

interests in Absolute Fund, LP (“Absolute”), an investment vehicle that Konior claimed had \$220 million in trading capital. Konior claimed that Absolute would provide millions of dollars in matching funds and establish a “first loss” trading program that would allow the hedge fund investors to dramatically increase their potential profits.

3. For at least the final four investors in Absolute, who invested a total of approximately \$2 million, Defendants did not set up the first loss trading program. Instead, Defendants misappropriated and misused the proceeds from the limited partnership interests to pay the redemptions of earlier investors, to make payments to Konior, and for other unauthorized personal and business expenses.

4. Since at least as early as November 2011, Konior has falsely represented to at least these four hedge fund investors that: (1) upon receipt of their investments, Absolute would allocate capital of up to nine times the amount of the investor’s capital contribution; (2) Absolute would place the combined funds in a sub-account at a broker-dealer through which the investor could trade securities; and (3) any trading losses would be allocated first to the investor’s contribution amount, and any trading profits would be shared between Absolute and the investor.

5. In reality, however, Absolute never operated the “first loss” trading program as promised. For example, Absolute did not provide these investors with any matching funds, or satisfy investors’ demands to return their capital contribution. Absolute’s current assets represent only a fraction of the amount needed to repay its current investors.

VIOLATIONS

6. By virtue of the conduct and as alleged further herein, Defendants Konior, AFA and AFM violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rules 10b-5(a), (b) and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b), and

(c)]; and Defendant Konior, (i) as a control person of AFA and AFM under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], violated Section 10(b) of the Exchange Act and Rules 10b-5(a), (b), and (c) thereunder, and (ii) aided and abetted AFA and AFM's violations of Section 10(b) of the Exchange Act and Rules 10b-5(a), (b), and (c) thereunder.

NATURE OF THE PROCEEDING AND RELIEF SOUGHT

7. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], seeking to restrain and enjoin permanently Defendants from engaging in the acts, practices and courses of business alleged herein.

8. The Commission also seeks immediate relief, including an asset freeze, a verified accounting, an order prohibiting the destruction or alteration of documents, and expedited discovery.

9. In addition to the relief recited above, the Commission seeks: (i) a final judgment ordering Defendants to disgorge their ill-gotten gains with prejudgment interest thereon on a joint and several basis; (ii) a final judgment ordering Defendants to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and (iii) such other relief as the Court deems just and appropriate.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§78u(d) and 78aa]. The Defendants, directly or indirectly, have used the mails and the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business alleged herein, many of which occurred in this District. During the relevant period, Defendants resided

in and/or maintained their principal place of business in Manhattan.

DEFENDANTS

11. **Jason Konior**, age 38, is a resident of Manhattan, and the founder, managing general partner and investment adviser of AFA, and the principal manager and member of AFM. He at one time held Series 7 and 63 securities licenses. Between 1996 and 2005, Konior was employed at 17 different securities firms, where numerous customer complaints were filed against him. Several such firms found that Konior violated their compliance policies and procedures by, *inter alia*, engaging in improper trading in customer accounts, making unauthorized transactions, and recommending unsuitable investments. In April 2008, Konior pleaded guilty to a misdemeanor charge of attempted repeated failure to file income taxes and agreed to pay \$107,445 in back taxes, penalties and interest.

12. **AFA** is a New York limited liability company with its principal place of business in Manhattan. AFA is an unregistered investment adviser formed by Konior in 2006. As of September 2011, Konior claimed, falsely, that AFA had approximately \$220 million in trading capital. AFA and Konior marketed limited partnership interests in non-party Absolute to potential investors.

13. **AFM** is a New York limited liability company with its principal place of business in Manhattan. AFM is the general partner and investment manager of Absolute. Konior is the principal manager and member of AFM. AFM is not registered with the Commission in any capacity.

RELEVANT ENTITY

14. **Absolute**, a New York limited partnership with its principal place of business in Manhattan, was formed by Konior on July 15, 2006. AFM serves as the manager of Absolute.

