JUDGE KOELTL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	ECF CASE
Plaintiff,	Civil Action No.
v.	
DARRYL A. GOLDSTEIN and CHRISTOPHER L. O'DONNELL,	DEMAND FOR JURY TRIAL
Defendants.	

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against defendants Darryl A. Goldstein and Christopher L. O'Donnell ("Defendants"):

SUMMARY

1. From on or about January 2002 until August 2003, the Defendants, each a top financial advisor ("FA") at Morgan Stanley DW, Inc. ("MSDW"), defrauded at least 50 mutual fund companies and their numerous shareholders by engaging in deceptive acts designed to circumvent the mutual funds' restrictions on market timing and to generate substantial commissions or asset-based fees for themselves. In an effort to conceal their hedge fund customers' ongoing market-timing trading, the Defendants repeatedly and systematically employed a variety of deceptive practices including, but not limited to, opening and trading in multiple brokerage accounts, trading using different FA identification numbers, and trading through numerous variable annuity contracts. In less than two years, for only two hedge fund customers, the Defendants continuously engaged

in more than 4,000 market-timing trades with total trading volume exceeding $4.8 billion, opened approximately 122 brokerage accounts, opened approximately 64 variable annuity contracts, and used 11 different FA identification numbers. As a direct result of their fraudulent scheme, the Defendants generated almost $1 million in net commissions or asset-based fees for themselves and in the process harmed countless unsuspecting mutual fund shareholders.

2. Market timing refers to the practice of short-term buying, selling and exchanging of mutual fund shares in order to, among other things, exploit inefficiencies in mutual fund pricing. To achieve substantial gains using this strategy, the trader must be able to quickly cycle its investments into and out of the targeted funds. While market timing can be a successful investing strategy and is not necessarily illegal, such trading can harm mutual fund shareholders in a number of ways: it can dilute the value of their shares; it can disrupt the management of the fund's investment portfolio; and it can significantly increase trading and administrative costs associated with the management of the fund. Consequently, mutual funds often impose quantitative or qualitative restrictions on excessive trading and monitor trading activity in their funds. Typically, if a mutual fund determines that a shareholder or broker has violated its trading restrictions, it will limit or refuse to enter into any future trades with that party.

3. At all relevant times, the Defendants knew or were reckless in not knowing that mutual fund companies imposed restrictions on excessive trading and monitored trading activity in their funds in order to detect and prevent market-timing activity. Early on in their associations with their customers, the Defendants also knew or were reckless in not knowing that they were engaged in trading practices that deceived

mutual funds. The Defendants' role in the scheme was more than mechanically executing their customers' orders; they also advised their customers on how to make deceptive market-timing trades**.** By using over one hundred accounts, over sixty variable annuity contracts, and numerous FA identification numbers, the Defendants intended to, and did, make it more difficult for the mutual funds to detect and prevent their customers' market-timing trading.

4. While participating in this fraudulent scheme, the Defendants made false and misleading statements to mutual fund companies in the account opening process, including, but not limited to, using shell companies and other misleading names to disguise their customers' identities. The Defendants also made omissions of material fact by failing to disclose to the mutual funds that the numerous accounts through which their customers traded actually belonged to the same customers and that the multiple FA identification numbers that the Defendants used to place the trades actually belonged to them. This misrepresented and omitted information was material because of the nature of the market timing in this case, the fact that market timing harms long-term mutual fund shareholders and that the fund companies were actively trying to detect and prevent market-timing trading in their funds. These continual deceptive acts, practices, and courses of business were committed by the Defendants or at their direction.

5. Due to the sheer size, volume, and frequency of their transactions, the mutual fund companies were able to identify some of the accounts and FA identification numbers that the Defendants used to engage in deceptive market-timing trades. Mutual fund companies sent MSDW numerous notices that barred or imposed trading restrictions on the Defendants or specific accounts associated with the Defendants' customers. These

notices were generally sent to representatives in MSDW's Mutual Fund Operation Department ("MF Ops"), who then forwarded the notices to MSDW compliance officers, the offending FA, and the offending FA's branch manager. In fact, from December 2001 until July 2003, MF Ops received at least 225 such notices pertaining solely to the two defendants. One mutual fund family, Marshall Funds, terminated the national broker-dealer agreement with MSDW as a result of one of the Defendant's deceptive market-timing activity.

6. In response to the mutual funds' efforts to prevent further market-timing trading, the Defendants continued to place trades for their hedge fund customers in accounts using FA identification numbers that had not been blocked by the mutual funds. In many cases, they simply transferred the funds from one blocked account to another account and continued to engage in market-timing trading. In doing so, they misled mutual fund companies into believing that the subsequent trades were for MSDW brokers or for customers whose trading had not been blocked. Ultimately, the Defendants' deceptive market-timing trading did not end until August 2003, when MSDW enforced new policies and procedures designed to prevent such practices throughout the firm.

7. By engaging in the conduct described in the Complaint, the Defendants violated Section 17(a) of the Securities Act of 1933 ("Securities Act"); and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

8. Accordingly, the Commission seeks: (a) entry of permanent injunctions prohibiting the Defendants from further violations of the relevant provisions of the Securities Act, the Exchange Act, and the rules promulgated thereunder; (b) the imposition of a civil penalty against each defendant due to the egregious nature of their

violations; and (c) any other relief this Court deems necessary and appropriate under the circumstances.

JURISDICTION

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

10. The Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein. Some of the alleged transactions, acts, practices, and courses of business occurred in the Southern District of New York.

DEFENDANTS

11. **Darryl Goldstein,** age 36, was a financial advisor at MSDW's office located at 885 Third Avenue, New York, New York, from October 2000 to November 2003. During the relevant period, he served as a financial advisor to hedge fund advisors Millennium Partners L.P. and Haidar Capital Management LLC. He is currently a registered representative at Gilford Securities Incorporated in New York, New York and resides in New York, New York.

12. **Christopher O'Donnell**, age 45, was a financial advisor at MSDW's Rye, New York, office from August 1998 to March 2004. During the relevant period, he served as a financial advisor to hedge fund advisor Millennium Partners L.P. He is currently a registered representative for Bear Stearns & Company Inc. in New York, New York and resides in Rye, New York.

RELATED PARTIES

13. **Morgan Stanley DW Inc.** was a Delaware corporation with its principal place of business in New York, New York. During the relevant time period, MSDW was a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, a registered investment adviser pursuant to Section 203(c) of the Investment Advisers Act of 1940, and a member of the National Association of Securities Dealers, the New York Stock Exchange, and the Municipal Securities Rulemaking Board. At all relevant times, MSDW provided comprehensive brokerage, investment and financial services nationwide.

