

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
SECURITIES AND EXCHANGE COMMISSION,	)	Case No.
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LEE D. WEISS,	)	JURY TRIAL DEMANDED
FAMILY ENDOWMENT PARTNERS, LP,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
MIP GLOBAL, INC. f/k/a MOSAIC INVESTMENT	)	
PARTNERS, INC.,	)	
MOSAIC ENTERPRISES, INC.,	)	
MOSAIC INVESTMENT PARTNERS, INC.,	)	
WEISS CAPITAL REAL ESTATE GROUP, LLC,	)	
	)	
Relief Defendants.	)	
_____	)	

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The Securities and Exchange Commission (“Commission”) alleges the following against defendants Lee D. Weiss (“Weiss”) and Family Endowment Partners, L.P. (“FEP”) and relief defendants MIP Global, Inc. (“MIP Global”), Mosaic Enterprises, Inc. (“Mosaic Enterprises”), Mosaic Investment Partners, Inc. (“Mosaic”), and Weiss Capital Real Estate Group, LLC (“Weiss Capital”):

**PRELIMINARY STATEMENT**

1. This matter involves material misrepresentations and omissions and multiple schemes to defraud perpetrated by Weiss and FEP (“Defendants”). Throughout the relevant period, FEP was an investment adviser registered with the Commission and the adviser to individual clients and the hedge fund FEP Fund I, LP (“FEP Fund I”). As the indirect owner and managing partner of FEP, Weiss was responsible for all of FEP’s investment recommendations. Weiss also made investments on behalf of another hedge fund, the Catamaran Holding Fund, Ltd. (“Catamaran Fund”). Since at least 2010, Defendants have engaged in a pattern of self-dealing and failing to disclose material facts to clients concerning Defendants’ conflicts of interest, their use of investor funds, and the risks associated with the investments that they recommended or made on behalf of investors. Defendants’ serial misconduct illegitimately enriched Weiss by providing him with undisclosed compensation and an improper means to sustain his otherwise failing businesses.

2. First, between 2010 and 2012, Defendants advised and caused individual FEP clients, as well as FEP Fund I and the Catamaran Fund (collectively the “Hedge Funds”), to invest more than \$40 million in subsidiaries of a French company that purportedly had designed methods to reduce the harmful effects of tobacco smoking. The investments were generally in the form of “loan agreements,” though in fact they were securities. They were not publicly traded. But in promoting these illiquid securities, Defendants failed to disclose Weiss’s multiple conflicts of interest arising from his personal investment in the parent French company and his contemporaneous receipt, directly or indirectly, of over \$600,000 in payments from the company. Moreover, in July 2011 and afterward, Defendants continued to promote the

investments with knowledge – undisclosed to clients – that at least one client’s new investment would be used to pay delinquent interest owed to other FEP clients.

3. Second, between late 2012 and 2014, Defendants advised and caused five FEP clients to invest approximately \$8.25 million in notes or shares of companies under Weiss’s ownership or control. In breach of their fiduciary duties to these clients, Defendants failed to disclose that they intended to use – and did use – invested funds *not* for the benefit of Weiss’s companies that issued the notes or shares, but primarily to pay millions of dollars in delinquent debt and business expenses (such as payroll and rent) of FEP. Defendants also failed to disclose to the clients the significant risk that the notes obligating repayment of millions of dollars would never be repaid – or that they only could be repaid through new notes issued to clients – because the debtor company had no significant business operations and its liquid funds consisted almost entirely of the clients’ own note proceeds.

4. Third, in late 2011, Defendants advised and caused four FEP clients to invest \$5 million in a consumer loan portfolio managed by a specialty financing company (“Financing Company”). However, Defendants failed to disclose that Weiss stood to profit from these investments through a sham structure that he implemented. Although Financing Company offered to pay an annual return of approximately 18% on invested principal, Weiss arranged for the clients to receive a lesser return of approximately 9%. Weiss pocketed the difference for himself by routing the other payments through a purported third-party “manager,” which was supposed to provide insurance for the investments, but, in fact, performed no services. The only role played by the manager, an inactive company controlled by Weiss’s college friend, was to receive the interest payments from Financing Company. Weiss then directed those funds to bank accounts under his control or to other third parties.

