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HURLEY, J.
ORENSTEIN, M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

EHRENKRANTZ KING NUSSBAUM,
INC.,
ANTHONY OTTIMO and
BRENDAN E. MURRAY,

Defendants.

Civil Action No.

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission"), alleges as follows
against defendants Ehrenkrantz King Nussbaum, Inc. ("EKN"), Anthony Ottimo ("Ottimo"), and
Brendan E. Murray ("Murray"):

SUMMARY

1. Defendant EKN is a Long Island-based broker-dealer headquartered in Garden City, New York. Ottimo is EKN's Chief Executive Officer and a registered representative of the firm, and, at all times during the conduct alleged in this Complaint, Murray was an unregistered associate of the firm. Throughout at least 2003, Ottimo and Murray engaged in a scheme to defraud at least 9 mutual fund companies (the "Mutual Fund Companies") for the purpose of enabling defendants' customers to place hundreds of "market timing" orders in the funds without alerting the Mutual Fund Companies to their activities.

2. "Market timing" refers to the practice of short-term buying, selling, and exchanging of mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Though not illegal per se, market timing can dilute the value of mutual fund shares and increase transaction costs for the fund. Substantial redemptions by a market timer may force a portfolio manager to liquidate certain fund holdings under unfavorable circumstances.

3. Ottimo and Murray (and through them EKN) knew that the Mutual Fund Companies monitored trading activity in their funds and imposed restrictions on excessive trading. To conceal the roles of Ottimo and Murray, the identities of their market timing customers, and the volume and frequency of their customers' trading, the defendants used multiple account numbers, with multiple branch office identifiers ("branch identifiers") and multiple registered representative codes ("representative codes"), to make it appear as if the mutual fund orders being submitted by defendants' market timing customers were coming from many different EKN customers, trading through many EKN branch offices, and being assisted by many different EKN registered representatives. In fact, all of the market timing orders were being submitted by only four EKN market timing customers, and many of the branch identifiers

and representative codes used had nothing to do with these four customers. Further, all four of these customers did business only through EKN's Garden City, New York office, and were being assisted by only one EKN registered representative, Ottimo. Ottimo and Murray used other branch identifiers and representative codes for the sole purpose of deceiving the Mutual Fund Companies by concealing the volume and frequency of the defendants' customers' trading, thus causing the fund companies to process transactions they otherwise would have rejected.

4. The defendants benefited richly from their misconduct. For their work in hiding the identities of their market timing customers and the volume and frequency of their customers' trading, and in otherwise facilitating their customers' market timing activities, EKN, Ottimo, and Murray received at least \$230,000 in fees from their market timing customers.

5. Throughout 2003, Murray – who was associated with EKN and was, in fact, the individual at EKN who was principally charged by Ottimo with servicing EKN's market timing customers' accounts – was involved in effecting transactions in mutual fund securities without being registered or approved in accordance with the standards promulgated by the National Association of Securities Dealers ("NASD"), of which EKN is a member firm.

6. Through the activities alleged in this Complaint, defendants EKN, Ottimo and Murray violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and 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]. Additionally, EKN violated, and Ottimo and Murray aided and abetted EKN's violations of: (a) Section 15(c)(1) of the Exchange Act [15 U.S.C. § 78o(c)(1)]; and (b) Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1].

7. Accordingly, the Commission seeks: (a) entry of a permanent injunction prohibiting the defendants from future violations of the relevant provisions of the Securities Act and the Exchange Act, and the rules thereunder; (b) disgorgement of ill-gotten gains, plus prejudgment interest; and (c) the imposition of a civil monetary penalty against each defendant due to the egregious nature of their violations.

JURISDICTION

8. The Commission seeks a permanent injunction and disgorgement of ill-gotten gains pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)]. The Commission seeks the imposition of civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

9. This Court has jurisdiction over this action pursuant to Sections 20 and 22(a) of the Securities Act [15 U.S.C. §§ 77t, 77v(a)] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u, 78aa].

10. Venue is proper because acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within this District, defendant EKN is headquartered in this district, and defendants Ottimo and Murray reside in this district.

11. In connection with the conduct alleged in this Complaint, the defendants directly or indirectly made use of the means and instrumentalities of interstate commerce and the means and instruments of transportation or communication in interstate commerce, or of the mails.

DEFENDANTS

12. **EKN** is a broker-dealer registered with the Commission and headquartered in Garden City, New York. EKN is a member firm of the NASD. The firm is approximately 45 percent owned by Ottimo, EKN's CEO.

13. **Ottimo**, age 66, was, at all times during the conduct alleged in this Complaint, the CEO of EKN. Ottimo was also a registered representative of the firm. He lives in Plainview, New York.

14. **Murray**, age 43, was, at all times during the conduct alleged in this Complaint, an unregistered associate of EKN. Murray is not licensed in any capacity. He lives in Patchogue, New York.

FACTS

A. Description of the Fraudulent Scheme

The Beginning of the Scheme

15. In late 2002, Murray was hired by Ottimo for the express purpose of bringing market timing business to EKN. Murray approached Ottimo and explained to him that some high-asset investment advisers, and other high-asset individuals, were in the business of market timing mutual funds by moving large amounts of money into and out of the funds on a frequent and sometimes daily basis. Murray also explained to Ottimo that for EKN's role in brokering the mutual fund transactions, and otherwise locating funds to be traded and assisting the market timers in getting all of their trades accepted by the mutual funds, EKN would receive both: (a) a per-transaction fee; and (b) a custody fee represented by a percentage of all assets the market timers placed at EKN to be traded.

16. At that time, Murray was doing business as White Star Capital, Inc., a sole proprietorship owned and operated by Murray. Murray and Ottimo (acting as CEO and on behalf of EKN) entered into a written agreement, effective as of January 1, 2003, "defin[ing] the terms of our agreement on the division of fees generated by those accounts introduced to EKN, or serviced by White Star Capital, Inc. at EKN." The agreement provided that all customers Murray brought on board and serviced at EKN would pay all per-transaction and custody fees directly to EKN. From that amount, fees charged by EKN's clearing broker, Correspondent Services Corporation ("CSC"), for clearing the transactions would be deducted. Murray was entitled to receive one-third of the remaining fees, leaving two-thirds for Ottimo and EKN.

17. After Ottimo hired Murray to bring market timing business to EKN, Murray recruited four market timing customers, whose accounts at EKN were serviced by Ottimo and Murray during at least 2003. Each of the market timing customers, whose trading is described more fully below, eventually placed between \$2,000,000 and more than \$26,000,000 at EKN, which was used to market time mutual funds through at least 76 brokerage accounts opened by Ottimo and Murray on behalf of these customers.

Ottimo and Murray's Awareness of the Mutual Funds' Market Timing Policies

18. Ottimo and Murray were aware that the Mutual Fund Companies discouraged market timing in their shares, and that the funds would prohibit their customers from trading if all of their trades were placed through a single account for each customer. Throughout the period of time covered by the conduct alleged in this Complaint, Murray regularly researched mutual fund prospectuses for each fund traded by each of EKN's market timing customers, specifically looking for language related to market timing, and he conveyed the substance of the prospectus limitations to Ottimo.