14. **Millennium Partners, L.P.**, a limited partnership organized in the Cayman Islands, is a hedge fund that maintains its principal place of business in New York, New York. During the relevant period, Darryl Goldstein placed trades for its trader Errol Mustafa and Christopher O'Donnell placed trades for its trader Kovan Pillai.

15. **Haidar Capital Management, LLC,** is a limited liability company formed under the laws of the State of New York. Haidar Capital Management was the administrative or trading member for four hedge funds. During the relevant period, Darryl Goldstein placed trades for its founder Said Haidar.

STATEMENT OF FACTS

Background

16. A mutual fund is an investment company that pools money from many investors and invests those funds in stocks, bonds, short-term money market instruments, or other securities. Mutual fund investors purchase their shares directly from the fund itself or through a broker for the fund. Millions of Americans have chosen to invest in

mutual funds as their primary method for saving for education, retirement, and other financial goals. Approximately half of all U.S. households own mutual fund shares.

17. Most mutual funds are meant to be long-term investments and were primarily designed for buy-and-hold investors. Nevertheless, some investors attempt to trade in and out of mutual funds in order to exploit inefficiencies in the way the funds value their shares. This strategy can be successful because many mutual funds use stale prices to calculate the value of the securities held in their portfolios. These prices are stale because they do not necessarily reflect the fair value of such securities at the time the shares are valued.

18. As a general rule, mutual funds are valued once a day, usually at 4:00 p.m., when the New York market closes. The price of a mutual fund share, known as the Net Asset Value ("NAV"), generally reflects the local market's closing prices of the securities that comprise a given fund's portfolio, plus the value of any cash that the fund manager maintains for the fund. Unlike a stock, the price of a mutual fund share does not change during the course of the day. Instead, a mutual fund always fills the buy and sell orders it receives at the next available NAV. Accordingly, orders placed at any time during the trading day up to the 4:00 p.m. cutoff get that day's NAV, but an order placed after the close of trading receives the next day's NAV.

19. The practice of taking advantage of short-term arbitrage opportunities repeatedly in a single mutual fund is called "market timing" the fund. Market-timing traders attempt to take advantage of mutual funds' pricing inefficiency in a number of ways.

a. One strategy is known as "time zone arbitrage." A typical example of this approach is a U.S. mutual fund that holds Japanese shares. Because of the time zone difference, the Japanese market closes at 2:00 a.m. New York time. If the U.S. mutual fund manager uses the closing prices of the Japanese shares in his or her fund to calculate the NAV at 4:00 p.m. in New York, he or she is relying on stale prices, i.e., market information that is fourteen hours old. If there have been positive market movements in the intervening hours between the close of the Japanese market and the close of the New York market that will cause the prices on the Japanese market to rise when it later opens, the stale Japanese prices will not reflect them, and the U.S. mutual fund's NAV will be artificially low. On such a day, a trader who buys the Japanese fund at the stale price is very likely to see a profit that can be realized the next day by selling.

b. Another such strategy is known as "liquidity arbitrage." An example of this approach is a mutual fund that contains illiquid securities such as high-yield bonds or small capitalization stocks. Here, the fact that some of the fund's securities may not have traded for hours before the New York closing time can render the fund's NAV stale, and thus make it vulnerable to market-timing activity.

20. Market timing has a negative effect on long-term mutual fund shareholders. Effective market timing captures an arbitrage profit that comes dollar-for-dollar out of the pockets of long-term mutual fund shareholders. Essentially, market timing allows the trader to step in at the last moment and take part of the buy-and-hold investors' upside when the market goes up, so the next day's NAV is reduced for those shareholders who remain in the fund. If the trader sells on down-market days, the arbitrage has the effect of making the next day's NAV lower than it would otherwise

have been, thus magnifying the losses that buy-and-hold investors experience in a declining market. By trading in and out of a mutual fund, market timers repeatedly take part of long-term investors' profits or increase long-term investors' losses.

21. Beyond the inequitable transfer of wealth associated with market timing, market timing also harms mutual fund shareholders in a number of other ways. As a preliminary matter, most market-timing purchases are followed by redemptions the next business day or shortly thereafter, in order to realize the gain from pricing inefficiencies. Accordingly, market timers impose additional transaction costs, such as trading commissions and administrative costs, on the long-term investors. Moreover, trades necessitated by such short-term sales can lead to the fund realizing taxable capital gains or losses at an undesirable time, increasing the tax bill for long-term investors. Market-timing transactions may also force mutual fund managers to buy stock as it is going up in price or sell it into a falling market. In short, while market timers may profit from engaging in frequent short-term trading of mutual fund shares, the costs associated with such trading are bourne by unsuspecting long-term investors.

22. Due to the negative impact market timers have on long-term shareholders, mutual fund companies often impose restrictions on short-term or excessive trading. In this case, mutual fund companies like Goldman Sachs Trust, expressly prohibited such trading in their fund family by stating in its prospectus "the Trust discourages frequent purchases and redemptions of Fund shares and does not permit market-timing or other excessive trading practices." Some fund companies, like AIM Mutual Funds, imposed quantitative restrictions on trading such as a limit on the number of transactions that an account holder could effect within a certain time period. For example, AIM's Equity

Fund prospectus states “You are limited to a maximum of 10 exchanges per calendar year, because excessive short-term trading or market-timing activity can hurt fund performance.” Other fund companies, like Gabelli Funds or Franklin Funds, formally reserved the right to reject “excessive” or “abusive” trading without providing a specific definition of those terms. The relevant language concerning the restrictions on excessive trading could be found in the mutual funds’ prospectuses.

23. In order to enforce these restrictions on excessive trading, mutual funds often attempt to monitor the size and frequency of trading by account number. Since the multi-trillion dollar mutual fund industry processes countless buy, sell, and exchange transactions every day on behalf of institutions and individuals, it is virtually impossible for mutual funds to identify every market-timing trade. Notwithstanding this reality, large short-term movements in and out of a mutual fund account can trigger surveillance by compliance personnel. When excessive trading has been identified, mutual funds have a number of tools available to them including, but not limited to, rejecting questionable trades, stopping all future trading in a particular account by placing a “stop purchase” code on the account number, and prohibiting a particular broker from executing trades with the fund by blocking the broker’s FA identification number.

24. Like every other FA at MSDW, each Defendant was assigned a primary FA identification number and this number was used to open customer accounts, execute securities transactions, and track commissions. Joint FA identification numbers were also sometimes legitimately assigned to FAs by MSDW to facilitate the allocation of commissions among brokers for a shared customer.