Beginning at least as early as 2008, Konior, AFA and AFM offered for sale, through a Private Placement Memorandum (“PPM”), unregistered limited partnership interests in Absolute with a minimum investment of \$250,000. The PPM states that the primary investment objective of Absolute is “growth of capital” and that the partnership may engage in “all forms of investment.”

FACTUAL ALLEGATIONS

A. The First Loss Investment Program

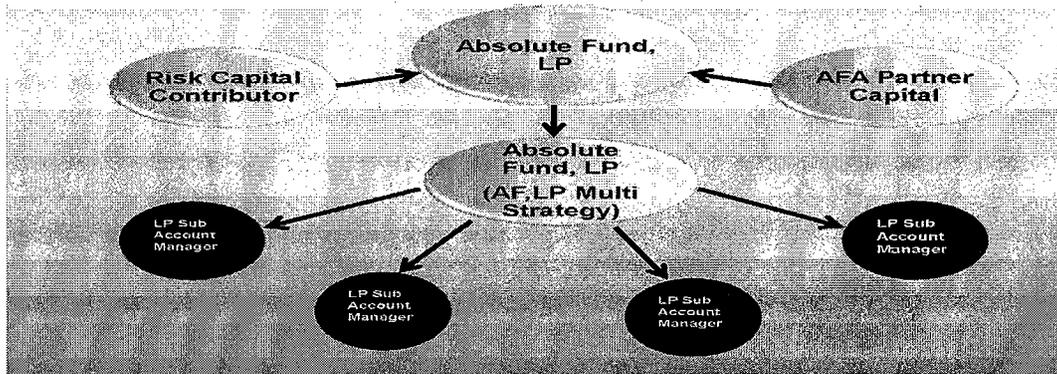
15. As described in AFA’s marketing materials, Absolute provided seed capital allocations to new and emerging hedge funds. These hedge funds would purchase limited partnership interests in Absolute and, in return, Absolute would generally match their investments on a ratio of up to 9:1. Thus, a hedge fund’s \$1 million investment in Absolute would be matched by \$9 million from Absolute, resulting in \$10 million in investment capital. Konior, AFA and AFM claimed that Absolute would place the combined funds in an Absolute sub-account at a brokerage firm that the hedge fund investor would manage.

16. Any trading losses in the sub-account would be allocated 100% to the hedge fund investor up to the amount of its capital contribution. This arrangement was referred to as a “first loss” model. The hedge fund investor purportedly would receive anywhere between 50% and 70% of any trading profits, depending on the negotiated terms of the agreement. The hedge fund investor also would pay a 1.5% annual management fee to AFM.

17. The purported structure is outlined in the following flow chart, which Konior created or directed the creation of, and which was included in the marketing materials provided to potential and actual investors in Absolute. The hedge fund investors are the “Risk Capital Contributors;” the matching funds to be provided by AFA are the “AFA Partner Capital;” and the combined funds were to be managed by the hedge fund investors at the “LP Sub Account

Manager” level.

AFA Flow Chart – Partnership Model



18. The marketing materials provided to investors by Defendants also included industry news articles about Absolute. One such article in a hedge fund news source states that Absolute is “looking to allocate upwards of \$50 million to managers.” This article quotes Konior as stating that Absolute is an “institutional investor” that “provide[s] managers an opportunity to run their strategy with Institutional Funding hence enhancing the fund’s marketability and exposure.”

19. A similar article included in the marketing materials states that Absolute intends to deploy \$10-\$25 million in capital to equity or options strategies, and that Absolute has 16 underlying hedge fund managers.

20. Absolute also placed articles in other financial news outlets that Defendants either provided to actual and potential investors or which were seen by these investors. An article in a hedge fund and private equity news source states that Absolute was then “run[ning] about \$220 million” and investing in 18 new hedge fund managers. The article quoted Konior as stating that many funds approach Absolute for financing and that, in addition to its first loss model, Absolute

allocates traditional assets to their best managers. At least one current investor in Absolute contacted Defendants after seeing this article.

