Pereira knew that this was false, as he was involved in the discussions that led to the March 2008 changes to the capital structure and was aware of the loan and security agreements entered into with the new feeder funds at the end of 2007. Pereira

nevertheless participated in the fraudulent scheme by falsifying the Master Fund's financial statements, which New Stream's outside audit firm did not discover.

63. The original version of the Master Fund's financial statements for the year ended December 31, 2007 correctly showed all of the feeder fund debt as *pari passu* on the face of the balance sheet. In fact, every draft version of the financial statements produced internally prior to New Stream's March 2008 meeting with Gottex shows all of the Master Fund's debt as one line item on the balance sheet. In addition, the outside auditors' task lists relating to auditing the notes payable section of the balance sheet never mention any issues regarding subordination. By the time the Gottex meeting occurred on March 17, 2008, the major audit testing on the financial statements had been completed. Nonetheless, just prior to finalizing the financial statements, Pereira and his staff told the outside audit firm in a telephone call to create a subordinated debt category on the balance sheet but did not provide any explanation for the last-minute change. One member of the outside audit team wrote the change onto the face of the balance sheet in a working draft of the financial statements and circulated it back to Pereira and his staff in an e-mail dated April 1, 2008, as follows:

<u>LIABILITIES AND PARTNERS' CAPITAL</u>		
Liabilities:		
Borrowings under line of credit	✓	\$ 13,129,000 ✓
Due to general partner	✓	4,060,625 ✓
Accounts payable and accrued expenses		5,382,209
Deposits		8,841,561
Pending capital contributions	✓	4,026,457
Senior subordinated notes	✓	<u>574,157,168</u>
Total liabilities		609,597,020
Minority interest in subsidiaries		15,691,374
Commitments and contingencies	✓	
Partners' capital		<u>161,429,944</u> ✓
Total		<u>\$ 786,718,338</u> ✓

542,625,900

Subordinated notes 31,531,268

64. The call between Pereira's staff and the outside auditors, and the rushed changes to the balance sheet that followed, occurred approximately two weeks before New Stream issued its final financial statements to investors. The outside audit firm's report is dated April 7, 2008. As reflected in the handwritten change excerpted above, the final version of the December 31, 2007 balance sheet showed two categories of notes, senior subordinated and subordinated, which was incorrect because as of December 31, 2007, all of the feeder debt was *pari passu* and there was no subordinated debt category. As of December 31, 2007, and up until the March 2008 changes in the capital structure, all of the Cayman Feeder debt, the U.S. Feeder debt and the Bermuda Feeder debt fell within a single debt category labeled senior subordinated debt, and New Stream's internal accounting records reflected that fact.

65. Pereira and Gutekunst signed the management representation letter provided to the outside audit firm in connection with its audit of the Master Fund's 2007 financial statements. In the management representation letter, which was dated April 7, 2008, Pereira and

Gutekunst stated, among other things, that: (i) they had provided all relevant documents to the outside auditors to permit them to conduct the audit; (ii) there are no material transactions that were not properly recorded in New Stream's accounting records; and (iii) no events, other than those disclosed in a "subsequent event" footnote to the financial statements, have occurred subsequent to the balance sheet date and through the date of the letter that would require disclosure in the financial statements. Each of these statements was false. Neither Pereira nor Gutekunst, nor anyone else at New Stream, provided the auditors, or otherwise disclosed to them the existence of, the March 2008 CAA or the other loan and security documents created in March 2008 that subordinated the Cayman and U.S. Feeder debt to the Bermuda Feeder debt. Nor did anyone at New Stream provide the audit firm with the November 2007 CAA or the fall 2007 loan and security agreements for the U.S. and Cayman Feeders. Moreover, because the March 2008 transactions that granted the Bermuda Feeder debt priority were material and occurred after the balance sheet date of December 31, 2007, but before the date of the audit report, the financial statements should have disclosed those transactions as a material subsequent event.

66. As a result of the foregoing, Pereira knew that the presentation of the feeder fund debt in the 2007 financial statements was materially false and misleading and not in compliance with Generally Accepted Accounting Principles. Had the financial statements been prepared correctly with all of the feeder fund debt presented as *pari passu* as of December 31, 2007, the March 2008 changes to the capital structure that gave seniority to the Bermuda Feeder debt would have been disclosed in a subsequent event footnote. Had that occurred, the financial statements would have alerted investors that, contrary to New Stream's solicitation materials and other representations, New Stream had decided to retain the Bermuda Feeder and, in fact, had

reversed course and given preferred status to the Bermuda Feeder debt over the other feeders' debt.