25. During the relevant time period, virtually all of the market-timing transactions executed by the Defendants were entered into directly with the mutual fund companies. The Defendants used the MSDW Mutual Fund Trading System to enter their customers' market-timing trades. When they executed a mutual fund trade, each FA had to enter the name of the fund, the type of transaction, the transaction amount, and the account number for which the trade was being made. A default FA identification number was assigned to the transaction, but that number could be changed by the FA. For traditional accounts, a twelve-digit number allowed a mutual fund to identify the fund, amount of transaction, and account for which the transaction was being executed. The first three digits identified the MSDW branch office, the next six digits represented the account number, and the final three digits were the FA identification number. For trades executed through MSDW Choice accounts, a type of asset-based fee account, the FA identification number was replaced with a unique identifier. Depending upon the account, select information regarding the transaction was wired to the mutual funds' transfer agents via the National Securities Clearing Corporation's Fund/Serv system. In exchange for executing market-timing transactions on behalf of their customers, the Defendants were paid quarterly asset-based fees—ranging between .30% and 2.25% of the amount held in the account, depending on how much was in the account and what the money was invested in. Generally, if the amount was invested in mutual funds, customers paid a quarterly fee of 1.00% of the accounts' assets.

26. The Defendants also opened over sixty variable annuity contracts for their hedge fund customers when they knew, or were reckless in not knowing, that these accounts would be used to engage in deceptive market-timing activity. Variable

annuities are hybrid securities, offered by insurance companies as long-term savings vehicles and used for retirement and estate planning purposes, which combine the elements of four different financial products: mutual funds, tax-deferred investments like Individual Retirement Accounts, life insurance policies, and traditional annuities. Upon purchasing a variable annuity, a consumer can direct that his or her money be invested in one or more mutual fund "subaccounts" offered by the insurance company. These subaccounts, which mirror the mutual funds available to retail investors, are usually run by the retail fund manager. Gains in variable annuity subaccounts compound tax-free until withdrawal. In addition, variable annuities offer investors the chance to convert their investment, after a certain number of years, into a guaranteed stream of annuity payments for a period of years or for life. The typical variable annuity also has a death benefit guaranteeing the return of the investor's principal to a designated heir if death precedes the start of annuity payouts. Typically, investors in these complex products pay both the managerial fees associated with the mutual fund subaccounts and the various fees required by the insurance company.

27. Variable annuities are purchased by a contract owner. At the time of purchase, the purchaser identifies the following: the contract owner, who has the ability to exercise the rights detailed in the contract; the annuitant, who is the person upon whose life the annuity benefit payments are made; and the beneficiary, who is to receive any death benefit paid if the annuitant dies before the annuity commencement period. The annuitant has to be a natural person, while the owner can be a corporate entity. In this case, the Defendants' hedge fund customers put forward an employee to serve as the annuitant.

28. A critical characteristic of a variable annuity contract is that the contract owner does not purchase or sell shares of mutual funds directly; instead the insurance company aggregates contract owners' orders for each mutual fund and submits a single net buy or sell order each day. Accordingly, by purchasing mutual fund shares in this manner, brokers and traders engaged in deceptive market timing cannot be associated with their trading activity as easily as if they executed their purchases of shares directly from a mutual fund.

29. In cases where traders are engaged in market timing through variable annuity contracts, the real losers are the countless unsuspecting insurance customers who actually bought variable annuities for retirement, estate planning or other long-term goals. These innocent customers paid higher fees and were harmed by having the value of their underlying mutual fund investments diluted by deceptive market-timing activity.

Darryl Goldstein

30. Defendant Darryl Goldstein was a financial advisor in MSDW's Third Avenue, New York, New York, office from October 2000 to November 2003. From as early as January 2002 until July 2003, Goldstein placed market-timing trades for Haidar Capital Management LLC ("Haidar") and its founder Said Haidar. Goldstein also placed market-timing trades for Millennium Partners, L.P. ("Millennium") and its trader Errol Mustafa from at least January 2002 until March 2003. During this short period, Goldstein and his partner, Marc H. Plotkin, placed approximately 2,747 market-timing trades for these two customers—without even considering the market-timing trades they executed for these two hedge funds through variable annuity contracts. Using numerous MSDW accounts, Goldstein with the knowing and substantial assistance of Plotkin

executed deceptive market-timing trades in at least 52 mutual fund complexes for Haidar with a total trading volume of $2,837,756,312 and 49 complexes for Millennium with a total trading volume of $443,632,966. As a result of these deceptive trading practices, Goldstein was ranked as the ninth highest producer in his office in 2002 and the tenth highest producer in 2003.

31. Goldstein knew, or was reckless in not knowing, that he was engaged in deceptive market-timing trading and understood that such trading violated mutual funds' trading restrictions. As evidence of this, early in the Haidar and Millennium relationships, the hedge funds told Goldstein that they anticipated placing numerous market-timing trades and that eventually the mutual funds would begin to block their trading. Nevertheless, he chose to actively engage in the fraudulent scheme.

32. By opening numerous accounts for each of his market-timing customers, Goldstein was able to invest a larger amount of his customers' money in a target mutual fund without triggering the fund's surveillance threshold and when his customer's market-timing trades were detected by the mutual fund he could continue to execute additional market-timing trades in the fund by shifting money to his customers' other accounts, despite the mutual fund's attempts to block his customers' trading.

33. In support of the deceptive market-timing scheme, Goldstein and Plotkin opened at least 59 MSDW accounts for Haidar and 13 MSDW accounts for Millennium, as follows:

Haidar

	Haidar Jupiter Fund LLC	10/30/01	622-025966-074
	Haidar Jupiter Fund LLC	9/27/01	622-024578-74
	Haidar Jupiter Fund LLC	11/01/01	622-025970-074
	Haidar Jupiter Fund LLC	9/27/01	622-024577-074
	Haidar Jupiter Fund LLC	11/14/01	622-025969-114
	Haidar Jupiter Fund LLC	11/26/01	622-026786-036
	Haidar Jupiter Fund LLC	11/26/01	622-026787-036
	Haidar Jupiter Fund LLC	11/26/01	622-026788-036
	Haidar Jupiter Fund LLC	11/26/01	622-026789-036
	Haidar Jupiter Fund LLC	12/17/01	622-027004-074
	Haidar Jupiter Fund LLC	12/17/01	622-027002-114
	Haidar Jupiter Fund LLC	12/17/01	622-027003-036
	Devon Capital LLC	5/8/02	622-029263-074
	Devon Capital LLC	10/18/02	622-034271-032
	Wessex Capital LLC	10/18/02	622-034270-032
	Wessex Capital LLC	5/8/02	622-029264-074
	Wessex Capital LLC	5/8/02	622-029264-074
	Haidar Jupiter Short Equity Fund LLC	11/15/01	622-026109-036
	Haidar Jupiter Short Equity Fund LLC	11/15/01	622-026110-036