21. Hedge funds began investing in Absolute's "first loss" investment program beginning at least as early as 2010. From that time until October 2011, Defendants caused Absolute to send most or all of the funds it obtained from the hedge fund investors to a prime broker and the hedge funds were able to enter into securities trades, as outlined in the marketing materials.

B. The Demise of Defendants' Strategy

22. Beginning in approximately August 2011, Absolute began to experience volatility and losses in the trading strategy.

23. Rather than disclosing the failure of its purported trading model and the resulting financial losses, Konior continued to seek additional investor capital for the scheme. Beginning in November 2011, Konior solicited and obtained at least \$11 million by selling limited partnership interests in Absolute. Some of the investors who bought these interests have been fully redeemed; others do not appear to have been fully redeemed. Defendants caused Absolute to use funds from new investors to repay redeeming investors. As alleged below, the final four investors in Absolute have not been repaid.

24. The investment management agreements entered into between Absolute, AFM and these final four investors represent that Absolute "has established a brokerage account" and "transferred assets in the form of cash to the Clearing Broker." The side letter agreements executed by AFM and the investors similarly provide that the investors' capital contribution shall be a "Side Pocket Investment," which is a segregated "Investment Account at one of the firm's Prime Brokerage relationships" under the custody of Absolute and in which the hedge fund

investors could direct securities trades.

25. In January 2011, AFA's marketing materials similarly represented that Absolute would form a sub-account at "one of AFA's Prime Brokerage relationships," and that Absolute would grant the manager trading authority on that account.

26. However, for three of the four final investors in Absolute, Absolute never funded any brokerage accounts and never provided any ability for them to trade. Konior instead misused their funds to repay other redeeming investors, to make payments to himself, and to pay other miscellaneous expenses.

27. For the fourth investor, Absolute appears to have funded a foreign exchange account with a portion of its funds and used the rest to repay other redeeming investors, to make payments to Konior, and to pay other miscellaneous expenses.

28. These unauthorized payments included AFA's and AFM's operating costs and Konior's personal expenses, including the purchase of a personal automobile and residential rental payments.

29. Accounts in the name of, or for the benefit of, Absolute currently have a total of approximately \$310,000 in assets, and thus, Absolute lacks sufficient funds to redeem these investors, absent solicitation of new investors in the "first loss" scheme.

C. Misrepresentations and Omissions to Investors

(1) Hedge Fund A

30. Defendants solicited and obtained from a Florida-based fund ("Hedge Fund A") a \$500,000 investment in Absolute, which Hedge Fund A transferred in three separate installments between November 23, 2011 and February 17, 2012. According to the terms of the investment management agreement and side letter agreement executed in February 2012 by Konior on

behalf of Absolute and AFM, and Hedge Fund A, Absolute would allocate \$2.5 million to a brokerage account for Hedge Fund A to trade. Under the agreements, Hedge Fund A would receive 100% of the first losses and 70% of the monthly net profits in the account.

31. Hedge Fund A was never able to trade in the sub-account, however, because Defendants never caused Absolute to provide Hedge Fund A with access to its own funds, to the promised additional \$2.5 million allocation, or to a trading account.

32. In response to repeated inquiries from Hedge Fund A, Konior represented on several occasions that Absolute would establish a trading account at various brokerage firms. For example, in a December 12, 2011 email to Hedge Fund A's principal, Konior represented that AFA would set up Hedge Fund A to trade live as soon as it received "the balance of the wire." On March 2, Konior represented that "we are set to have you trading next week."