19. Certain of the mutual fund prospectuses, as detailed more fully below, contained language limiting customers to a certain number of trades, and stating that the customer may be prohibited from further trading if the customer exceeded that number of trades. Other mutual fund prospectuses, also as detailed more fully below, contained language stating, in substance, that the funds discouraged market timing in the shares, and that the funds retained discretion to reject any order that was identified as being part of a market timing strategy.

20. Ottimo and Murray were also aware that EKN received dozens of notices from at least 16 different mutual funds during 2003, specifically prohibiting further trading in accounts that the funds were able to identify as engaged in market timing. Specifically, during 2003, EKN received notices that one or more customer accounts had been blocked from trading because of market timing activity from at least the following mutual fund families: (a) AIM; (b) Alliance; (c) American Century; (d) Dreyfus; (e) Evergreen; (f) Fidelity; (g) Goldman Sachs; (h) Harbor; (i) Hartford; (j) IDEX; (k) ING; (l) John Hancock; (m) Managers; (n) Pioneer; (o) Scudder; and (p) Sun America.

21. For example, on March 18, 2003, ING Funds sent a letter to "Registered Representative[] Ottimo," informing Ottimo that "large, frequent exchanges (or buys and sells) requested on behalf of your clients have become detrimental to the overall effectiveness of the investment objectives of The ING Funds. Therefore, transactions will be limited as outlined in the current prospectus Since we have detected excessive market timing activity in one or more of your accounts, no further market timing transactions will be permitted in such account(s)." More often, funds would notify EKN's clearing broker, CSC, that certain trades had been rejected due to market timing, and CSC would convey that notice to EKN.

22. All of the notices blocking trades for all of EKN's market timing customers were received at EKN by Murray, because Ottimo had given Murray the primary responsibility of servicing the market timing customers' accounts at EKN.

23. Murray informed Ottimo when one or more of their customers had been blocked from further trading in a fund.

The Opening of Multiple Accounts at EKN

24. Ottimo and Murray knew that they were more likely to succeed in deceiving the Mutual Fund Companies if they spread out the money each customer was actually moving into and out of each fund, by placing simultaneous orders for a given customer through multiple accounts. Through his past experience, Murray knew that mutual funds were more likely to notice market timing trades that were high-dollar, for the simple reason that high-dollar market timing trades can cause more damage to the fund because more money is extracted from the fund when the market timer finally sells the shares. Throughout 2003, Murray sent to at least one market timing investor information on dozens of different mutual funds that was contained in memoranda that had specific column headings listing the "Approx[imate] \$ Maximum to Avoid Funds' 'Radar screen'." By avoiding the funds' "radar screen," Murray meant to convey the dollar amounts that would be less likely to be detected by the funds.

25. To accomplish their deceptive purpose, during 2003 Ottimo and Murray opened at least 76 separate accounts for their four market timing customers. An account number at EKN, which was the only customer information typically conveyed to the Mutual Fund Companies during the order process, was composed of the following three items: (a) a two-digit branch identifier, which supposedly corresponded with the branch office through which a customer order was submitted, as well as, in some cases, the type of customer submitting the order (e.g.,

foreign or domestic); (b) a five-digit number, which was picked from a list of numbers provided by CSC to EKN; and (c) a two-digit representative code, which supposedly corresponded with the EKN registered representative or representatives (if the representative code was jointly used by more than one EKN registered representative) on the account.

26. For example, "12" was the branch identifier that corresponded with domestic customers of EKN's Garden City, New York office. It was the only branch identifier that should have been used on all of EKN's market timing customers' accounts because all four market timing customers were domestic entities or individuals who submitted their orders through the Garden City office. However, to deceive the Mutual Fund Companies into believing that orders were being submitted through other branch offices, Ottimo and Murray opened accounts for their four market timing customers using three other branch identifiers, none of which were appropriate for these customers. Ottimo and Murray opened accounts under the "3T," "BS," and "JB" branch identifiers, which corresponded, respectively, with EKN's office in Melville, New York, foreign customers of EKN's Garden City, New York office, and EKN's office in New York, New York.

27. As for the representative codes, "CS" was a joint representative code that corresponded with Anthony Ottimo and Ottimo's partner at EKN. Ottimo was the only EKN registered representative who was actually associated with any of the market timing customers' accounts. However, to deceive the Mutual Fund Companies into believing that orders were being submitted from many, disparate customers who were being assisted by many different EKN registered representatives, Ottimo and Murray opened accounts for their market timing customers using 17 other representative codes, none of which corresponded with any EKN

registered representative who actually did any work on any of the market timing customers' accounts.

28. Ottimo and Murray opened accounts for EKN's four market timing customers using the following 17 other representative codes: "1D," "7G," "34," "99," "AA," "AB," "AD," "BB," "BD," "CX," "D5," "FT," "OU," "RC," "SC," "XQ," and "ZZ." All of these representative codes corresponded with EKN registered representatives who did not take orders from any of the four market timing customers, were not compensated in any way on the basis of the market timing orders, and, in some cases, were not even aware that their representative codes were being used on the accounts. Ottimo and Murray used these representative codes to deceive the Mutual Fund Companies as to the volume and frequency of their customers' trading in the funds.

29. On a daily basis, with Ottimo's full knowledge and approval, Murray kept track of each transaction that occurred in each of the market timer's accounts, and send a report to the customer detailing which transactions had been processed, and which had been refused by the mutual funds due to market timing. Because EKN, Ottimo, and Murray were, in part, compensated on the basis of how much money each market timing customer custodied at EKN, Murray, again with Ottimo's full knowledge and approval, kept track of the account balances in each of the market timer's accounts, and calculated monthly fees due from the customer on the basis of the shifting account balances.

30. Further, because the market timing customers paid EKN a per-transaction fee, it was more costly for the customers to trade through multiple accounts than it would have been if the customers had made fewer, but larger, trades through only one account. For example, a customer submitting five orders through five different accounts for shares of the same mutual

fund was charged five per-transaction fees. In contrast, if the customer had consolidated the order and purchased the total amount of shares by submitting only one order through one account, the customer would have been charged only one per-transaction fee.

31. Ottimo and Murray shouldered the administrative burden of opening and keeping track of multiple accounts, and convinced their market timing customers that the accounts were worth the excess cost, because they knew that only by using multiple accounts, with multiple branch identifiers and multiple representative codes, would they be able to avoid being restricted from trading in mutual funds that they knew their customers wanted to market time.

32. For each market timing customer, the source of the funds deposited into each of the customer's accounts was the same, and the trading strategy employed in each of the accounts was the same market timing strategy. Multiple accounts were opened and used for each market timing customer to allow each customer to market time mutual funds that would have rejected the customer's trades if the trades had been placed through a single account.

33. Ottimo gave Murray, and other administrative personnel, the primary responsibility of filling out the account opening documents for EKN's market timing customers. However, each and every person involved in the opening of the multiple accounts obtained authorization from Ottimo to open all of the accounts, and also obtained authorization from Ottimo to use the various branch identifiers and representative codes that were used in connection with the accounts.