20.	Haidar Jupiter Short Equity Fund LLC	11/15/01	622-026111-036
	Haidar Jupiter Short Equity Fund LLC	11/15/01	622-026113-114
	Haidar Jupiter Short Equity Fund LLC	11/15/01	622-026114-114
	Haidar Jupiter Short Equity Fund LLC	11/15/01	622-026112-114
	Haidar Jupiter Short Equity Fund LLC	11/1/01	622-025966-074
	Haidar Jupiter Short Equity Fund LLC	11/1/01	622-025968-074
	Haidar Jupiter Short Equity Fund LLC	11/1/01	622-025970-074
	Haidar Jupiter Short Equity Fund LLC	11/1/01	622-025969-114
	Haidar Jupiter Short Equity Fund LLC	11/1/01	622-025971-074
	Haidar Jupiter Short Equity Fund LLC	11/1/01	622-025975-036
	FCK Partners LLC	1/2/02	622-027212-036
	FCK Partners LLC	1/2/02	622-027214-074
	FCK Partners LLC	1/2/02	622-027210-036
	FCK Partners LLC	4/3/02	622-028515-074
	Hudson Investor LLC	1/2/02	622-027211-036
	Hudson Investor LLC	1/2/02	622-027213-114
	Hudson Investor LLC	1/2/02	622-027215-074
	Haidar Jupiter International LLC	1/8/02	622-027292-114
	Cayman Partners LLC	1/9/02	622-027290-074
	Mariner LDC	Unknown	622-026142-074
	Mariner LDC	Unknown	622-026141-114
	Mariner LDC	Unknown	622-026143-036

42.	Riverview Group LLC	7/23/01	622-024176-074
	Riverview Group LLC	7/23/01	622-024177-074
	Riverview Group LLC	7/23/01	622-024184-036
	Riverview Group LLC	7/23/01	622-024185-114
	Riverview Group LLC	7/23/01	622-024179-074
	Riverview Group LLC	7/23/01	622-024180-114
	Riverview Group LLC	7/23/01	622-024183-036
	Riverview Group LLC	7/23/01	622-024178-074
	Riverview Group LLC	7/23/01	622-024181-114
	Riverview Group LLC	7/23/01	622-024182-036
	Riverview Group LLC	11/18/02	622-034592-032
	Riverview Group LLC	11/18/02	622-034593-032
	Canadian Imperial Holdings Inc.	10/25/02	622-034182-114
	Canadian Imperial Holdings Inc.	10/25/02	622-034183-114
	Canadian Imperial Holdings Inc.	2/5/03	622-035160-114
	Jarko Investment Fund LLC	11/9/01	622-026047-074
	Jarko Investment Fund LLC	11/9/01	622-026048-074
	Jarko Investment Fund LLC	11/9/01	622-026049-074

Millennium

	Carroll Hinrichs & Co LLC	1/7/02	622-027278-074
	Umber Partners LLC	1/28/02	622-027523-114
	Chiswick Park LLC	3/1/02	622-027852-074
	Barnabus & Co. LLC	10/18/02	622-034266-032
	Barnabus & Co. LLC	10/18/02	622-034267-032
	Barnabus & Co. LLC	11/18/02	622-034490-032
	Barnabus & Co. LLC	11/18/02	622-03449-032
	Barnabus & Co. LLC	11/18/02	622-034492-032
	Barnabus & Co. LLC	6/20/02	539-041105-067
	Barnabus & Co. LLC	6/20/02	539-041114-077
	Barnabus & Co. LLC	6/20/02	539-041106-067
	Barnabus & Co. LLC	6/21/02	539-041098-078
	Ravenscourt LLC	6/20/02	622-029797-074

34. Goldstein did not open these accounts for Haidar and Millennium to pursue different investment strategies. On the contrary, he regularly used two or more of their accounts to purchase shares of the same mutual fund at or about the same time. He also routinely sold or exchanged fund shares held in several of their accounts at or about the same time. Significantly, these purchases, sales and exchanges often reflected the

same investment decision (i.e., a transfer from a money market fund to an equity fund in a particular sector, or vice versa).

35. Similarly, Goldstein did not open these accounts for Haidar and Millennium to segregate assets. Instead, Goldstein co-mingled the funds in the Haidar and Millennium accounts through frequent and large journal transfers of money. For example, from November 20, 2001 to November 21, 2003, Goldstein transferred funds between Haidar accounts on 29 occasions. Six of those transfers were for over a million dollars and 14 transfers were in the hundreds of thousands of dollars. From October 30, 2002 to January 8, 2003, Goldstein transferred funds between Millennium accounts on 11 occasions. One of those transfers was for over a million dollars and two of the transfers were in the hundreds of thousands of dollars.

36. Another deceptive practice Goldstein used to circumvent mutual funds' excessive trading restrictions was to open accounts using other FAs' identification numbers and execute market-timing trades using those numbers. FA identification numbers were used at MSDW to open customer accounts, execute securities transactions, and track commissions. Each FA received a primary FA identification number. In addition, two or more brokers could obtain an additional joint FA identification number to handle transactions and allocate commissions for a shared customer. While joint FA identification numbers were sometimes used legitimately to share commissions at MSDW, Goldstein did not use joint FA identification numbers for that purpose when executing market-timing trades for Haidar and Millennium. As evidence of this, he used many more identification numbers than would have ever been necessary to allocate

commissions for a shared customer. Together, Goldstein and Plotkin used at least eight different FA identification numbers to place trades for Haidar and Millennium.

37. By placing trades using different FA identification numbers, Goldstein made it harder for mutual funds to detect and prevent him from executing his customers' market-timing trades. To illustrate this point, for market-timing trades executed through a MSDW Choice account, mutual funds were required to contact MF Ops at MSDW and ask for information regarding the identity of the FA involved in the market-timing trading. In response to these requests, MSDW personnel provided the mutual funds with the FA's identification number or other identifying information. The mutual funds would then use this information to attempt to block further deceptive market-timing trading by the offending FA. Accordingly, the more FA identification numbers available to Goldstein and the more FAs purportedly involved the market-timing trading, the longer it potentially would take for mutual fund companies to completely bar him from trading on behalf of his clients in their funds.