33. On March 23, 2012, Konior represented that Defendants and Absolute used several trading platforms and that Hedge Fund A would be trading by the following week. On April 2, 2012, Konior emailed a trading platform demo to Hedge Fund A. On April 9, 2012, Konior represented that a trading account at a specific brokerage firm would be operational by April 10, 2012. On May 5, 2012, Hedge Fund A contacted another brokerage account to obtain its trading account login, based on Konior's representations about such an account, only to learn from that brokerage firm two days later that it was no longer associated with Absolute.

34. Hedge Fund A submitted a redemption request for \$500,000 on May 2, 2012, but, to date, has not received its funds from Defendants or Absolute. Konior promised Hedge Fund A's principal that he would return its funds by May 8, 2012, but failed to do so and has stopped returning Hedge Fund A's calls or emails.

35. Hedge Fund A's last wire transfer to Absolute for \$100,000 on February 17, 2012,

was commingled with other funds and then was used to pay, among other things, a redeeming investor that same day. Konior authorized these fund transfers.

(2) Hedge Fund B

36. A New York-based fund (“Hedge Fund B”), invested \$300,000 in Absolute on March 12, 2012. Hedge Fund B’s principal first learned of AFA through articles published on industry media sources, stating that AFA provided seed capital to hedge funds and intended to make additional allocations.

37. Hedge Fund B contacted AFA in January 2012, and spoke with Konior on February 2, 2012. Konior informed Hedge Fund B that, in return for its \$300,000 investment, AFA would allocate \$2.7 million in seed capital, to be transmitted to an AFA sub-account at a certain brokerage firm that Hedge Fund B would manage.

38. Konior further represented to Hedge Fund B that its investment would serve as the first loss protection for the entire \$3 million investment capital. Konior claimed that the firm would allocate trading profits 25% to AFA and 75% to Hedge Fund B.

39. Hedge Fund B executed the AFA subscription documents, including an investment management agreement and side letter agreement, on February 27, 2012.

40. Hedge Fund B sought to make trades in its sub-account as early as mid-March 2012, but was unable to do so. Just like he did with Hedge Fund A, Konior offered an array of excuses and repeatedly told Hedge Fund B that it soon would be able to trade through varying brokerage firms. However, to date, Hedge Fund B has been unable to trade in an AFA sub-account, and has never been provided access to its own capital or the purported \$2.7 million allocation.

41. On April 26, 2012, Hedge Fund B submitted a formal redemption request. Konior

promised to return Hedge Fund B's funds but stated that AFA would need to first transfer the funds from one brokerage account to another such account and then issue a wire transfer instruction. In an April 30, 2012, email, Konior represented to Hedge Fund B that he had expedited the wire. In a May 1 email, Konior again promised "will have for you today."

42. On May 3, 2012 email, Konior's legal counsel informed Hedge Fund B that Absolute had until May 31, 2012 to honor Hedge Fund B's redemption request under the terms of the side letter, and that Hedge Fund B would be required to execute a general release of legal claims as a condition to obtaining its funds on an expedited basis.

43. In reality, Defendants, without authority, used Hedge Fund B's \$300,000 investment on March 12, 2012 to pay, among other things, three redeeming investors. Konior authorized these fund transfers.

(3) Hedge Funds C and D

44. Recently, in reliance on Defendants' misrepresentations, two additional hedge funds made separate investments in Absolute. A New York-based hedge fund ("Hedge Fund C") invested \$700,000 on April 11, 2012, and a Florida-based hedge fund ("Hedge Fund D") invested \$400,000 in two separate installments on March 30 and April 2, 2012.

45. Defendants represented to Hedge Fund C and to Hedge Fund D that Absolute would contribute amounts in excess of their original investments to their sub-accounts, that Hedge Fund C and Hedge Fund D purportedly would have control over trading in these sub-accounts, and that Hedge Fund C and Hedge Fund D would absorb 100% of the first losses in their accounts and a portion of any profits.