5. In addition, Defendants managed FEP Fund I in a manner that was inconsistent with the investment strategy described in the offering materials for this fund. Furthermore, FEP, in violation of Commission rules, did not undertake at least one of two actions required each year of investment advisers with custody of client assets, namely, (1) preparing and distributing audited financial statements to FEP Fund I investors or (2) causing a surprise examination of FEP to occur. FEP also failed promptly to update its Form ADV (a disclosure document that investment advisers file under Commission rules) to advise clients of recent material events, including that FEP had received a qualified audit opinion for FEP Fund I and that Defendants were subject to a \$48 million arbitration award. Weiss knowingly or recklessly failed to ensure that FEP complied with these Commission rules.

6. Through the activities alleged in this Complaint, Defendants violated: (a) Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)]; (b) Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; (c) Sections 206(1), 206(2), 206(3), and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder [15 U.S.C. § 80b-6(1)-(4) and 17 C.F.R. § 275.206(4)-8]; (d) Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder [15 U.S.C. § 80b-6 and 17 C.F.R. § 275.206(4)-2] (Defendant FEP), or the prohibition on aiding and abetting the same (Defendant Weiss); and (e) Section 204(b)(5) of the Advisers Act and Rule 204-1 thereunder [15 U.S.C. § 80b-4(b)(5) and 17 C.F.R. § 275.204-1] (Defendant FEP), or the prohibition on aiding and abetting the same (Defendant Weiss).

### **JURISDICTION AND VENUE**

7. The Commission seeks a permanent injunction and disgorgement in this action pursuant to Section 20(b) of the Securities Act, Section 21(d)(1) of the Exchange Act, and Section 209(d) of the Advisers Act [15 U.S.C. §§ 77t(b), 78u(d)(1), and 80b-9(d)]. The Commission seeks civil penalties pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e) of the Advisers Act [15 U.S.C. §§ 77t(d), 78u(d)(3), and 80b-9(e)].

8. 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) and 77v(a)]; Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]; and Sections 209(d), 209(e) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14].

9. Venue is proper in this judicial district pursuant to Section 22(a) of the Securities Act, Section 27 of the Exchange Act, and Section 214(a) of the Advisers Act [15 U.S.C. §§ 77v(a), § 78aa, and 80b-14(a)] because Weiss resides in this judicial district and because certain of the acts and omissions constituting violations alleged herein occurred within this district.

10. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business described in this Complaint.

### **DEFENDANTS**

11. **Lee D. Weiss (“Weiss”)** is a resident of Newton, Massachusetts. He is the owner of Family Endowment Partners, LLC (“FEP, LLC”) and associated with FEP. Weiss is also currently associated as a registered representative with MIP Global, Inc., a broker-dealer

registered with the Commission and based in Puerto Rico (and separate from the Delaware corporation of the same name).

12. **Family Endowment Partners, LP (“FEP”)**, is a Delaware limited partnership with its principal place of business in Newton, Massachusetts and formerly in Boston, Massachusetts. FEP, LLC is the general partner of FEP. FEP has been registered with the Commission as an investment adviser since 2009 and provides discretionary and non-discretionary investment advice to high-net worth individuals, pension and profit-sharing plans, and charitable organizations. Weiss is the Managing Partner of FEP and controls its operations. According to FEP’s most recent Form ADV filed with the Commission in September 2015, FEP has approximately \$27 million of assets under management.

#### **RELIEF DEFENDANTS**

13. **MIP Global, Inc. f/k/a Mosaic Investment Partners, Inc. (“MIP Global”)** is a Delaware corporation for which Weiss is the Chief Executive Officer. In or around June 2013, the corporation changed its name from “Mosaic Investment Partners, Inc.” to “MIP Global, Inc.” Weiss was the sole owner of MIP Global until at least February 2015. During that month, less than two weeks after a customer arbitration hearing and the day before Weiss appeared for investigative testimony before Commission staff, Weiss signed documents purporting to transfer his ownership interest in MIP Global to a trust for the benefit of his minor children.

