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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STEPHEN J. TREADWAY AND KENNETH W. CORBA, Defendant(s).	04 Civ. 3464 (VM) **FIRST AMENDED COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa, Sections 209(e)(1) and 214 of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-9(e)(1) & 80b-14, and Sections 42(d), 42(e)(1) and 44 of the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. §§ 80a-41(d), 80a-41(e)(1) & 80a-43. Defendants have, directly or indirectly, made use of the means or instrumentalities

of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, Section 214 of the Advisers Act, 15 U.S.C. § 80b-14, and Section 44 of the Investment Company Act, 15 U.S.C. § 80a-43, because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws occurred within this district.

SUMMARY

3. This action concerns a fraud perpetrated by defendants on unsuspecting investors in several mutual funds that are part of the PIMCO Funds: Multi-Manager Series ("PIMCO Funds" or the "Funds"). The PIMCO Funds' prospectuses represented to investors that the Funds would limit a practice known as market timing (the frequent buying and selling of shares of the same mutual fund). Consistent with this policy, the Funds actively policed market timing activities and prevented some Fund shareholders from engaging in it. However, without any disclosure to Fund shareholders (and contrary to representations), the defendants orchestrated a secret arrangement with one preferred client to allow market timing in amounts exceeding $4 billion in trading.

4. From February 2002 to April 2003, the PIMCO Funds' advisers, PIMCO Advisers Fund Management LLC ("PAFM") and PEA Capital LLC ("PEA"), and the Funds' distributing broker-dealer, PIMCO Advisors Distributors LLC ("PAD") (collectively, "PIMCO Entities"), provided "timing capacity" in their mutual funds to a market timer, Canary Capital Partners LLC ("Canary"), in return for Canary's investment of "sticky assets" in a mutual fund and a hedge fund from which PAFM and PEA earned management fees. "Sticky assets" are long-term investments made in exchange for permitting market timing in mutual

funds. The prospectuses for the mutual funds failed to disclose that an agreement had been made to permit timing in the funds in exchange for sticky assets. In addition, the prospectuses gave the misleading impression that the mutual funds discouraged timing.

5. At the height of the agreement, Canary used over $60 million in timing capacity in several different mutual funds and invested $27 million in sticky assets into a mutual fund and a hedge fund.

6. Stephen J. Treadway, the former CEO of PAFM and PAD, as well as the former Chairman of the Board of Trustees for the PIMCO Funds: Multi-Manager Series, approved the market timing arrangement in approximately January 2002. Treadway, however, did not disclose his knowledge of the arrangement to the Board of Trustees until approximately September 2003.

7. Kenneth W. Corba, PEA's former Chief Executive Officer, negotiated and approved the timing and sticky asset arrangement with Canary. He also managed the PIMCO Growth Fund, which provided $30 million in market timing capacity to Canary, and the PIMCO Select Growth Fund, which received $25 million in sticky assets from Canary.

8. Defendants permitted the arrangement with Canary despite their awareness of the potential harmful effects of timing on mutual funds and an ability to detect and prevent timing.

9. Through this conduct, Treadway and Corba violated Section 17(a) of the Securities Act, violated, or aided and abetted violations of, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, violated Section 34(b) of the Investment Company Act, aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act, and breached their fiduciary duties under Section 36(a) of the Investment Company Act.

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17. In October 2001, representatives of a registered broker-dealer (the "broker representatives") were introduced to PEA by a third party trust company. The representatives sought market timing capacity in the PIMCO family of funds for their clients.

18. In or around early November 2001, the broker representatives met with Corba and PEA's former Senior Vice President of Institutional Marketing. At this meeting, which occurred in Corba's office, the broker representatives stated their interest in arranging for approximately $100 million in trading capacity in the PIMCO family of funds at a rate of three to four round-trip exchanges per month. The broker representatives also specified that they only wanted capacity in funds where their client's investment would consist of 3% or less of the fund value. In exchange for this ability to market time, the broker representatives proposed a long-term investment consisting of 25% of the value of trading capacity into one of the PIMCO Entities' other investment products.

19. After the meeting with the broker representatives, Corba met with PEA's managing directors and portfolio managers regarding the proposed arrangement. At this meeting, Corba indicated that PEA was entering a market timing relationship involving PEA's growth-type funds (i.e., the Growth, Target, and Innovation Funds).