38. The following is a summary of the fund complexes Goldstein and Plotkin made purchases in on behalf of Haidar and Millennium, the amounts purchased, the number of accounts used, and the number of FA identification numbers used to trade in each fund complex.

Haidar

AIM	$268,265,726	37	5
Alger	$376,338	1	1

Alliance	$38,834,435	18	3
American Century	$217,212,348	18	4
American	$10,628,096	2	1
Black Rock	$5,838,220	3	3
Bond Fund of America	$1,373,441	1	1
Columbia	$7,003,946	4	3
Credit Suisse	$9,200,513	6	3
Davis	$4,141,506	3	5
Delaware	$665,000	2	2
Dreyfus	$1,936,944	3	4
Eaton Vance	$25,901,367	24	4
EuroPacific	$1,525,166	2	1
Evergreen	$145,418,896	25	4
Excelsior	$1,675,415	2	2
Federated	$65,129,933	25	4
Fidelity	$1,453,452	4	2
Franklin	$89,361,426	13	5
Fremont	$10,218,184	8	3
Gabelli	$3,427,767	1	2
Goldman Sachs	$22,156,214	13	5
ING	$127,251,765	24	5
Janus	$38,540,740	27	5
John Hancock	$8,399,836	17	4
Lord Abbett	$23,248,115	16	4
Managers	$3,681,000	10	4
Marshall Funds	$56,201,320	17	3

Massachusetts Investors Trust	$405,934	1	1
MFS	$47,401,650	20	4
Morgan Stanley	$56,387,598	3	3
Nations Funds	$12,240,549	1	1
One Group	$4,984,704	4	3
Oppenheimer	$4,554,266	2	1
Phoenix	$4,696,449	7	4
PIMCO	$63,214,616	4	2
Pioneer	$27,388,667	16	4
Putnam	$416,726,800	28	4
Salomon Brothers	$37,193,023	14	3
Scudder	$59,917,150	26	4
Seligman	$32,213,530	25	5
Sit	$31,730,845	15	3
State Street	$2,237,164	2	1
Strong	$1,603,834	1	2
SunAmerica	$19,414,527	18	4
T Rowe Price	$6,514,512	7	4
Templeton Funds	$25,008,237	9	2
Transamerica	$2,644,479	1	1
Van Kampen	$789,789,678	42	6
Victory Portfolios	$2,420,991	1	1

Millennium

AIM	$31,436,058	9	5
Alliance	$11,698,963	7	6
American Century	$4,425,110	3	3
Columbia	$3,370,701	5	4
Delaware	$1,056,000	3	2
Eaton Vance	$1,865,814	2	2
Evergreen	$31,611,858	7	5
Federated	$21,660,755	11	7
Fidelity	$4,415,868	1	1
Franklin	$1,993,827	2	1
Fremont	$4,606,553	4	2
Gabelli	$707,700	2	2
Goldman Sachs	$18,424,581	8	5
ING	$6,576,057	3	2
Janus	$7,057,986	6	5
John Hancock	$1,529,400	5	4
Lord Abbett	$655,600	2	2
Managers	$310,000	1	1
Marshall Funds	$27,548,629	8	7
MFS	$19,676,036	9	5
Morgan Stanley	$10,105,364	3	2
New Perspective Fund	$1,127,848	1	1
One Group	$1,559,524	1	1

Oppenheimer	$4,990,876	2	1
Phoenix	$1,598,300	4	3
PIMCO	$5,111,265	2	2
Pioneer	$1,400,000	3	2
Putnam	$22,672,339	4	3
Salomon Brothers	$11,039,519	5	4
Scudder	$6,380,621	6	5
Seligman	$3,239,617	1	1
SIT	$3,703,969	3	3
Small Cap World Fund	$547,832	1	1
Sun America	$3,279,870	6	5
Van Kampen	$166,248,526	12	6

39. Goldstein did not use joint FA identification numbers to facilitate the allocation of commissions or asset-based fees among multiple brokers for a shared customer when executing market-timing trades for Haidar and Millennium. To illustrate this point, he opened accounts using a retiring FA's identification number and entered into multiple joint production agreements with another FA from the Mellville, New York office. According to the terms of the joint production agreements with the Mellville FA, the FA was entitled to receive a portion of any commissions generated by transactions executed using the joint FA identification number. Goldstein and Plotkin obtained three new FA identification numbers for every combination of Goldstein, Plotkin, and the Mellville FA. Additionally, these new joint numbers were often coded in such a way as to make it appear that the trades originated from the Mellville office, rather from the New York office where Goldstein worked and the trades were actually executed. The retiring

FA and the Mellville FA had little or no role in establishing the Haidar and Millennium customer relationships or servicing these customers' accounts.

40. In an effort to further disguise their market-timing activity, Goldstein purchased variable annuity contracts and executed trades through them on behalf of Haidar and Millennium. O'Donnell knew, or was reckless in not knowing, that trading through variable annuity contracts made it harder for mutual funds to identify Goldstein or his hedge fund customers because the issuer of the annuity would aggregate trades and transmit them to the mutual funds on a net basis. As a result, Goldstein was able to engage in additional deceptive market-timing trading on behalf of Haidar and Millennium.

41. Goldstein knew, or was reckless in not knowing, that the annuity contracts Haidar and Millennium purchased were sham transactions. After all, these hedge funds did not need or want life insurance, nor were they interested in tax-deferred investing or retirement planning for their employees. Furthermore, the additional fees associated with annuities made it a more expensive and unnecessarily complicated way for them to invest in mutual funds. With this knowledge, Goldstein advised his customers as to how to open a variable annuity contract and how to trade mutual funds through them. Ultimately, Goldstein opened and executed mutual fund trades through at least 40 variable annuity contracts for Haidar and 14 for Millennium.

42. From December 14, 2001 to February 10, 2003, Goldstein and his partners collectively received approximately 131 block notices from mutual fund companies asking them, using various methods of communication, to stop or limit their trading for Haidar or Millennium in their fund. Initially, Goldstein responded to these notices by

simply executing trades through new and different MSDW accounts that had not been blocked. Eventually, the fund companies began blocking trades based upon Goldstein and Plotkin's FA identification numbers. In response, Goldstein started placing new orders by using the FA identification numbers of other brokers or using new FA identification numbers he had obtained by entering into joint production agreements with other FAs.