14. **Mosaic Enterprises, Inc. (“Mosaic Enterprises”)** is a Puerto Rico corporation for which Weiss is the Chief Executive Officer. Weiss was the sole owner of Mosaic Enterprises until at least February 2015. That month, as he had done with his interest in MIP Global, Weiss signed documents purporting to transfer his ownership interest in Mosaic Enterprises to an

irrevocable trust for the benefit of his minor children. Mosaic Enterprises is the owner of Mosaic Investment Partners, Inc., a corporation and investment adviser established in Puerto Rico.

15. **Mosaic Investment Partners, Inc. (“Mosaic”)** is a corporation that was established in Puerto Rico and is wholly owned by Mosaic Enterprises. Weiss is the Chief Executive Officer of Mosaic. Mosaic is registered as an investment adviser in Puerto Rico.

16. **Weiss Capital Real Estate Group, LLC (“Weiss Capital”)** is a Massachusetts limited liability company with its principal place of business in Newton, Massachusetts. Weiss is the manager and 99% owner of Weiss Capital.

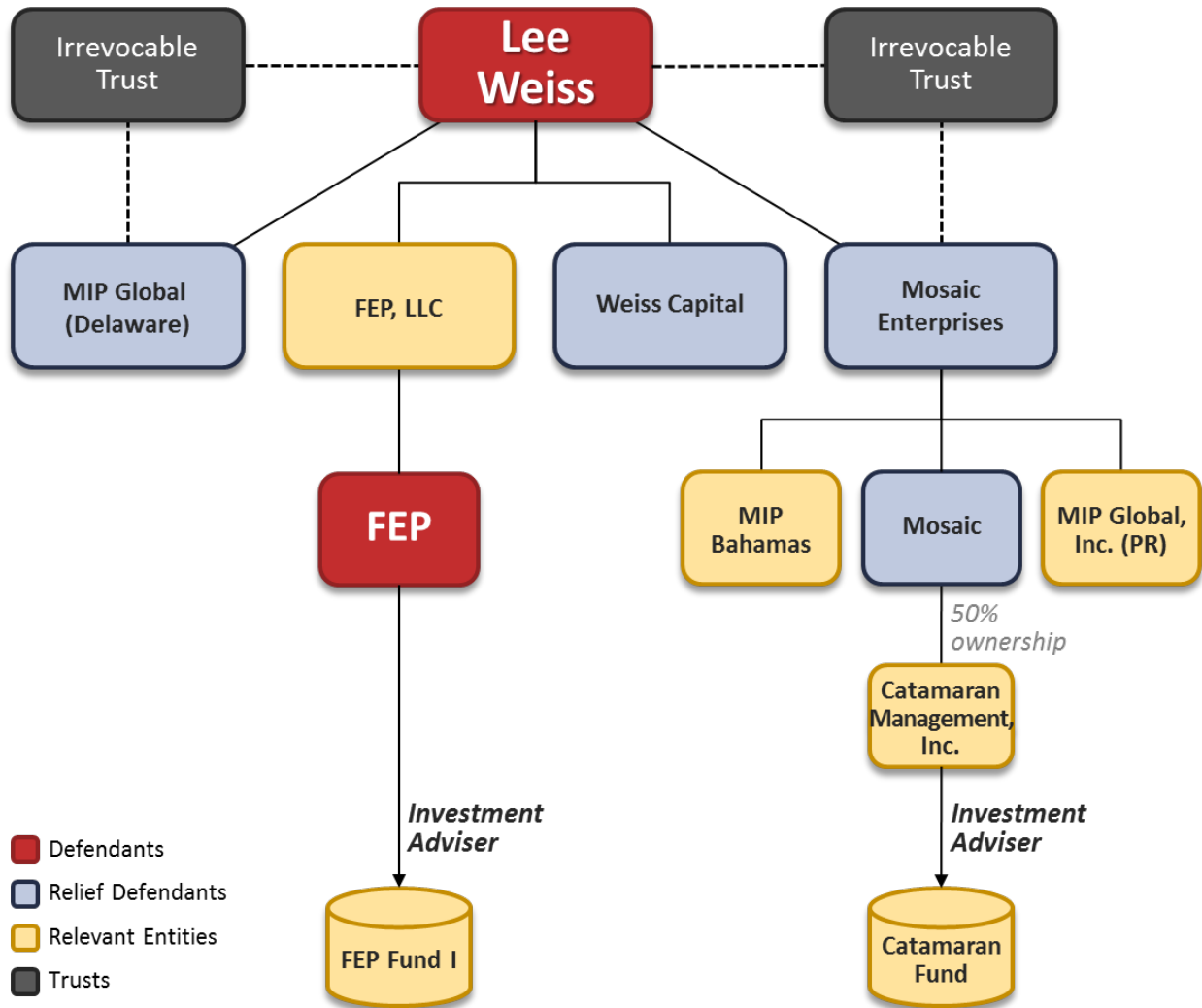
#### **OTHER RELEVANT ENTITIES**

17. **FEP Fund I, LP (“FEP Fund I”)** is a Delaware limited partnership that began operating in or around 2009 as a “fund of funds,” meaning that it would invest primarily in investment accounts or funds operated by third parties. FEP is the general partner of and investment adviser to FEP Fund I. FEP and Weiss made or approved all significant investments of FEP Fund I.

18. **Catamaran Holding Fund, Ltd. (“the Catamaran Fund”)** is a Cayman Island entity that, beginning in 2012, operated as a fund to invest in exchange-traded funds and fixed income investments. Mosaic owns 50% of the investment manager to the Catamaran Fund, Catamaran Management Company, Inc.

19. **MIP Global Bahamas, Ltd. (“MIP Bahamas”)** is a Bahamas entity and subsidiary of Mosaic Enterprises. MIP Bahamas is a broker-dealer registered with the Securities Commission of the Bahamas. Weiss is the Chairman of MIP Bahamas.