20. After the meeting with the managing directors and portfolio managers, Corba instructed PEA's former Senior Vice President of Institutional Marketing to work out an agreement that permitted trading capacity in the PIMCO Growth, Target, and Innovation Funds. The terms of the agreement were that Canary would invest $100 million in the Growth, Target, and Innovation Funds; the assets could be traded in up to four round-trips per month; the amount of money invested in each fund by Canary could not exceed 3% of the fund's assets; and Canary agreed to make a long-term investment representing 25% of the assets under management into the PIMCO Select Growth Fund.

21. In or about January 2002, Corba met with Treadway to discuss the proposed market timing relationship. At this meeting, Corba told Treadway that a member of a very wealthy and reputable family, Edward Stern, was interested in the PIMCO Funds and in establishing a long-term relationship with PEA. Corba also told Treadway at this meeting that he wanted to get Stern to invest into the Select Growth Fund. Corba further told Treadway that Stern was interested in active trading that could potentially run afoul of the PIMCO Entities' market timing policies. In describing the proposed arrangement to Treadway, Corba stated that the PIMCO Entities would be informed about Stern's trades and that Stern would not invest more than 3% into any one of the PEA-managed funds at any one time.

22. Corba needed Treadway's approval to proceed with the Stern relationship because it involved a significant amount of money and the accommodation of market timing. Corba also needed Treadway's approval because Treadway was the Chairman of the PIMCO Funds and the PAD "timing police" ultimately reported to Treadway. At the meeting with Corba, Treadway approved the relationship with Stern.

23. In February 2002, Canary executed its first round-trip exchange in the PIMCO Innovation Fund. After the execution of this transaction, however, the portfolio manager for the PIMCO Innovation Fund decided that the Canary timing activity was too disruptive and forbade further trading by Canary in the fund.

24. On or about March 5, 2002, Corba and PEA's former Senior Vice President of Institutional Marketing met with Stern and the broker representatives at The Racquet Club in New York City and discussed, among other things, the market timing agreement between PEA and Canary. They discussed that the agreement permitted four round-trip exchanges in each fund per month and included a 25% long-term investment in the PIMCO Select Growth Fund. In addition, Stern expressed an interest in obtaining additional capacity in other

PIMCO Funds and investing in a PIMCO hedge fund. Corba told Stern about the PIMCO Equity Advisors Horizon Fund LP (the "Horizon Fund") and, specifically, that it had a good performance record. The Horizon Fund was a hedge fund focused on small cap growth with assets of $31.1 million as of February 28, 2003.

25. Throughout March 2002, Stern continued to express an interest in obtaining additional capacity in other PIMCO Funds. Corba knew that Stern was disappointed about losing capacity in the Innovation Fund. Corba, therefore, told PEA's former Senior Vice President of Institutional Marketing that Canary could consider the Opportunity Fund if they were interested but that because it was a much smaller fund the capacity level would not be the same as what they had with the Innovation Fund.

26. On or about March 22, 2002, Stern met with the portfolio manager for the Horizon and Opportunity Funds and PEA's former Senior Vice President of Institutional Marketing to learn about the Horizon Fund. On March 25, 2002, the former Senior Vice President of Institutional Marketing informed Corba that Canary still wanted to invest in the Innovation and Opportunity Funds as part of the deal. Corba knew that part of the long term investment in the Horizon Fund would be to gain further access to the funds including the Opportunity Fund.

27. Soon after the March 22, 2002 meeting with Stern, Canary invested $2 million in the Horizon Fund on a long-term basis and received $5 million in trading capacity in the Opportunity Fund.

28. In addition, Canary obtained a waiver of the lock-up period for investments into the Horizon Fund in the event the market timing relationship with Canary and PEA ended.

29. PEA received 1% of total assets under management and a performance fee consisting of 20% of the net profits generated by the fund in annual fees from the Horizon Fund. Likewise, PAFM and PEA collectively

Further, as CEO of PEA, the investment sub-adviser at which all of the market timing occurred, as portfolio manager for the PEA Growth Fund, one of the funds that provided timing capacity for Canary, and as portfolio manager for the PEA Select Growth Fund, the fund that received $25 million in sticky assets from Canary, Corba had authority over the content of portions of the fund summary statements within the prospectus. Specifically, he provided information concerning fund investment objectives and guidelines, fund holdings, and fund capitalization. In doing so, Corba knew that such information would be directly incorporated into the prospectus and thereby disseminated to the public. In providing this information, Corba made material misrepresentations and omissions by failing to disclose the sticky asset and market timing arrangement with Canary.