43. By using different MSDW account and FA identification numbers, Goldstein was able to conceal his customers' market-timing trading, making it harder for mutual funds to detect and prevent such activity. As a result of this subterfuge, mutual fund companies were fooled into processing additional transactions from him and his customers that the mutual fund companies were trying to stop. While Attachment A details instances of such deceptive trading, outside of the annuity context, the following are a few examples of Goldstein and Plotkin's deliberate attempts to evade mutual fund companies' efforts to enforce their trading restrictions.

a. On February 19, 2002, Alliance Funds blocked trading in two Haidar accounts, one named Haidar Jupiter Fund LLC and one named Mariner LDC. Nevertheless, Goldstein then used different Haidar accounts to make 13 additional purchases or exchanges of Alliance funds between July 22, 2002 and August 9, 2002.

b. On March 19, 2002, Liberty Funds banned Goldstein and Plotkin from trading in their funds. Nonetheless, Goldstein made seven additional purchases in Liberty Funds for both Haidar and Millennium using different FA identification numbers between August 21, 2002 and September 17, 2002.

c. On June 24, 2002, Phoenix mutual funds banned Goldstein and Plotkin from trading in their funds. Notwithstanding this ban, in July and August 2002, Goldstein used a different FA identification number to make five new purchases of Phoenix funds for Millennium.

d. On July 30, 2002, Managers Funds banned Goldstein's partner Plotkin from making any purchases. Nevertheless, six additional purchases in Managers Funds were then made between August 6, 2002 and September 4, 2002 for Haidar and Millennium using other FA identification numbers associated with Goldstein and Plotkin.

e. Between June 4, 2002 and December 18, 2002, Goldstein and Plotkin received twenty block notices from AIM mutual funds stating that Haidar and Millennium funds would no longer be permitted to place orders in 2002. Nonetheless, after these notices were received, Goldstein and Plotkin utilized many different Haidar and Millennium accounts to continue making market-timing trades throughout 2002. They executed dozens of market-timing trades in AIM funds using six different accounts opened for Haidar from April 23, 2002 to December 16, 2002.

f. On November 22, 2002, Federated blocked trading in five Haidar accounts and one Millennium account. Notably, two of the blocked Haidar accounts were titled "Riverview." One was opened using Goldstein's FA identification number, while the other was opened using Plotkin's FA identification number. Despite the trading restriction, on December 4, 2002, Goldstein transferred $2.3 million from one of the barred Riverview accounts to a new account named Riverview that had been opened using a retiring FA's identification number. On December 16, 2002, the new Riverview account purchased 52,000 shares of the Federated International Small Company A fund.

On January 8, 2003, the new Riverview account sold its entire position in the Federated fund for a profit.

44. Goldstein knew, or was reckless in not knowing, that his request for and use of multiple MSDW accounts, variable annuity contracts, and FA identification numbers was for the purpose of circumventing mutual funds' trading restrictions by disguising his customers' market-timing trades, in order to deceive and defraud the mutual funds they targeted and their shareholders.

45. Goldstein left MSDW in November 2003. Goldstein earned approximately $546,257 from placing market-timing trades for Haidar and Millennium. By executing deceptive trades, Goldstein caused significant harm to the shareholders of the mutual funds targeted.

<u>Christopher O'Donnell</u>

46. Christopher O'Donnell was a financial advisor at MSDW's Rye, New York, office from August 1998 until March 2004. O'Donnell placed market-timing trades for Millennium and its trader Kovan Pillai from April 2002 until August 2003. During this short period, O'Donnell placed approximately 1,360 market-timing trades for Millennium—without even considering the market-timing trades he executed for Millennium through variable annuity contracts. Using numerous MSDW accounts, O'Donnell executed deceptive market-timing trades in at least 35 mutual fund complexes with a total trading volume of $1,534,289,843. As a result of his deceptive trading practices, O'Donnell was ranked as the second highest producer in his office in 2002 and 2003.

47. O'Donnell knew, or was reckless in not knowing, that he was engaged in

deceptive market-timing trading and that such trading violated mutual funds' trading restrictions.

48. From April 26, 2002 to March 12, 2003, O'Donnell opened at least 50 MSDW accounts for Millennium as part of the deceptive scheme. By opening these accounts, he was able to invest a larger amount of his customer's money in a target mutual fund without triggering the fund's surveillance threshold and when his hedge fund customer's market-timing trades were detected by a mutual fund he could continue to execute trades in the fund by shifting money to his customers' other accounts, despite the mutual fund's attempts to block his customers' trading. Nearly all the accounts opened by O'Donnell for Millennium bore the names of limited liability companies Millennium had formed to facilitate market-timing trades. The use of such names was misleading because they had no apparent relationship to Millennium and prevented mutual funds from easily associating Millennium with the excessive trading. The following are the Millennium accounts O'Donnell opened:

	Gilmore and Gillespie LLC	4/26/02	723-060178-143
	Wyatt, Atwood & Co., LLC	4/26/02	723-060177-143
	Gahn & McElroy, LLC	4/26/02	723-060179-143
	Mazzard Group LLC	4/26/02	723-060176-143
	Auric Ventures LLC	6/14/02	723-060195-143
	Linkage Associates, LLC	6/14/02	723-060193-143
	Napa Drive LLC	6/14/02	723-060196-143

8.	Palomino Enterprises LLC	7/31/02	723-060202-015
	Periwinkle LLC	9/6/02	723-060304-143
	Smike & Co. LLC	10/3/02	723-060210-143
	Periwinkle LLC	10/22/02	723-060217-002
	Mazzard Group LLC	10/22/02	723-060215-002
	Gilmore and Gillespie LLC	10/22/02	723-060214-002
	Taiga Group LLC	10/22/02	723-060216-002
	Buka Group LLC	10/23/02	723-060219-002
	Lemata LLC	10/23/02	723-060220-002
	Chiba LLC	10/29/02	723-060221-002
	Exmoor Ltd.	11/1/02	723-012316-002
	Forest Green LLC #2	11/30/02	723-060259-011
	Buka Group LLC	12/10/02	723-060246-011
	Lemata LLC	12/10/02	723-060243-011
	Hobart Way LLC	12/10/02	723-060244-011
	Valonia LLC	12/10/02	723-060242-011
	Chiba LLC	12/10/02	723-060245-011
	Buka Group LLC	12/10/02	723-060246-011
	Osaykanyo LLC	12/10/02	723-060247-011
	Forest Green LLC	12/10/02	723-060257-011
	Valonia LLC	12/10/02	723-060242-011