20. Defendants, relief defendants, and other Weiss-related entities, including the Hedge Funds, are related to each other as follows:



21. **Biosyntec, SA (“Biosyntec”)** is a French corporation whose principal place of business is in Paris, France.



22. **Biosyntec Polska Sp Zoo (“Biosyntec Polska”)** is a Polish corporation and subsidiary of Biosyntec.

23. **Karien Sp Zoo (“Karien”)** is a Polish corporation that was purportedly formed to purchase two gas turbines in Tunisia. Biosyntec and Weiss have represented Karien to be a subsidiary of Biosyntec.

24. **Globe 360 Tobacco Inc. (“Globe 360”)** is a Florida corporation and subsidiary of Biosyntec. Globe 360 was purportedly formed to purchase the assets of a defunct tobacco company in Florida.

25. **Falcon-Peregrine Family LLC (“Falcon-Peregrine”)** is a Delaware limited liability company and partial owner of Biosyntec.

## FACTS

### **I. The Biosyntec Investments**

#### **A. Weiss Invests in Biosyntec**

26. Biosyntec, based in France, was founded in approximately 1998. Its founder and Chief Executive Officer (“Biosyntec CEO”) claimed to have developed a cigarette filter that would reduce the risk of lung cancer from smoking tobacco.

27. Before or during December 2003, Weiss invested \$161,000 in Biosyntec shares. As described more fully below, Weiss and Biosyntec repeatedly stated that Weiss was a shareholder of Biosyntec, and/or had another substantial financial interest in Biosyntec, through at least June 10, 2013:

- a. In an e-mail dated December 23, 2009, Weiss submitted information supplementing a personal financial statement to a private bank based in Boston, Massachusetts, in which he stated, “The “Private Equity

breakdown is below: . . . \$1.2 Million in a firm called Biosyntec, LLC that was a venture investment of mine for \$300K in 2000.”