46. Despite these representations, and after Defendants made multiple excuses and provided reassurances, Hedge Fund C has not yet been able to trade in any Absolute sub-

accounts, and Hedge Fund D may have the ability to trade in a foreign exchange account, but in an amount of no more than half of its investment.

47. Defendants caused Absolute to use the majority of the funds raised from Hedge Fund C and Hedge Fund D – approximately \$675,000 – to pay redemptions to earlier investors between April 2 and April 11, 2012. Konior authorized these fund transfers. Defendants and Absolute do not have sufficient funds to enable either of these new investors to trade or to redeem their investments.

FIRST CAUSE OF ACTION

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

(Antifraud violations, against all Defendants)

48. The Commission realleges and incorporates paragraphs 1 through 47 as if fully set forth herein.

49. As a result of the conduct described above, Defendants Konior, AFA, and AFM, 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 course of business which operated and operate as a fraud or deceit upon other persons.

50. By reason of the foregoing, Defendants Konior, AFA, and AFM, directly or indirectly violated, and unless enjoined and restrained will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

SECOND CAUSE OF ACTION

**Aiding and Abetting Violations of Section 10(b) of the
Exchange Act and Rule 10b-5
(against Defendant Konior)**

51. The Commission realleges and incorporates paragraphs 1 through 47 as if fully set forth herein.

52. Defendants AFA and/or AFM 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 course of business which operated and operate as a fraud or deceit upon other persons in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

53. Through the conduct alleged herein, Defendant Konior knowingly or recklessly provided substantial assistance to Defendants AFA and/or AFM in the commission of these violations.

54. By reason of the foregoing, Defendant Konior aided and abetted Defendants AFA's and/or AFM's violations of, and unless enjoined and restrained will continue to aid and abet violations of, Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder.

THIRD CAUSE OF ACTION

**Control Person Liability Under
Section 20(a) of the Exchange Act
(against Defendant Konior)**

55. The Commission realleges and incorporates paragraphs 1 through 47 as if fully set forth herein.

56. Defendants AFA and/or AFM 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 course of business which operated and operate as a fraud or deceit upon other persons in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

57. At all relevant times, Defendant Konior possessed, directly or indirectly, the power to direct and control AFA's and/or AFM's management and policies, including the conduct of their representatives, and was a controlling person of AFA and/or AFM and their representatives pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)]. Defendant Konior was a culpable participant in the fraudulent conduct described above, and directly induced much of the conduct and many of the misrepresentations and misstatements alleged herein.

58. By reason of his actions alleged herein, Defendant Konior is liable as a controlling person pursuant to Section 20(a) of the Exchange Act for AFA's and/or AFM's, and their representatives', violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and unless enjoined and restrained will again violate these provisions and rules.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court grant the following relief:

A. A Final Judgment permanently enjoining and restraining Defendants Konior, AFA and AFM from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rules 10b-5(a), (b) and (c) thereunder.

B. A Final Judgment ordering Defendants to disgorge all ill-gotten gains that they obtained as a result of the conduct, acts or courses of conduct described in this Complaint, and to pay prejudgment interest thereon on a joint and several basis.

C. A Final Judgment ordering Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

D. An Order freezing all of the Defendants' assets.

E. An Order directing each of the Defendants to file with this Court, and serve upon the Commission, a verified written accounting.

F. An Order enjoining and restraining each of the Defendants from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

- G. An Order permitting expedited discovery.
- H. Such other and further relief as this Court deems just and appropriate.

Dated: New York, New York
May 24, 2012

Respectfully Submitted,

SECURITIES AND EXCHANGE COMMISSION

By: 
George S. Canellos

Regional Director
New York Regional Office
3 World Financial Center, Room 400
New York, NY 10281
Telephone: (212) 336-0573 (Arnzen)
Fax: (703) 813-9465 (Arnzen)
E-mail: ArnzenA@sec.gov

Of Counsel:
Bruce Karpati
Ken C. Joseph
Lara Mehraban
Catherine Lifeso
Aaron P. Arnzen