Other Evidence of the Defendants' Fraudulent Intent

67. The Defendants had multiple reasons for hiding the truth. Had the Defendants told investors the truth about what had transpired with Gottex in March 2008, the increased advisory fees that New Stream was receiving in 2008 would have been jeopardized. It would also have been difficult to raise new money if prospective investors knew that they were going to stand behind a massive amount of Bermuda Feeder debt in the capital structure. Those investors that had already invested in the new feeder funds would likely have demanded redemption, which could have pushed the Master Fund into liquidation.

68. In fact, there were significant liquidity risks at New Stream during this time period. For example, in addition to Gottex's redemption requests, New Stream had also received redemption requests from other Bermuda Feeder investors who did not want to transfer to the Cayman Feeder. With David Bryson's approval and to forestall a liquidity crisis, New Stream agreed to allow these investors to remain in the Bermuda Feeder in exchange for cancelling their redemptions. One of these investors had already transferred its investment to the Cayman Feeder but then learned from Gottex that New Stream had agreed to allow Gottex to remain in the Bermuda Feeder. Even though New Stream had told investors that the Bermuda Feeder was closed to new investment and was telling other foreign investors that they had to move to the Cayman Feeder, New Stream permitted this Cayman Feeder investor to move its investment back to the Bermuda Feeder. David Bryson agreed to do so because New Stream did not have the money to pay the investor's \$9 million redemption request. New Stream did not give other Cayman Feeder investors the option of returning to the Bermuda Feeder.

69. As the fraud began to unravel in the wake of the mounting financial crisis and

rising redemptions, David Bryson nevertheless portrayed the hedge fund to investors as highly successful. New Stream issued a press release on August 7, 2008, in which it claimed that it had reached \$1.2 billion in assets under management, including “\$400 million recently raised for a new institutional debt strategy.” David Bryson was quoted in the press release as follows: “Based on the confidence of our investors and the steady performance of our portfolios, New Stream Capital has joined the few hundred hedge funds worldwide with assets under management of more than \$1 billion.” The press release was materially misleading for several reasons. New Stream did not disclose that the “new” \$400 million investment was New Stream’s own money that it was managing for free. The press release was also silent about the sizable redemption requests that New Stream had received and the fact that it had not paid certain redemptions that were already effective. It also failed to disclose the March 2008 changes to the capital structure or anything about the Bermuda Feeder debt. An e-mail sent by David Bryson a few days before the press release was issued shows that the release was intended, in part, to stem a rising tide of redemptions. In response to an e-mail concerning a number of new redemption requests, David Bryson wrote: “This is all the reason more to move ahead on my \$1+ press release asap.”

The Master Fund’s Collapse and Bankruptcy

70. By September 30, 2008, investor redemption requests totaled approximately \$545 million, which proved to be insurmountable. Most of these redemption requests had come from the Bermuda Feeder. In October 2008, New Stream rejected all redemption requests that had not become effective on or before October 1, 2008. Thereafter, New Stream began the process of attempting to liquidate the Master Fund’s portfolio but still planned to operate the hedge fund going forward. New Stream’s plan was to pay the effective redemptions out of available cash in the order that the redemptions had become effective, and then pay the remainder of the investors,

which were mostly U.S. and Cayman Feeder investors, on a *pari passu* basis.

71. However, the value of New Stream's portfolio continued to decline in 2009 and redemption requests reached \$695 million in the first quarter of 2009. As a result, in April 2009, New Stream abandoned any plan to continue operating the hedge fund and formalized a restructuring proposal that contemplated a liquidation of all the Master Fund's assets on the foregoing terms. An April 6, 2009 letter to investors detailed this restructuring plan, but New Stream prepared two versions of this letter. The version that New Stream sent to Bermuda Feeder investors assured them that "the priority position of the Bermuda Fund over the Feeder Funds [would] be maintained." This statement was not included in the version that New Stream sent to the U.S. and Cayman Feeder investors.