34. On a daily basis, EKN's market timing customers sent their mutual fund orders, by account, to EKN via facsimile. Once the orders arrived at EKN, generally, they were either taken to or retrieved by either Ottimo or Murray, who then took the orders to EKN's trade execution desk for processing. The mutual fund company either processed the order or identified

the account, the EKN branch office, or the EKN registered representative as involved in market timing, in which case the fund would reject the order. At EKN, Murray always received information relating to whether any market timing trade had been accepted or rejected, and communicated the rejection of market timing orders to Ottimo.

B. EKN's Market Timing Customers

35. EKN had at least four market timing customers during 2003, each of which is described more fully below.

Customer 1

36. Customer 1 (EKN account numbers 3T-***01-AB, 3T-***02-AB, 3T-***03-AB, BS-***01-CX, BS-***01-RC, BS-***01-XQ, BS-***02-CX, BS-***02-RC, BS-***02-XQ, BS-***03-CX, BS-***03-RC, BS-***03-XQ, I2-***64-CS, I2-***64-CX, I2-***64-XQ, I2-***65-CS, I2-***65-CX, I2-***65-XQ, I2-***66-CS, I2-***66-CX, I2-***66-XQ, I2-***39-CX, I2-***39-RC, I2-***39-XQ, I2-***40-CX, I2-***40-RC, I2-***40-XQ, I2-***41-CX, I2-***41-RC, I2-***41-XQ, JB-***01-1D, JB-***02-1D and JB-***03-1D) was an investment adviser located in Wilmington, North Carolina. On or about January 7, 2003, Customer 1 entered into a written brokerage account agreement with EKN, which was signed by both Customer 1 and Ottimo. The agreement provided for a per-transaction fee of \$50 per trade, and a custody fee of 0.75 percent of all assets that Customer 1 placed in Customer 1's brokerage accounts at EKN.

37. Ottimo and Murray initially opened three brokerage accounts for Customer 1. Each of the accounts was initially assigned the branch identifier "I2," which corresponded with domestic customers of EKN's Garden City, New York office, and the representative code "CS,"

which corresponded with Ottimo. The account numbers (deleted in part) for the three original accounts were: (1) I2-***64-CS; (2) I2-***65-CS; and (3) I2-***66-CS.

38. As detailed more fully below, Ottimo and Murray began placing orders on behalf of Customer 1 for mutual funds and, from time to time, certain of Customer 1's orders were rejected by certain funds because the funds identified one or more of Customer 1's accounts as being used to market time the funds. Even though some funds were able to identify individual Customer 1 accounts as being involved in market timing, the funds did not know that Ottimo and Murray were using all three accounts to trade, simultaneously, in certain funds, and were thereby able to mask the total volume and frequency of Customer 1's trading.

39. To get around the problem of trades being rejected by certain funds for market timing, on or about March 21, 2003, Murray sent Customer 1 the following e-mail: "Given the number of funds that have restricted your accounts (I2-[***]64, I2-[***]65, and I2-[***]66) from further trading . . . , we would like to propose that you consider shifting some of your investment capital to new, duplicate accounts. We have taken the liberty of opening three 'mirror' accounts on our books. These accounts will be available for trading on Monday, March 24, 2003. In addition to the new numbers, we have assigned new representative codes to each account." The "old" account number, I2-***64, was assigned a "new" account number, I2-***39. The "old" account number, I2-***65, was assigned a "new" account number, I2-***40. The "old" account number, I2-***66, was assigned a "new" account number, I2-***41. Murray continued, "The representative code assigned to your new accounts is RC We have taken these steps to provide you with additional venues to continue to trade funds such as American Century, ING, Hartford, Dreyfus etc. These accounts can also be used to take additional

positions in those funds you are currently timing, such as AIM, INVESCO, IDEX, and Evergreen.”

40. The representative code “RC” corresponded with an EKN registered representative who was not actually associated with Customer 1’s accounts. Instead, only Ottimo and Murray were responsible for servicing Customer 1’s accounts. Further, the representative received no compensation from EKN on the basis of Customer 1’s trading at the firm, as would have been the case if the representative had actually been the EKN registered representative assigned to Customer 1’s accounts. Ottimo and Murray opened new accounts with the representative code “RC” because the representative code “CS” (which corresponded with Ottimo) had been identified by certain funds as being involved in market timing, and Ottimo and Murray knew that the mutual funds would likely reject Customer 1’s orders if those orders continued to be submitted under the representative code “CS.”

41. As detailed more fully below, using the new accounts Ottimo and Murray continued to submit market timing orders on behalf of Customer 1 in funds that would have rejected the orders if they had been placed through a single account. Additionally, throughout 2003, Ottimo and Murray opened yet more accounts for Customer 1 with different representative codes and different branch identifiers. Ottimo and Murray opened at least 33 accounts for Customer 1, using four branch identifiers and six representative codes. By trading through the multiple accounts that Ottimo and Murray had opened at EKN, Customer 1 was able to extract millions of dollars from the mutual funds, and EKN, Ottimo, and Murray received at least \$230,000 in per-transaction and custody fees as a result of Customer 1 and the other market timers’ trading at EKN.

42. Ottimo and Murray placed fraudulent, market timing orders for at least the following mutual funds in Customer 1's accounts at EKN.

a. AIM Funds

43. The prospectuses for the AIM Asia Pacific Growth Fund and the AIM European Growth Fund, both dated March 3, 2003, stated that investors were "limited to a maximum of 10 exchanges per calendar year, because excessive short-term trading or market-timing activity can hurt fund performance. If you exceed that limit, or if an AIM Fund or the distributor determines, in its sole discretion, that your short-term trading is excessive or that you are engaging in market-timing activity, it may reject any additional exchange orders."

44. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to exchange into and out of the AIM Asia Pacific Growth Fund and the AIM European Growth Fund at least 109 times between January 29, 2003 and November 7, 2003, using 29 account numbers, four branch identifiers, and six representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, only one of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

45. For the period January 29, 2003 to November 7, 2003, EKN, through Ottimo and Murray, purchased approximately \$17,470,822 in shares of the AIM Asia Pacific Growth Fund

and the AIM European Growth Fund for Customer 1's accounts, and sold those same shares for approximately \$18,246,862, extracting approximately \$776,040 from the funds.

b. Fidelity

46. The prospectus for the Fidelity Advisor Emerging Asia Fund, dated December 29, 2000, stated: "Short-term or excessive trading into and out of the fund may harm performance by disrupting portfolio management strategies and by increasing expenses. Accordingly, the fund may reject any purchase orders, including exchanges, particularly from market timers or investors who, in [the fund's] opinion, have a pattern of short-term or excessive trading or whose trading has been or may be disruptive to the fund. For these purposes, [the fund] may consider an investor's trading history in the fund or other Fidelity funds, and accounts under common ownership or control." The prospectus further stated: "The fund may temporarily or permanently terminate the exchange privilege of any investor who makes more than four exchanges out of the fund per calendar year. Accounts under common ownership or control will be counted together for purposes of the four exchange limit."

47. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to exchange into and out of the Fidelity Advisor Emerging Asia Fund at least 30 times between July 1, 2003 and September 29, 2003, using 14 account numbers, four branch identifiers, and three representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, none of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch

identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

48. For the period July 1, 2003 to September 29, 2003, EKN, through Ottimo and Murray, purchased approximately \$5,603,577 in shares of the Fidelity Advisor Emerging Asia Fund for Customer 1's accounts, and sold those same shares for approximately \$6,123,505, extracting approximately \$519,928 from the fund.

49. On September 3, 2003, Fidelity rejected orders from three of Customer 1's accounts because Fidelity determined that the accounts were engaged in market timing. The rejections were communicated to Murray, who in turn notified Ottimo of the rejections, as was Murray's practice.

50. The defendants concealed from Fidelity that Ottimo and Murray were, at that very time, using seven other accounts, which the fund did not detect, to purchase for Customer 1 an additional approximately \$1,813,585 in Fidelity fund shares. In all of the accounts, there was no difference in the identity of the customer or the trading strategy employed in the accounts. The only purpose behind the establishment of the multiple accounts was to allow Ottimo and Murray to place orders for funds that would have rejected their market timing transactions if they had all been placed through a single account.

c. **Goldman Sachs**

51. The prospectus for the Goldman Sachs Asia Growth Fund, dated May 1, 1996, stated: "The Funds and Goldman Sachs each reserves the right to reject any specific purchase order (including exchanges) or to restrict purchases or exchanges by a particular purchaser (or group of related purchasers). The Funds or Goldman Sachs may reject or restrict purchases or exchanges of shares by a particular purchaser or group, for example, when a pattern of frequent

purchases and sales of shares of a Fund is evident, or if the purchase and sale or exchange orders are, or a subsequent abrupt redemption might be, of a size that would disrupt management of a Fund.”

52. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1’s accounts to purchase and sell the Goldman Sachs Asia Growth Fund at least 72 times between July 1, 2003 and September 24, 2003, using 14 account numbers, four branch identifiers, and three representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN’s Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, none of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1’s accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1’s identity, and the nature and volume of Customer 1’s trading.

53. For the period July 1, 2003 to September 24, 2003, EKN, through Ottimo and Murray, purchased approximately \$6,650,771 in shares of the Goldman Sachs Asia Growth Fund for Customer 1’s accounts, and sold those same shares for approximately \$7,077,135, extracting approximately \$426,363 from the fund.

54. Ottimo and Murray continued purchasing and selling the Goldman Sachs Asia Growth Fund for Customer 1’s accounts beyond September 24, 2003. On October 9, 2003, Goldman Sachs identified one of the representative codes that Ottimo and Murray were using to trade in the fund (which corresponded with a registered representative at EKN who was not actually associated with Customer 1’s accounts, but whose representative code Ottimo and Murray were using for the sole purpose of disguising Customer 1’s identity and nature and

volume of his trading) as engaged in market timing. Goldman Sachs sent a letter to the registered representative at EKN, notifying him that because “your trading activity is of a frequency and size that potentially disrupts management, as set forth above, Goldman Sachs Funds will no longer be able to accept business from you.” The letter also identified seven accounts that Ottimo and Murray had been using to trade in the fund, which were associated with the identified representative code, and stated that those accounts were blocked from further trading. This notice from Goldman Sachs was conveyed to Murray, who in turn notified Ottimo of the block, as was Murray’s practice.

55. The defendants concealed from Goldman Sachs that only days earlier, on October 1, 2003, Ottimo and Murray had used six additional accounts, which the fund did not detect at that time, to purchase for Customer 1 an additional approximately \$3,051,309 in Goldman Sachs fund shares. Those six additional accounts were associated with two other representative codes (neither of which corresponded with registered representatives at EKN who were actually associated with Customer 1’s accounts) that had not yet been identified by Goldman Sachs as engaged in market timing. As Murray reported to Customer 1 in an October 15, 2003 memorandum, “The fund has identified [seven of the] accounts as participating in market timing As of now [the six other] accounts, having a different representative code[,] have not been restricted.” In all of the accounts, there was no difference in the identity of the customer or the trading strategy employed in the accounts. The only purpose behind the establishment of the multiple accounts was to allow Ottimo and Murray to place orders for funds that would have rejected their market timing transactions if they had all been placed in a single account.

d. **Hartford**

56. The prospectus for the Hartford International Opportunities Fund, dated March 1, 2003, stated: "Because excessive account transactions can disrupt the management of the funds and increase transaction costs for all shareholders, the funds limit account activity as follows: you may make no more than two substantive exchanges out of the same fund in any 90 day period . . . ; the funds may refuse a share purchase at any time, for any reason; the funds may revoke an investor's exchange privilege at any time, for any reason. 'Substantive' means a dollar amount that the funds determine, in their sole discretion, could adversely affect the management of the funds."

57. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to exchange into and out of the Hartford International Opportunities Fund at least 45 times between March 13, 2003 and June 13, 2003, using 17 account numbers, two branch identifiers, and four representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, only one of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

58. For the period March 13, 2003 to June 13, 2003, EKN, through Ottimo and Murray, purchased approximately \$6,146,050 in shares of the Hartford International Opportunities Fund for Customer 1's accounts, and sold those same shares for approximately \$6,215,300, extracting approximately \$69,249 from the fund.

59. On March 17, 2003, Hartford notified EKN's clearing broker, CSC, that one of Customer 1's accounts had been identified by the fund and would not be allowed any further exchanges in the fund. This notice from Hartford was conveyed to Murray, who in turn notified Ottimo of the block, as was Murray's practice.

60. The defendants concealed from Hartford that Ottimo and Murray were using two additional accounts, which the fund did not detect at that time, to purchase for Customer 1 an additional approximately \$826,851 in Hartford fund shares. In all of the accounts, there was no difference in the identity of the customer or the trading strategy employed in the accounts. The only purpose behind the establishment of the multiple accounts was to allow Ottimo and Murray to place orders for funds that would have rejected their market timing transactions if they had all been placed in a single account.

61. Further, after Hartford notified EKN of its intent to reject further orders from Customer 1's account, Ottimo and Murray established an additional five accounts, using two branch identifiers and three different representative codes (which corresponded with registered representatives at EKN who were not actually associated with Customer 1's accounts, but whose representative codes Ottimo and Murray were using for the sole purpose of disguising Customer 1's identity and nature and volume of Customer 1's trading). Using these newly created accounts, Ottimo and Murray purchased for Customer 1 an additional approximately \$4,814,655 in Hartford fund shares and sold those same shares for approximately \$4,859,731, extracting approximately \$45,076 from the fund.

e. IDEX

62. The prospectus for the IDEX American Century International fund, dated March 2003, stated: "IDEX DOES NOT PERMIT MARKET TIMING OR EXCESSIVE TRADING AND HAS ADOPTED SPECIAL POLICIES TO DISCOURAGE THIS ACTIVITY. IF YOU WISH TO ENGAGE IN SUCH PRACTICES, WE REQUEST YOU DO NOT ATTEMPT TO PURCHASE SHARES OF ANY OF THE FUNDS. Some investors try to profit from various short-term or frequent trading strategies known as market timing; for example, switching money into mutual funds when they expect prices to rise and taking money out when they expect prices to fall, or switching from one fund to another and then back again after a short period of time. As money is shifted in and out, a fund incurs expenses for buying and selling securities. Excessive purchases, redemptions or exchanges of Fund shares disrupt portfolio management, hurt fund performance and drive fund expenses higher. These costs are borne by all shareholders, including the long-term investors who do not generate these costs. The exchange privilege is not intended as a vehicle for short-term or excessive trading. Each fund may limit or terminate your exchange privileges or may not accept future investments from you if you engage in excessive trading. In determining excessive trading, we consider frequent purchases and redemptions having similar effects as exchanges to be excessive trading. Four or more exchanges in a quarter (3 months) will be considered excessive trading, although each fund reserves the right to impose restrictions even if there are less frequent transactions. Specifically, each fund reserves the right to reject any request to purchase or exchange shares that it determines may be disruptive to efficient fund management and harmful to existing shareholders. Such a request could be rejected because of the timing of the investment or because a history of excessive trading by the shareholder or accounts under common control."

63. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to purchase and sell the IDEX American Century International fund at least 14 times, using seven account numbers, two branch identifiers, and two representative codes, during an approximately three week period from April 22, 2003 to May 13, 2003. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, only one of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

64. For the period April 22, 2003 to May 13, 2003, EKN, through Ottimo and Murray, purchased approximately \$1,833,570 in shares of the IDEX American Century International fund for Customer 1's accounts, and sold those same shares for approximately \$1,877,357, extracting approximately \$43,786 from the fund.

f. Invesco

65. The prospectus for the Invesco European Fund, dated February 28, 2003, stated: "You may make up to four exchanges out of each Fund per twelve-month period Each Fund reserves the right to reject any exchange request, or to modify or terminate the exchange policy, if it is in the best interest of the Fund."

66. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to exchange into and out of the Invesco European Fund at least 78 times, using 10 account numbers, two branch identifiers, and four representative codes, during a

less than three month period from April 22, 2003 to July 10, 2003. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, only one of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

67. For the period April 22, 2003 to July 10, 2003, EKN, through Ottimo and Murray, purchased approximately \$11,205,759 in shares of the Invesco European Fund for Customer 1's accounts, and sold those same shares for approximately \$11,216,095, extracting approximately \$10,335 from the fund.

68. The prospectus for the Invesco International Blue Chip Value Fund, also dated February 28, 2003, also stated: "You may make up to four exchanges out of each Fund per twelve-month period Each Fund reserves the right to reject any exchange request, or to modify or terminate the exchange policy, if it is in the best interest of the Fund."

69. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to exchange into and out of the Invesco International Blue Chip Value Fund at least 10 times, using five account numbers, two branch identifiers, and two representative codes, during a less than two month period from May 27, 2003 to July 10, 2003. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, neither of the representative codes corresponded with Ottimo, who was the only

registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

70. For the period May 27, 2003 to July 10, 2003, EKN, through Ottimo and Murray, purchased approximately \$1,368,166 in shares of the Invesco International Blue Chip Fund for Customer 1's accounts, and sold those same shares for approximately \$1,385,498, extracting approximately \$17,332 from the fund.

g. Managers

71. The prospectus for the Managers International Equity Fund, dated November 20, 2001, stated: "The Funds reserve the right to . . . refuse any purchase or exchange request if determined that such request could adversely affect the Fund's N[et] A[ssset] V[alue], including if such person or group has engaged in excessive trading (to be determined in management's discretion); after prior warning and notification, close an account or a related account due to excessive trading; and terminate or change the Exchange Privilege or impose fees in connection with exchanges or redemptions."

72. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to purchase and sell shares of the Managers International Equity Fund at least 29 times from March 13, 2003 to April 25, 2003, using eight account numbers, two branch identifiers, and two representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, only one of the representative codes corresponded with Ottimo, who was the only registered representative at

EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

73. For the period March 13, 2003 to April 25, 2003, EKN, through Ottimo and Murray, purchased and sold approximately \$3,638,189 in shares of the Managers International Equity Fund for Customer 1's accounts.

h. Pioneer

74. The prospectus for the Pioneer International Growth Fund, dated April 1, 2002, stated: "The fund discourages excessive and/or short-term trading practices, such as market timing, that may disrupt portfolio management strategies and harm fund performance. These practices consist of: selling shares purchased within the preceding 90 days; two or more purchases and redemptions in any 90-day period; or any other series of transactions indicative of a timing pattern. If we identify an account that engages in such activity, the fund and distributor reserve the right to refuse or restrict any purchase order (including exchanges) for that account and other accounts under common ownership or control."

75. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to purchase and sell shares of the Pioneer International Growth Fund at least 15 times, using six account numbers, two branch identifiers, and two representative codes, during the approximately six week period from March 13, 2003 to April 25, 2003. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, only one of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray

used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

76. For the period March 13, 2003 to April 25, 2003, EKN, through Ottimo and Murray, purchased approximately \$1,487,656 in shares of the Pioneer International Growth Fund for Customer 1's accounts, and sold those same shares for approximately \$1,492,175, extracting approximately \$4,519 from the fund.

77. On March 17, 2003, Pioneer notified EKN's clearing broker, CSC, by memorandum that orders from two of Customer 1's accounts had been "rejected due to ma[r]ket timer activity." This notice from Pioneer was conveyed to Murray, who in turn notified Ottimo of the block, as was Murray's practice. Murray further notified Customer 1, by e-mail, that "[n]o further trade[s] . . . will be allowed in the account for those funds."

78. The defendants concealed from Pioneer that Ottimo and Murray were using an additional account, which the fund did not detect at that time, to purchase for Customer 1 an additional approximately \$185,417 in Pioneer fund shares. In all of the accounts, there was no difference in the identity of the customer or the trading strategy employed in the accounts. The only purpose behind the establishment of the multiple accounts was to allow Ottimo and Murray to place orders for funds that would have rejected their market timing transactions if they had all been placed in a single account.

79. Further, after Pioneer sent notice of its intent to reject further orders from Customer 1's accounts, Ottimo and Murray established an additional three accounts, using a different branch identifier and a different representative code. The new branch identifier did not correspond with domestic customers and EKN's Garden City, New York office, which was the

only branch of EKN through which Customer 1 conducted business. Further, the new representative code did not correspond with any registered representative at EKN who was actually associated with Customer 1's accounts. Ottimo and Murray used the new branch identifier and representative code for the sole purpose of disguising Customer 1's identity and nature and volume of his trading. Using these newly created accounts, Ottimo and Murray purchased for Customer 1 an additional approximately \$777,127 in Pioneer fund shares.

i. Scudder

80. The prospectus for the Scudder Pacific Opportunities Fund, dated February 7, 2003, stated: "Exchanges are a shareholder privilege, not a right: we may reject any exchange order or require a shareholder to own shares of a fund for 15 days before we process the purchase order for the other fund, particularly when there appears to be a pattern of 'market timing' or other frequent purchases and sales."

81. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 1's accounts to purchase and sell shares of the Scudder Pacific Opportunities Fund at least 90 times from July 1, 2003 to October 22, 2003, using 14 account numbers, four branch identifiers, and three representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, none of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 1's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 1's identity, and the nature and volume of Customer 1's trading.