- b. On April 25, 2010, Biosyntec’s Chief Financial Officer sent an email to Weiss discussing the benefits of certain fundraising efforts “for the shareholders of Biosyntec (including you as a shareholder).”
- c. On January 3, 2011, Weiss submitted by email another personal financial statement to the same private bank in Boston stating that he held \$300,000 in non-marketable Biosyntec securities. In a follow-up email that same day, Weiss stated,

The Partnership equity value equals my 5% ownership in a European Biotech Company called Biosyntec. It was valued in October to go public on the AIM exchange in London for 360 million Euros. That would put my value at 18 million Euros or \$24.3 million. I have discounted this value by 40% and listed it at \$14,500,000.

- d. On January 6, 2012, Biosyntec CEO emailed Weiss a draft disclosure document concerning a prospective Biosyntec transaction and identifying Weiss as a “Shareholder” of Biosyntec.
- e. On June 10, 2013, Weiss stated in an e-mail to a second bank concerning a loan and credit application that the “[b]reakdown” for his private equity holdings included “Biosyntec \$4M.”

**B. Defendants Recommended Securities Issued by a Biosyntec Subsidiary While Failing to Disclose Weiss’s Ongoing Financial Interest in Biosyntec**

- 28. In or around September 2009, Biosyntec signed an agreement to acquire a company whose predecessor operated as the state-owned Polish tobacco monopoly. Biosyntec

represented that it had established a Polish subsidiary, Biosyntec Polska, to acquire the Poland-based tobacco company.

29. Also in or around September 2009, Biosyntec approached Weiss about obtaining investor capital required to complete the pending acquisition.

30. Between February 2010 and the end of July 2011, Defendants advised and caused ten individual FEP clients to invest approximately \$18.7 million in notes issued by Biosyntec Polska. Subsequently, in December 2011, Defendants caused FEP Fund I to invest approximately \$2 million in another note issued by Biosyntec Polska. These notes, totaling approximately \$20.7 million, were for either one- or two-year terms with 12% or 9% rates of interest, respectively. Weiss described these investments to certain of Defendants' clients as follows:

- a. In or around February 2010, Weiss met with Client A and recommended that Client A invest \$1 million in a Biosyntec Polska note. Weiss described Biosyntec Polska as a strong, solid company that had significant assets and was looking for interim financing. Weiss told Client A that it was a "safe" investment.
- b. In or around July 2010, Weiss met with Client B and recommended that Client B invest \$1 million in a Biosyntec Polska note. Weiss told Client B that it was a "safe" investment.
- c. In or around January 2011, Weiss met with Client C and recommended that Client C invest \$2 million in a Biosyntec Polska note. Weiss told Client C that it was a strong investment, paying a high rate of interest.

31. Before advising and causing the above-described investments in Biosyntec Polska, Defendants did not disclose to Clients A, B, and C and to other individual clients making similar investments, or to investors in FEP Fund I, that Weiss had an ownership or other financial interest in Biosyntec, the parent company of Biosyntec Polska.

32. A reasonable investor would have viewed its investment adviser's financial interest in Biosyntec – and the resulting conflict that hindered the adviser's ability to provide disinterested investment advice – as important in deciding whether to invest in the Biosyntec Polska notes.

**C. Defendants Recommended That a Client Loan an Additional \$2.5 Million to Biosyntec So That Biosyntec Could Repay Delinquent Interest Owed to Clients**

33. Beginning in early 2011, Biosyntec Polska failed for several months to pay interest due to Defendants' clients.

34. In May 2011, Biosyntec CEO stated in an email to Weiss that Biosyntec Polska did not have funds available to pay the overdue interest:

Let me make it very clear. In a short term (several days) and without new cash from your side, there is NO WAY we can get current.

35. Subsequently, on or about July 21, 2011, Biosyntec CEO sent Weiss a letter stating that Biosyntec intended to use an additional \$2.5 million investment by Client A to pay the delinquent interest owed to current Biosyntec Polska noteholders (including Client A):

Upon the receipt of funds from the 2.5 million USD loans, Biosyntec SA will make the required transfers to bring the existing [FEP] sourced loans current through August 15, 2011 . . . . Out of the proceeds . . . of this 2.5 million loan, Biosyntec will set aside funds to cover the full interest payment from all of [Client A]'s loan through the end of FY 2011.