72. Although a majority of all the investors supported this plan, certain of the funds managed by Gottex had redemptions that were effective in the post-October 1, 2008 pool and filed suit in Bermuda to invalidate this restructuring. On November 26, 2010, the Supreme Court of Bermuda declared the plan void under Bermuda law.

73. In March 2011, New Stream and three other affiliates filed bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware. After extensive proceedings, the Bankruptcy Court confirmed an Amended Joint Plan of Reorganization on April 23, 2012. Under the plan, the U.S. and Cayman Feeder investors will receive a greater recovery than they would have received in a pre-packaged plan previously proposed by New Stream. Nonetheless, their claims are almost worthless. The claims total approximately \$182 million and they are expected to recover approximately \$9.7 million from the proceeds of the sale of the Master Fund's assets, or little more than 5 cents on the dollar for their investment. All the Bermuda Feeder investors, whose debt claims are senior to the debt claims of the U.S. and Cayman

investors, are expected to receive at least twice as much under the plan, with some Bermuda Feeder investors receiving substantially more than that.

FIRST CLAIM FOR RELIEF

**Violations of Section 17(a) of the Securities Act
(All Defendants)**

74. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 73.

75. The Defendants directly or indirectly, singly or in concert, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mail, knowingly or recklessly, have: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

76. By reason of the foregoing, the Defendants, singly or in concert, directly or indirectly, have violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5
(All Defendants)**

77. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 76.

78. The Defendants, directly or indirectly, singly or in concert, by use of the means or

instrumentalities of interstate commerce or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, have:

(a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

79. By reason of the foregoing, the Defendants, singly or in concert, directly or indirectly, have violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF

Violations of Sections 206(1) and 206(2) of the Advisers Act (New Stream, David Bryson, Gutekunst)

80. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 79.

81. New Stream, David Bryson, and Gutekunst at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

82. As investment advisers to the U.S. Feeder, New Stream, David Bryson, and Gutekunst owed the U.S. Feeder fiduciary duties of utmost good faith, fidelity, and care to make full and fair disclosure to it of all material facts, including any conflicts or potential conflicts of interest, as well as the duty to act in the best interests of the U.S. Feeder and not to act in their own interests to the detriment of the U.S. Feeder.

83. During the relevant period, New Stream, David Bryson, and Gutekunst, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly,

while acting as investment advisers, have knowingly or recklessly: (1) employed devices, schemes, or artifices to defraud clients or prospective clients; or (2) engaged in transactions, practices, and courses of business that operated as a fraud or deceit upon clients or prospective clients.

84. By reason of the foregoing, New Stream, David Bryson, and Gutekunst breached their fiduciary duties to the U.S. Feeder and have otherwise violated, and unless enjoined will again violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

FOURTH CLAIM FOR RELIEF

Violations of Sections 206(4) of the Advisers Act and Rule 206(4)-8 (New Stream, Cayman Adviser, David Bryson and Gutekunst)

85. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 84.

86. New Stream, the Cayman Adviser, David Bryson, and Gutekunst at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

87. By engaging in the conduct alleged above, New Stream, the Cayman Adviser, David Bryson, and Gutekunst, directly or indirectly, while acting as investment advisers, have knowingly or recklessly: (1) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to investors or prospective investors in the U.S. Feeder and the Cayman Feeder; and (2) otherwise engaged in acts, practices or courses of business that were fraudulent, deceptive or manipulative with respect to investors or prospective investors in the U.S. Feeder and the Cayman Feeder.

88. By reason of the foregoing, New Stream, the Cayman Adviser, David Bryson, and

Gutekunst violated, and unless enjoined will again violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)], and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

FIFTH CLAIM FOR RELIEF

**Control Person Liability for New Stream's Violations
of Section 10(b) of the Exchange Act and Rule 10b-5
(David Bryson, Gutekunst, and Pereira)**

89. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 88.

90. As alleged above, New Stream violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

91. During the relevant period, David Bryson, Gutekunst, and Pereira were controlling persons of New Stream for purposes of Section 20(a) of the Exchange Act.

92. As alleged above, David Bryson, Gutekunst, and Pereira knowingly or recklessly engaged in fraudulent conduct that resulted in violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by New Stream.