82. For the period July 1, 2003 to October 22, 2003, EKN, through Ottimo and Murray, purchased approximately \$13,713,287 in shares of the Scudder Pacific Opportunities Fund for Customer 1's accounts, and sold those same shares for approximately \$14,745,863, extracting approximately \$1,032,575 from the fund.

Customer 2

83. Customer 2 (EKN account numbers 3T-***27-AA, 3T-***27-CX, 3T-***30-AA, 3T-***33-AA, 3T-***33-AD, 3T-***35-AA, 3T-***35-AB, BS-***00-7G, BS-***04-CX, BS-***04-RC, BS-***06-CX, BS-***06-SC, BS-***06-XQ, BS-***07-CX, I2-***45-CX, I2-***45-RC, I2-***45-XQ, I2-***80-OU, JB-***38-CX, JB-***38-ZZ, JB-***47-1D, JB-***50-1D, JB-***55-1D, JB-***57-1D and JB-***60-1D) was an investment adviser located in Richmond, Virginia. As of March 26, 2003, Customer 2 entered into a brokerage account agreement with EKN that provided for the payment of both per-transaction as well as custody fees to EKN, in exchange for EKN's services in connection with Customer 2's accounts. To disguise their own identities, Customer 2's identity, and the volume and frequency of Customer 2's trading in mutual funds, Ottimo and Murray opened at least 25 accounts for Customer 2, using four branch identifiers and 11 representative codes.

84. Ottimo and Murray placed fraudulent, market timing orders for at least the following mutual funds in Customer 2's accounts at EKN.

a. AIM

85. Despite the trading limitation noted above for the AIM European Growth Fund, published in the fund's prospectus dated March 3, 2003, EKN, through Ottimo and Murray, placed orders for Customer 2's accounts to exchange into and out of the AIM European Growth Fund at least 133 times from April 1, 2003 to November 13, 2003, using 19 account numbers,

four branch identifiers, and nine representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 1 did business. Additionally, none of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 2's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 2's identity, and the nature and volume of Customer 2's trading.

86. For the period April 1, 2003 to November 13, 2003, EKN, through Ottimo and Murray, purchased approximately \$29,265,634 in shares of the AIM European Growth Fund for Customer 2's accounts, and sold those same shares for approximately \$29,468,783, extracting approximately \$203,149 from the fund.

87. On June 27, 2003 AIM notified EKN's clearing broker, CSC, that two exchange orders in two of Customer 2's accounts had been rejected by the fund due to market timing, and that the fund would not accept any further orders from those accounts. This notice from AIM was conveyed to Murray, who notified Ottimo of the block, as was Murray's practice.

88. The defendants concealed from AIM that Ottimo and Murray were using at least two additional accounts, which the fund did not detect at that time, to purchase and sell for Customer 2 additional AIM fund shares. In all of the accounts, there was no difference in the identity of the customer or the trading strategy employed in the accounts. The only purpose behind the establishment of the multiple accounts was to allow Ottimo and Murray to place orders for funds that would have rejected their market timing transactions if they had all been placed in a single account.

89. Further, after AIM notified EKN of its intent to reject further orders from Customer 2's accounts, Ottimo and Murray used an additional two accounts that AIM had not detected, and established an additional four accounts, using two branch identifiers and three different representative codes (which corresponded with registered representatives at EKN who were not actually associated with Customer 2's accounts, but whose representative codes Ottimo and Murray were using for the sole purpose of disguising Customer 2's identity and nature and volume of Customer 2's trading). Using these six accounts, between July 1, 2003 and August 1, 2003, Ottimo and Murray purchased for Customer 2 an additional approximately \$12,081,357 in AIM fund shares and sold those same shares for approximately \$12,093,197, extracting approximately \$11,840 from the fund.

90. From August 1, 2003 to at least November 13, 2003, EKN received additional notices from AIM that one or more Customer 2 accounts had been blocked from trading in the fund because of market timing. On August 1, 2003, EKN received notice that AIM had blocked three Customer 2 accounts from trading because of market timing. On August 8, 2003, EKN received notice that AIM had blocked two Customer 2 accounts from trading because of market timing. On September 9, 2003, EKN received notice that AIM had blocked one Customer 2 account from trading because of market timing. In response to these block notices, Ottimo and Murray opened yet additional accounts, using additional representative codes, to allow Customer 2 to continue trading in AIM shares. Using these additional accounts, between August 1, 2003 to November 13, 2003, Ottimo and Murray purchased for Customer 2 an additional approximately \$3,117,375 in AIM fund shares and sold those same shares for approximately \$3,126,030, extracting approximately \$8,655 from the fund.

91. During this period, Murray discussed with Customer 2 the opening of new accounts to continue to trade in AIM shares. On August 8, 2003, Murray sent Customer 2 a memorandum detailing certain exchange orders that had been rejected by AIM in certain of Customer 2's accounts, and then stating, "The only option available is to sell the positions and move the investment capital into new sub accounts." Further, on August 29, 2003, Murray sent Customer 2 another memorandum, stating, in part, "Yesterday several buy orders were entered in accounts located in the 'I2' branch identifier of EKN. These orders were placed under new representative numbers, with each account having a unique number. AIM has questioned these new representative numbers. This leads us to believe that AIM has focused upon the 'I2' branch as a market timer. This could limit the ability to engage in future exchanges." Murray then recommended moving capital "to new sub accounts (in a different branch)," for the purpose of disguising Customer 2's trading in AIM shares.

b. Managers

92. Despite the trading limitation noted above for the Managers International Equity Fund, published in the fund's prospectus dated November 20, 2001, EKN, through Ottimo and Murray, placed orders for Customer 2's accounts to purchase and sell shares of the Managers International Equity Fund at least 26 times from April 1, 2003 to May 19, 2003, using three account numbers, two branch identifiers, and two representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 2 did business. Additionally, none of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 2's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for

the sole reason of disguising Customer 2's identity, and the nature and volume of Customer 2's trading.

93. For the period April 1, 2003 to May 19, 2003, EKN, through Ottimo and Murray, purchased approximately \$5,019,713 in shares of the Managers International Equity Fund for Customer 2's accounts, and sold those same shares for approximately \$5,062,279, extracting approximately \$42,566 from the fund.

Customer 3

94. Customer 3 (EKN account numbers 3T-***31-AD, I2-***82-CX, I2-***82-SC, JB-***00-99, JB-***10-99 and JB-***13-99) was an investment adviser located in Great Neck, New York. As of May 6, 2003, Customer 3 entered into a brokerage account agreement with EKN that provided for the payment of both per-transaction as well as custody fees to EKN, in exchange for EKN's services in connection with Customer 3's accounts. To disguise their own identities, Customer 3's identity, and the volume and frequency of Customer 3's trading in mutual funds, Ottimo and Murray opened at least six accounts for Customer 3, using three branch identifiers and four representative codes.