40. PAD froze nearly 400 accounts in 2002 because of market timing or frequent trading in those accounts. From January 2003 through October 2003, PAD sent 104 warning letters to registered representatives, prohibited 67 registered representatives from selling PIMCO Funds, and froze 317 accounts.

41. In fact, in furtherance of the stated policy, PAD prevented some shareholders from performing exchanges based on the policy articulated in the prospectus. PAD monitored the trading patterns in the PIMCO Funds and, in so doing, was able to identify some market timers. When PAD identified market timers, it sent letters to them warning that they could not use PIMCO Funds to execute market timing strategies. Specifically, these letters stated that frequent transactions violated prospectus policies and were detrimental to the Funds and harmful to shareholders. As a further measure, PAD instructed the transfer agent for the PIMCO Funds to block or freeze trades in market timers' accounts.

42. PAD maintained a log listing broker-dealers and registered representatives identified as market timers. On the log, PAD identified the market timer and the action taken to deter that entity from continuing to time the PIMCO Funds, including whether a warning letter was sent, the account was frozen, or the

56. Canary continued, however, to time the Opportunity Fund until on or around April 3, 2003, and kept its sticky asset investment in the Horizon Fund until on or around May 31, 2003.

FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

(Against Both Defendants)

57. The Commission realleges and incorporates by reference ¶¶ 1 through 56 above.

58. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:

a. with scienter, employed devices, schemes, or artifices to defraud;

b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

59. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

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SECOND CLAIM FOR RELIEF

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

Violations and Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

(Against Both Defendants)

60. The Commission realleges and incorporates by reference ¶¶ 1 through 56 above.

61. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

62. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

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63. In the alternative, defendants Treadway and Corba, and each of them, knowingly provided substantial assistance to PAFM's, PEA's and PAD's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

64. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendants Treadway and Corba aided and abetted PAFM's, PEA's and PAD's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

THIRD CLAIM FOR RELIEF

FRAUD BY AN INVESTMENT ADVISER

Aiding and Abetting Violations of Section 206(1) and 206(2) of the Advisers Act

(Against Both Defendants)

65. The Commission realleges and incorporates by reference ¶¶ 1 through 56 above.

66. PAFM and PEA, and each of them, by engaging in the conduct described above, directly or indirectly, by use of the mails or means or instrumentalities of interstate commerce:

a. with scienter, employed devices, schemes, or artifices to defraud clients or prospective clients;

b. engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients.

67. By engaging in the conduct described above, PAFM and PEA violated Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

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68. Defendants Treadway and Corba, and each of them, knowingly provided substantial assistance to PAFM's and PEA's violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

69. By engaging in the conduct described above and pursuant to Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d), defendants Treadway and Corba aided and abetted PAFM's and PEA's violations, and unless restrained and enjoined will continue to aid and abet violations, of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

FOURTH CLAIM FOR RELIEF

MISREPRESENTATIONS AND OMISSIONS IN INVESTMENT COMPANY REGISTRATION STATEMENT

Violations of Section 34(b) of the Investment Company Act

(Against Both Defendants)

70. The Commission realleges and incorporates by reference ¶¶ 1 through 56 above.

71. Defendants Treadway and Corba, and each of them, by engaging in the conduct described above:

a. made untrue statements of a material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, the keeping of which is required pursuant to Section 31(a), 15 U.S.C. 80a-30(a);

b. omitted to state in such documents facts necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

[X] U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

Telephone: (323) 965-3998; Fax: (323) 965-3908

On November 10, 2004, I served the document entitled **FIRST AMENDED COMPLAINT** upon the parties to this action addressed as stated on the attached service list:

[X] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

[ ] **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

[ ] **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

[ ] **PERSONAL SERVICE:** I caused to be personally delivered each such envelope by hand to the office of the addressee in the attached service list.

[ ] **FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

[ ] **FAX (BY AGREEMENT ONLY):** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

[X] **(Federal)** I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct

Date: November 10, 2004

Magnolia M. Marcelo
MAGNOLIA M. MARCELO

SEC v. PIMCO Advisors Fund Management LLC, et al.
United States District Court - Southern District of New York
Case No. 04 CV 3464 (VM)
(LA-2796)

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