36. Despite the May 2011 email and the July 2011 letter, on or about July 28, 2011, Defendants recommended that Client A invest an additional \$2.5 million in a Biosyntec Polska note. Client A had previously invested \$3 million in similar notes.

37. Based on Defendants' recommendation, Client A invested the additional \$2.5 million. On or about July 29, 2011, Client A transferred \$2.5 million to Biosyntec in accordance with Defendants' instructions.

38. A portion of the \$2.5 million sent by Client A was transferred to a Biosyntec Polska bank account in Poland. Those funds were then used to pay the outstanding interest owed to clients, including Client A.

39. On approximately August 3, 2011, an employee of FEP asked Weiss about Client A's \$2.5 million investment. Weiss falsely told the employee that the additional investment represented the final payment on an earlier commitment made by Client A in 2009.

40. On August 5, 2011 – less than one week after Weiss convinced Client A to loan \$2.5 million to Biosyntec Polska – another Biosyntec affiliate, Falcon-Peregrine, sent \$50,000 to a bank account controlled by Weiss in the name of relief defendant Weiss Capital.

41. When Defendants recommended that Client A make the additional investment in Biosyntec Polska, as described in the paragraphs immediately above, Defendants did not disclose that Biosyntec Polska was delinquent in paying several months of interest due to FEP clients; that Biosyntec Polska intended to use Client A's new loan to pay the delinquent interest; or that Biosyntec Polska's ability to repay the notes held by FEP clients (including Client A) was in serious question. A reasonable investor would have viewed all of this information, as well as Weiss Capital's receipt of \$50,000 on August 5, 2011, as important in deciding whether to invest in the Biosyntec Polska notes.

42. In December 2011, an FEP employee learned that Weiss was considering an investment by FEP Fund I in a Biosyntec Polska note. On or about December 24, 2011, the employee told Weiss that he was concerned that the Biosyntec Polska transactions lacked standard documentation and that FEP had not received adequate due diligence information.

43. Nevertheless, in December 2011, Defendants caused FEP Fund I to purchase a \$2 million note from Biosyntec Polska.

44. Biosyntec Polska stopped paying interest on FEP clients' notes in mid-2012. Meanwhile, the principal balances on the Biosyntec Polska notes became due between February 2011 and December 2013. These principal balances were not timely repaid to FEP clients.

**D. Defendants Recommended Securities Issued by a Second Biosyntec Subsidiary While Failing to Disclose Weiss's Ongoing Financial Interest in Biosyntec**

45. In early 2012, Biosyntec represented that, through its subsidiary Karien, a Polish corporation, it sought investor capital to acquire certain power generation assets in Tunisia, including two gas turbines.

46. In March 2012, Weiss caused the Catamaran Fund to invest approximately \$1 million in Karien pursuant to a "Financing Agreement."

47. Pursuant to similar financing agreements, in April 2012, Defendants advised and caused three individual FEP clients each to invest approximately \$1 million in Karien. In June 2012, Defendants caused FEP Fund I to invest approximately \$2.5 million in Karien.

48. The individual FEP clients and the Hedge Funds wired the funds for the Karien investments to a bank account controlled by Biosyntec CEO in the name of Falcon-Peregrine.

49. The agreements with Karien provided that each investor would participate in a two-step profit-sharing arrangement: first, for a period of 90 days after the investment, the

company would prioritize payment of “first profit” to the investor up to a limit equal to 30 percent of the company’s internal rate of return; second, after satisfaction of the first obligation, additional profit would be shared equally between Karien and the investor.

50. At the time they advised and caused the Karien investments, Defendants did not disclose to relevant clients or to investors in the Hedge Funds that Weiss had a financial interest in Biosyntec.

51. A reasonable investor would have viewed Weiss’s financial interest in Biosyntec as important in deciding whether to invest in the Karien agreements.