95. Ottimo and Murray placed fraudulent, market timing orders for at least the following mutual fund in Customer 3's accounts at EKN.

a. AIM

96. The prospectus for the AIM International Growth Fund, dated March 3, 2003, stated that investors were "limited to a maximum of 10 exchanges per calendar year, because excessive short-term trading or market-timing activity can hurt fund performance. If you exceed that limit, or if an AIM Fund or the distributor determines, in its sole discretion, that your short-

term trading is excessive or that you are engaging in market-timing activity, it may reject any additional exchange orders.”

97. Despite this trading limitation, EKN, through Ottimo and Murray, placed orders for Customer 3's accounts to exchange into and out of the AIM International Growth Fund at least 32 times from May 21, 2003 to October 9, 2003, using six account numbers, three branch identifiers, and four representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 3 did business. Additionally, none of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 3's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 3's identity, and the nature and volume of Customer 3's trading.

98. For the period May 21, 2003 to October 9, 2003, EKN, through Ottimo and Murray, purchased approximately \$12,014,405 in shares of the AIM International Growth Fund for Customer 3's accounts, and sold those same shares for approximately \$12,340,902, extracting approximately \$326,497 from the fund.

Customer 4

99. Customer 4 (EKN account numbers 3T-***46-BB, 3T-***52-AA, 3T-***67-BD, I2-***56-CS, I2-***56-SC, I2-***69-FT, I2-***99-CS, I2-***99-CX, JB-***78-D5, JB-***40-1D, JB-***15-1D and JB-***30-1D) was a retail customer of EKN, residing in Whitestone, New York. As of January 16, 2003, Customer 4 entered into a brokerage account agreement with EKN that provided for the payment of both per-transaction as well as custody fees to EKN, in exchange for EKN's services in connection with Customer 4's accounts. To disguise their own

identities, Customer 4's identity, and the volume and frequency of Customer 4's trading in mutual funds, Ottimo and Murray opened at least 12 accounts for Customer 4, using three branch identifiers and nine representative codes.

100. Ottimo and Murray placed fraudulent, market timing orders for at least the following mutual fund in Customer 4's accounts at EKN.

a. AIM

101. Despite the trading limitation noted above for the AIM European Growth Fund and the AIM International Growth Fund, published in the funds' prospectuses dated March 3, 2003, EKN, through Ottimo and Murray, placed orders for Customer 4's accounts to exchange into and out of the AIM European Growth Fund and the AIM International Growth Fund at least 84 times from March 6, 2003 to November 13, 2003, using 14 account numbers, four branch identifiers, and nine representative codes. Only one of the branch identifiers corresponded with domestic customers of EKN's Garden City, New York office, which was the only branch of EKN through which Customer 4 did business. Additionally, only one of the representative codes corresponded with Ottimo, who was the only registered representative at EKN associated with Customer 4's accounts. Ottimo and Murray used the other branch identifiers and representative codes, and each of the multiple account numbers, for the sole reason of disguising Customer 4's identity, and the nature and volume of Customer 4's trading.

102. For the period March 6, 2003 to November 13, 2003, EKN, through Ottimo and Murray, purchased approximately \$21,863,328 in shares of the AIM European Growth Fund and the AIM International Growth Fund for Customer 4's accounts, and sold those same shares for approximately \$22,042,110, extracting approximately \$178,782 from the fund.

103. On May 22, 2003, a Senior Vice President of AIM Investments wrote a letter to EKN's clearing broker, CSC, which was transmitted by CSC to Murray, stating: "Over the past few months, we have closely monitored the effects of market timing and short-term trading within our family of funds. We have determined that these activities, if not properly addressed, may hinder our ability to achieve desirable long-term investment results for our shareholders." The letter further stated that Customer 4's account at EKN, which had been identified as a market timing account, would be prohibited from further trading in the AIM funds.

104. After AIM notified EKN of its intent to reject further orders from Customer 4's account, between May 27, 2003 and August 28, 2003, Ottimo and Murray established an additional eight accounts, using three branch identifiers and four different representative codes (which corresponded with registered representatives at EKN who were not actually associated with Customer 4's accounts, but whose representative codes Ottimo and Murray were using for the sole purpose of disguising Customer 4's identity and nature and volume of Customer 4's trading). Using these eight accounts, between May 27, 2003 and August 28, 2003, Ottimo and Murray purchased for Customer 4 an additional approximately \$9,185,449 in AIM fund shares and sold those same shares for approximately \$9,196,336, extracting approximately \$10,887 from the fund.

105. On August 29, 2003, AIM again rejected an order from one of Customer 4's accounts because the fund was able to identify that account as involved in market timing the funds. AIM's rejection was communicated to Murray, who communicated the block notice to Ottimo, as was Murray's practice. In response, Ottimo and Murray opened yet more accounts, with different branch identifiers and different representative codes, to allow Customer 4 to continue market timing the AIM funds. Using accounts that AIM had not yet identified as

engaged in market timing, as well as newly created accounts, from August 28, 2003 to November 13, 2003, Ottimo and Murray purchased for Customer 4 an additional approximately \$13,710,960 in AIM fund shares and sold those same shares for approximately \$13,873,163, extracting approximately \$162,203 from the fund.

C. Murray's Involvement in Effecting Securities Transactions at EKN

106. Throughout 2003, Murray, who was associated with EKN, was involved in effecting transactions in mutual fund securities without being registered or approved in accordance with the standards promulgated by the NASD, of which EKN is a member firm. In fact, Murray functioned at EKN much as any registered representative of the firm would have functioned – he provided information to his customers relating to their securities transactions, he took their orders for processing, and he was compensated by EKN on the basis of how much business he was able to generate at the firm.

107. Murray's written contract with EKN, entered into as of January 1, 2003, provided for payment to Murray in connection with Murray's work in both recruiting market timing customers for EKN, and servicing their accounts once the customers opened brokerage accounts at EKN. As stated above, according to the contract, EKN paid Murray one-third of all per-transaction fees and custody fees EKN received from the firm's market timing customers (discounted by fees EKN paid to CSC in connection with CSC's clearing services). Additionally, Murray needed EKN to gain access to the securities markets because without EKN's order processing and clearing function, Murray would not have been able to either recruit or service any market timing customers.

108. Murray was the person principally charged by Ottimo to service EKN's market timing customers' accounts on a day-to-day basis. Murray regularly provided information on a

wide variety of subjects to EKN's market timing customers through: (a) an EKN e-mail address that was provided to him by the firm; (b) memoranda that Murray wrote on EKN letterhead; (c) facsimile transmissions that Murray sent through an EKN facsimile machine; and (d) telephone calls that Murray placed and received through an individual telephone number that EKN allowed him to use. Murray placed and received customer calls at EKN while sitting at his own desk that EKN gave him to use.

109. Through these various methods and venues, Murray provided information to EKN's market timing customers relating to at least the following subjects: (a) individual mutual fund purchase and sale policies; (b) daily transactional information relating to which purchase and sale orders had been processed, or refused by the fund due to timing, for each, individual customer; (c) block notices received by EKN from the various funds for each, individual customer; (d) how EKN's market timing customers might continue to trade in mutual funds that had previously blocked them from trading, or were expected to block them from trading in the future, through the use of multiple accounts with multiple branch identifiers and multiple representative codes; (e) information relating to each customer's opening of brokerage accounts at EKN, each customer's written contract with EKN, and each customer's access to an on-line EKN platform whereby the customer could view account positions; and (f) monthly fee information relating to what fees were due from the customer to EKN.