29.	Redwing Group LLC	12/10/02	723-060241-011
	Forest Green LLC	12/31/02	723-060260-011
	Forest Green LLC	12/31/02	723-060261-011
	Umiak Partners LLC	1/13/03	723-060267-002
	Umiak Partners LLC	1/13/03	723-060268-002
	Acorn Way LLC	1/13/03	723-060269-002
	Acorn Way LLC	1/13/03	723-060270-002
	Tipton Associates LLC	1/13/03	723-060271-002
	Tipton Associates LLC	1/13/03	723-060272-002
	Cotton Tail Associates LLC	1/13/03	723-060263-002
	Cotton Tail Associates LLC	1/13/03	723-060264-002
	Saga Partners LLC	1/13/03	723-060265-002
	Saga Partners LLC	1/13/03	723-060266-002
	Optic Group LLC	2/26/03	723-060287-002
	Buka Group LLC	2/26/03	723-060288-002
	Hobart Way LLC	2/26/03	723-060294-002
	Valonia LLC	2/26/03	723-060291-002
	Napa Drive LLC	2/26/03	723-060290-002
	Chiba LLC	2/26/03	723-060293-002
	Osaykanyo LLC	2/26/03	723-060292-002
	Taiga Group LLC	2/26/03	723-060289-002

50.	Foxtail Ltd. LLC	3/12/03	723-012407-143

49. O'Donnell did not open these accounts for Millennium to pursue different investment strategies. On the contrary, he regularly used two or more of Millennium's accounts to purchase shares of the same mutual fund at or about the same time. He also routinely sold or exchanged fund shares held in several of Millennium's accounts at or about the same time. Significantly, these purchases, sales and exchanges often reflected the same investment decision (i.e., a transfer from a money market fund to an equity fund in a particular sector, or vice versa).

50. Similarly, O'Donnell did not open these accounts for Millennium to segregate assets. Instead, O'Donnell co-mingled the funds in the Millennium accounts through frequent and large journal transfers of money. From November 2002 until July 2003, O'Donnell transferred funds between Millennium accounts on 41 occasions. Eleven of the transfers were for over a million dollars and 19 of the transfers were for hundreds of thousands of dollars.

51. The timing and manner in which the numerous accounts were opened demonstrate that O'Donnell knowingly or recklessly engaged in deceptive trading practices to circumvent mutual funds' trading restrictions. To illustrate this point, O'Donnell's trading assistant recommended to Millennium that it place trades in a certain mutual fund through five particular accounts based upon his belief that these trades would be accepted by the mutual fund if executed through these accounts. O'Donnell then opened the recommended accounts for Millennium using five different entity names. His assistant also advised Millennium that the trades should be kept under $300,000 and

asked Millennium if they wanted him to recommend other accounts from which he believed trades would be accepted. If the accounts actually represented different investment strategies or separate asset pools, there would be no legitimate reason for O'Donnell or his trading assistant to advise Millennium as to the number of accounts in which to place the trades or the amount of each trade.

52. Another deceptive practice O'Donnell used to circumvent mutual funds' excessive trading restrictions was to open accounts and execute trades using other FAs' identification numbers. As stated earlier, FA identification numbers were used at MSDW to open customer accounts, execute securities transactions, and track commissions. Each FA received a primary FA identification number. In addition, two or more brokers could obtain a joint FA identification number to handle transactions and allocate commissions for a shared customer. While joint FA identification numbers were sometimes used legitimately to share commissions at MSDW, O'Donnell did not use joint FA identification numbers for that purpose when executing market-timing trades for Millennium.

53. O'Donnell used at least three different FA identification numbers in order to place trades for Millennium. Besides his primary FA identification number, ("O'Donnell identification number"), he obtained two supplemental identification numbers by entering into joint production agreements with junior FAs in his office. O'Donnell obtained the first FA identification number though a joint production agreement with David Cusano on or about October 21, 2002, ("O'Donnell/Cusano identification number") and he obtained the second FA identification number through a

joint production agreement with Michael Gaetano on or about October 31, 2002 ("O'Donnell/Gaetano identification number").

54. By placing trades using different FA identification numbers, O'Donnell made it harder for mutual funds to detect and prevent him from executing his customers' market-timing trades. To illustrate this point, for market-timing trades executed through a MSDW Choice account, mutual funds were required to contact MF Ops at MSDW and ask for information regarding the identity of the FA involved in the market-timing trading. In response to these requests, MSDW personnel provided the mutual funds with the FA's identification number or other identifying information. The mutual funds would then use this information to attempt to block further deceptive market-timing trading by the offending FA. Accordingly, the more FA identification numbers available to O'Donnell and the more FAs purportedly involved in the market-timing trading, the longer it potentially would take for mutual fund companies to completely bar him from trading on behalf of his clients in their funds.

55. The following is a summary of the fund complexes O'Donnell made purchases in on behalf of Millennium, the amounts purchased, the number of accounts used, and the number of FA identification numbers used to trade in each fund complex.

AIM	290,597,970	17	3
Alliance	51,772,015	22	2
American Century	38,725,698	8	2
Citizens Funds	2,032,086	1	1
Columbia	9,052,728	3	1

Credit Suisse	5,099,747	8	2
Delaware	4,258,190	3	1
Dreyfus	3,031,623	7	2
Evergreen	73,956,505	16	3
Fidelity	11,133,348	1	1
Franklin	41,985,434	11	2
Gabelli	27,249,628	16	2
Goldman Sachs	40,551,550	10	2
ING	51,711,148	16	2
Ivy Fund	5,886,116	1	1
Janus	34,159,261	2	1
John Hancock	3,200,000	14	2
Liberty	3,056,625	2	1
Lord Abbett	6,168,019	4	2
Managers Funds	6,389,403	3	2
MFS	68,068,258	17	3
Morgan Stanley	50,221,447	13	2
Nations Fund	38,767,938	5	1
Oppenheimer	86,351,865	10	2
Phoenix	5,734,801	8	1
Pioneer	14,745,000	12	2
Putnam	189,216,885	11	2
Scudder	134,727,187	15	2
Seligman	10,347,163	18	3
SIT	26,424,465	13	2
Sun America	10,860,441	9	2

T Rowe Price	24,092,119	16	2
Templeton	53,030,435	15	3
Thornburg	300,000	1	1
Van Kampen	111,384,745	13	2

56. O'Donnell did not use joint FA identification numbers to facilitate the allocation of commissions among multiple brokers for a shared customer when executing market-timing trades for Millennium. To illustrate this point, he obtained new FA identification numbers by entering into joint production agreements with two junior FAs in his office. These FAs had little or no role in establishing the Millennium customer relationship or servicing its accounts. The true nature of these agreements is demonstrated by the fact that under each of the joint production agreements O'Donnell received 99% of the revenue earned for business placed under that number, leaving the junior FA with only 1%.