93. By reason of the foregoing, David Bryson, Gutekunst, and Pereira are liable as controlling persons pursuant to Section 20(a) of the Exchange Act for New Stream's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

SIXTH CLAIM FOR RELIEF

**Control Person Liability for the Cayman Adviser's
Violations of Section 10(b) of the Exchange Act and Rule 10b-5
(David Bryson and Gutekunst)**

94. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 93.

95. As alleged above, the Cayman Adviser violated Section 10(b) of the Exchange

Act and Rule 10b-5 thereunder.

96. During the relevant period, David Bryson and Gutekunst were controlling persons of the Cayman Adviser for purposes of Section 20(a) of the Exchange Act.

97. As alleged above, David Bryson and Gutekunst, knowingly or recklessly engaged in fraudulent conduct that resulted in violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by the Cayman Adviser.

98. By reason of the foregoing, David Bryson and Gutekunst are liable as controlling persons pursuant to Section 20(a) of the Exchange Act for the Cayman Adviser's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

SEVENTH CLAIM FOR RELIEF

Aiding and Abetting Liability for Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (David Bryson, Gutekunst, Pereira and Tara Bryson)

99. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 98.

100. By engaging in the conduct alleged above, David Bryson, Gutekunst, Pereira, and Tara Bryson knowingly or recklessly provided substantial assistance to each other, New Stream, and the Cayman Adviser with respect to their violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

101. By reason of the foregoing, David Bryson, Gutekunst, Pereira, and Tara Bryson are liable pursuant to Section 20(e) of the Exchange Act for aiding and abetting each other's violations, and the violations committed by New Stream and the Cayman Adviser, of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§

240.10b-5].

EIGHTH CLAIM FOR RELIEF

**Aiding and Abetting Liability for Violations
of Sections 206(1) and 206(2) of the Advisers Act
(David Bryson and Gutekunst)**

102. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 101.

103. By engaging in the conduct alleged above, David Bryson and Gutekunst knowingly or recklessly provided substantial assistance to each other and to New Stream with respect to their violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

104. By reason of the foregoing, David Bryson and Gutekunst are liable pursuant to Section 209 of the Advisers Act for aiding and abetting each other's violations, and the violations committed by New Stream, of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

NINTH CLAIM FOR RELIEF

**Aiding and Abetting Liability for Violations of
Section 206(4) of the Advisers Act and Rule 206(4)-8
(David Bryson and Gutekunst)**

105. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 104.

106. By engaging in the conduct alleged above, David Bryson and Gutekunst knowingly or recklessly provided substantial assistance to New Stream, the Cayman Adviser, and to each other with respect to those defendants' violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

107. By reason of the foregoing, David Bryson and Gutekunst are liable pursuant to Section 209 of the Advisers Act for aiding and abetting each other's violations, and the violations committed by New Stream and the Cayman Adviser, of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

TENTH CLAIM FOR RELIEF

**Aiding and Abetting Liability for Violations of
Section 206(4) of the Advisers Act and Rule 206(4)-8
(Pereira and Tara Bryson)**

108. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 107.

109. By engaging in the conduct alleged above, Pereira and Tara Bryson knowingly or recklessly provided substantial assistance to New Stream, the Cayman Adviser, David Bryson and Gutekunst with respect to those defendants' violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

110. By reason of the foregoing, Pereira and Tara Bryson are liable pursuant to Section 209 of the Advisers Act for aiding and abetting the violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8] committed by New Stream, the Cayman Adviser, David Bryson and Gutekunst.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests a Final Judgment:

I.

Permanently enjoining New Stream, the Cayman Adviser, David Bryson, Gutekunst, Pereira and Tara Bryson from committing, aiding and abetting or otherwise engaging in conduct that would make them liable for the violations of the federal securities laws alleged in this complaint;

II.

Ordering David Bryson, Gutekunst and Pereira to disgorge the ill-gotten gains they received as a result of the violations alleged in this complaint, and ordering each of them to pay prejudgment interest thereon;

III.

Ordering David Bryson, Gutekunst and Pereira to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9]; and

IV.

Granting such other and further relief as the Court may deem just and proper.

SECURITIES AND EXCHANGE COMMISSION

By its attorneys,

Dated: February 26, 2013

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