110. On a daily basis, Murray both provided customers' account positions to them via facsimile, and also received trading orders via facsimile from all of EKN's market timing customers. When Murray received customers' orders, he transmitted those orders to EKN's trade execution desk for processing, and thereafter followed up on the orders to make certain that they had been processed. When orders were delayed or rejected by the mutual funds, Murray

contacted EKN's clearing broker, CSC, to obtain information relating to the delay or rejection. All information sent by the mutual funds to CSC relating to trade processing was forwarded by CSC to Murray, specifically.

FIRST CLAIM FOR RELIEF
Violations of Section 17(a)(1) of the Securities Act

111. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 110 above, as if the same were fully set forth herein.

112. As set forth above, defendants EKN, Ottimo and Murray, directly or indirectly, in the offer or sale of securities, and by the use of the means or instruments of transportation and communication in interstate commerce or by use of the mails employed devices, schemes, or artifices to defraud.

113. Defendants EKN, Ottimo and Murray knowingly, intentionally, or with severe recklessness, engaged in the aforementioned devices, schemes, and artifices to defraud. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate, and defraud or with a severe reckless disregard for the truth.

114. As a result, defendants EKN, Ottimo and Murray violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)], and their violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

SECOND CLAIM FOR RELIEF
Violations of Sections 17(a)(2) and (3) of the Securities Act

115. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 110 above, as if the same were fully set forth herein.

116. As set forth above, defendants EKN, Ottimo and Murray, directly or indirectly, in the offer or sale of securities, and by the use of the means or instruments of transportation and communication in interstate commerce or by use of the mails: (a) obtained money or property by means of untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (b) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

117. As a result, defendants EKN, Ottimo and Murray violated Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)], and their violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

THIRD CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5

118. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 110 above, as if the same were fully set forth herein.

119. As set forth above, defendants EKN, Ottimo and Murray, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to

make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

120. Defendants EKN, Ottimo and Murray intentionally, or with severe recklessness, engaged in the aforementioned conduct. In engaging in such conduct, defendants acted with scienter, that is, with an intent to deceive, manipulate, and defraud or with a severe reckless disregard for the truth.

121. As a result, defendants EKN, Ottimo and Murray violated 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 their violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements, and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

FOURTH CLAIM FOR RELIEF
Violations of Section 15(c)(1) of the Exchange Act by Defendant EKN

122. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 110 above, as if the same were fully set forth herein.

123. As set forth above, defendant EKN, a broker or dealer, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities, otherwise than on a national securities exchange of which defendant EKN was a member, by means of manipulative, deceptive, or other fraudulent devices or contrivances.

124. Defendant EKN intentionally, or with severe recklessness, engaged in the aforementioned conduct. In engaging in such conduct, defendant EKN acted with scienter, that

is, with an intent to deceive, manipulate, and defraud or with a severe reckless disregard for the truth.

125. As a result, defendant EKN violated Section 15(c)(1) of the Exchange Act [15 U.S.C. § 78o(c)(1)], and the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements, and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

FIFTH CLAIM FOR RELIEF
Aiding and Abetting Defendant EKN's Violations of Section 15(c)(1)
of the Exchange Act by Defendants Ottimo and Murray

126. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 110 above, as if the same were fully set forth herein.

127. As set forth above, defendants Ottimo and Murray provided knowing and substantial assistance to the fraudulent market timing activities of defendant EKN.

128. As a result, defendants Ottimo and Murray aided and abetted the violations of Section 15(c)(1) of the Exchange Act [15 U.S.C. § 78o(c)(1)] by defendant EKN.

SIXTH CLAIM FOR RELIEF
Violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 by EKN

129. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 110 above, as if the same were fully set forth herein.

130. As set forth above, defendant EKN, a registered broker or dealer, effected transactions in, or effected the purchase or sale of, securities when Murray, a natural person associated with EKN, who effected or was involved in effecting such transactions, was not registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required

forms, paying all required fees, and passing any required examinations) established by the rules of the NASD, of which EKN was a member firm.

131. As a result, defendant EKN violated Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1], and the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements, and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]

SEVENTH CLAIM FOR RELIEF

Aiding and Abetting Defendant EKN's Violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 by Defendants Ottimo and Murray

132. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 110 above, as if the same were fully set forth herein.

133. As set forth above, defendants Ottimo and Murray provided knowing and substantial assistance to EKN's activities in effecting transactions in securities while Murray, a natural person associated with EKN, who effected or was involved in effecting such transactions, was not registered with or approved by the NASD, of which EKN was a member firm.

134. As a result, defendants Ottimo and Murray aided and abetted the violations of Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1] by defendant EKN.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an order permanently enjoining defendants EKN, Ottimo and Murray and their respective agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of 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], Section 15(c)(1) of the Exchange Act [15 U.S.C. § 78o(c)(1)], and Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1].

II.

Issue an order requiring defendants EKN, Ottimo and Murray each to disgorge their ill-gotten gains, plus prejudgment interest.

III.

Issue an order requiring defendants EKN, Ottimo and Murray each to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

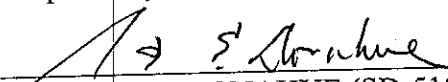
Retain jurisdiction of this action for purposes of enforcing the Final Judgment and Order.

V.

Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 29, 2005


STEPHEN E. DONAHUE (SD-5100)
WILLIAM P. HICKS (not admitted in EDNY)
MATTHEW H. BAUGHMAN (not admitted in
EDNY)

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ORIGINAL
CV-05 4643
CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of identifying the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

MURLEY, J.
ORENSTEIN, M.

I. (a) PLAINTIFFS

Securities and Exchange Commission

DEFENDANTS

Herkrantz King Nussbaum, Inc., Anthony Marino and Brendan E. Murray

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
EASTON, NY

SEP 30 2005

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

Nassau

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen E. Donahue, Securities & Exchange Commission, 3475 Lenox Rd., N.E., Suite 1000, Atlanta, GA 30326-1232, Tel. No. 404-842-7618

Attorney's (If Known)

Ira Lee Sorkin, Dickstein Shapiro Morin & Oshinsky LLP, 1177 Avenue of the Americas, New York, NY 10036-2714, Tel. No. 212-835-1400

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Act of 1933, Sec. 10(b), 15(b)(7) & 15(c)(1), Securities Exchange Act of 1934, Rules 10b-5 & 15b7-1

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 Permanent injunction, disgorge-ment & civil penalty JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

9/29/05

[Signature]

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ARBITRATION CERTIFICATION

I, Stephen E. Donahue, counsel for plaintiff
do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.
Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Did the cause arise in Nassau or Suffolk County? yes

If answered yes, please indicate which county. Nassau

County of residence of plaintiff(s) (1) Fulton County, GA
(2) _____
(3) _____

County of residence of defendant(s) (1) Nassau
(2) _____
(3) _____

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes X

No _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ (If yes, please explain)

No X

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.
(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: SD-5100

E-MAIL Address: donahue@sec.gov

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: 