57. In an effort to further disguise their market-timing activities, O'Donnell purchased variable annuity contracts and executed trades on behalf of Millennium. O'Donnell knew, or was reckless in not knowing, that trading through variable annuity contracts made it harder for mutual funds to identify O'Donnell or his hedge fund customer because the issuer of the insurance would aggregate trades and transmit them to the mutual funds on a net basis. Thus, O'Donnell was able to engage in additional deceptive market-timing trading on behalf of Millennium.

58. O'Donnell knew, or was reckless in not knowing, that the contracts Millennium purchased were sham transactions. After all, Millennium did not need or want life insurance, nor was it interested in tax-deferred investing or retirement planning

for its employees. Furthermore, the additional fees associated with this insurance product made it a more expensive and unnecessarily complicated way for Millennium to invest in mutual funds. O'Donnell has acknowledged that the purpose of these variable annuity contracts was to market time international mutual funds. With this knowledge, O'Donnell facilitated the purchase of at least 10 variable annuity contracts and executed mutual fund trades through them on behalf of Millennium.

59. From May 21, 2002 to May 28, 2003, O'Donnell and his partners collectively received approximately 94 block notices from mutual fund companies, using various methods of communication, asking him to stop or limit their trading for Millennium in their fund. Despite these repeated requests, O'Donnell continued to execute market-timing trades with the same funds through other Millennium accounts and by using other FA identification numbers.

60. By using different MSDW account and FA identification numbers, O'Donnell was able to conceal his customers' market-timing trading, making it harder for mutual funds to detect and prevent such activity. As a result of this subterfuge, mutual fund companies were fooled into processing additional transactions that they were trying to stop from him and his customers. While Attachment B details instances of such deceptive trading, outside of the annuity context, the following are a few examples of O'Donnell's deliberate attempts to evade mutual fund companies' efforts to enforce their trading restrictions.

a. From April 29, 2002 through October 3, 2002, O'Donnell opened all Millennium accounts under his own identification number. On October 9, 2002, AIM mutual funds banned O'Donnell from trading in their funds. On October 21, 2002, O'Donnell obtained a new joint FA identification number, the O'Donnell/Cusano identification number. The next day, he opened four Millennium accounts using the O'Donnell/Cusano identification number: Mazzard LLC, Periwinkle LLC, Gilmore and Gillespie LLC, and Taiga LLC. On October 29, 2002, he opened a fifth Millennium account, Chiba LLC, using the O'Donnell/Cusano identification number. On November 8, 2002, he funded the Gilmore & Gillespie LLC account by journal transferring $2 million dollars into it from a previously opened Millennium account. Despite the trading bar, on November 15, 2002, O'Donnell used four of the new accounts—Chiba, Mazzard, Taiga, and Periwinkle—to purchase $1.5 million, $1.3 million, $1 million, and $1.5 million respectively of shares in the AIM International Growth Fund. On November 27, 2002, all four of these accounts sold their positions. On January 2, 2003, all four of these accounts and the Gilmore & Gillespie account were used to purchase $1.5 million each in the AIM International Growth Fund. These positions were sold on January 8, 2003.

b. On July 24, 2002, Oppenheimer mutual funds banned O'Donnell from trading in their funds. Nevertheless, O'Donnell used the O'Donnell/Gaetano identification number to make seven purchases in Oppenheimer funds in January and February 2003 using five different Millennium accounts with a total trading volume of $5,026,123.

c. On August 9, 2002, T.Rowe Price mutual funds banned O'Donnell from trading in their funds. Nonetheless, from September to October 2002, O'Donnell made eight additional purchases in T. Rowe Price funds for Millenium under his FA identification number, then beginning in January of 2003, he used the O'Donnell/Gaetano identification number to make six additional purchases in T.Rowe Price funds through six Millennium accounts totaling $3,431,217.

d. On August 9, 2002, American Century mutual funds banned O'Donnell from trading in their funds and threatened to bar all trades from the Rye Branch if he violated that ban. Notwithstanding this prohibition, in January of 2003, he made three purchases in an American Century fund under the O'Donnell/Gaetano identification number with total trading volume of $1,385,014.

e. Around February 26, 2003, Alliance Funds banned O'Donnell from trading in their funds. Notwithstanding this ban, he subsequently made 14 additional purchases in eight different Millennium accounts using the O'Donnell/Cusano identification number. An example of one of these trades is as follows: on March 3, 2003, Alliance cancelled a trade in a Millennium account named Smike & Co. LLC because it was identified as a market-timing trader. On that same day, O'Donnell transferred $1.8 million from the Smike & Co. account to a Millennium account named Chiba LLC. On March 5, 2003, the Chiba account was used to make four purchases in Alliance funds: $200,000 in the All Asia Investment Fund, $170,000 in the Worldwide Privatization Fund, $180,000 in the International Premium Growth Fund, and $150,000 in the New Europe Fund.

61. O'Donnell knew, or was reckless in not knowing, that his request for and use of multiple MSDW accounts, variable annuity contracts, and FA identification numbers was for the purpose of circumventing mutual funds' trading restrictions by disguising his customer's market-timing activity, in order to deceive and defraud the mutual funds they targeted and their shareholders.

62. O'Donnell left MSDW in March 2004. O'Donnell earned approximately $390,677 from placing market-timing trades for Millennium. In executing these deceptive trades, O'Donnell caused significant harm to shareholders of the mutual funds targeted.

FIRST CLAIM

Violations of Section 17(a) of the Securities Act

63. Paragraphs 1 through 62 are realleged and incorporated by reference as if set forth fully herein.

64. The Defendants knowingly, recklessly, or negligently in the offer or sale of securities, by the use of the means or instrumentalities of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices or courses of business which operated as a fraud or deceit upon purchasers of securities.

65. By engaging in the foregoing conduct, the Defendants violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

66. Paragraphs 1 through 62 are realleged and incorporated by reference as if set forth fully herein.

67. The Defendants knowingly or recklessly by the use of the means or

instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons.

68. By engaging in the foregoing conduct, the Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

JURY DEMAND

69. The Commission hereby demands trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Permanently enjoin the Defendants and their respective agents, servants, employees, attorneys, assigns and all those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from directly or indirectly engaging in violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and 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];

B. Order each defendant to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [5 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act

[15 U.S.C. § 78u(d)(3)]; and

C. Grant such other and further relief as this Court deems necessary and appropriate under the circumstances.

Respectfully submitted,

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