52. As of the date of this Complaint, at least some FEP clients have neither been paid any profits nor received their principal from the Karien investments.

**E. Defendants Recommended Securities Issued by a Third Biosyntec Subsidiary While Failing to Disclose Weiss’s Ongoing Financial Interest in Biosyntec**

53. In mid-2012, Biosyntec sought investor capital to acquire the tobacco manufacturing assets and a related building of a tobacco company located in Miami, Florida, through its subsidiary Globe 360.

54. Between May and June 2012, Defendants caused FEP Fund I, and Weiss caused the Catamaran Fund, to invest approximately \$9 million and \$1 million, respectively, in notes issued by Globe 360. Furthermore, in August 2012, Defendants advised and caused Client A to invest \$2.5 million in a Globe 360 note.

55. The notes were initially for eight-month or two-year terms and paid interest at rates of 8% or 9%. In September 2013, Defendants caused FEP Fund I, and Weiss caused the Catamaran Fund, to enter into new agreements with Globe 360 to refinance the loans for additional two-year terms.

56. At the times that Defendants advised and caused the Globe 360 investments, Defendants did not disclose to Client A or to investors in the Hedge Funds that Weiss had a financial interest in Biosyntec.

57. A reasonable investor would have viewed Weiss's financial interest in Biosyntec as important in deciding whether to invest in the Globe 360 notes.

58. In 2014, Globe 360 transferred its assets and real property to the Hedge Funds in purported satisfaction of the refinanced loans, which had a face value of \$11.37 million.

59. As of the date of this Complaint, Client A has not received any payment of interest or principal in connection with his \$2.5 million note.

**F. Defendants Failed to Disclose Weiss's Receipt of Over \$616,000 in Payments from Biosyntec**

60. In addition to failing to disclose Weiss's own financial interest in Biosyntec, Defendants failed to disclose to FEP clients and investors in the Hedge Funds that Weiss directly and indirectly received payments from Biosyntec. Specifically, from February 2010 through September 2012, Weiss received numerous payments from Biosyntec and related entities totaling over \$616,000.

61. The payments were wired from accounts controlled by Biosyntec and/or Biosyntec CEO, including accounts in the name of Biosyntec, Falcon-Peregrine, and Globe 360. These payments were deposited into bank accounts in Weiss's name or under his control, including accounts in the names of relief defendants Weiss Capital, Mosaic Enterprises, and Mosaic.

62. In most instances, Weiss received the payments shortly after Defendants' individual clients or the Hedge Funds made their investments, as described above, in Biosyntec



subsidiaries Biosyntec Polska, Karien, or Globe 360 (collectively, the “Subsidiaries”). For example:

- a. In February 2010, two clients bought \$1.2 million in notes issued by Biosyntec Polska. Within days of the second client’s purchase, Falcon-Peregrine sent \$50,000 to Weiss’s personal brokerage account.
- b. In late July 2010, a client invested \$1 million in a Biosyntec Polska note. Less than a week later, Falcon-Peregrine sent \$75,000 to a bank account in the name of relief defendant Weiss Capital.
- c. As alleged above, in August 2011, after Client A’s investment of \$2.5 million in the Biosyntec Polska note in late July 2011, Falcon-Peregrine sent \$50,000 to Weiss Capital.
- d. In late March and April 2012, the Catamaran Fund and three clients invested \$4 million in Karien financing agreements; then, in May 2012, FEP Fund I invested \$7 million notes in Globe 360 notes. In late May 2012, relief defendant Mosaic received payments of \$70,000 and approximately \$93,000 from Falcon-Peregrine and Globe 360, respectively.

63. Weiss and relief defendants received other payments within a month or less of the dates of clients’ investments in the Subsidiaries.

64. The payments from Biosyntec and its affiliates created an additional conflict of interest (beyond the conflict caused by Weiss’s own interest in Biosyntec) with respect to investments in the Subsidiaries advised and caused by Defendants.

65. By the end of 2010, Weiss and the relief defendants had received over \$230,000 in payments. Defendants did not disclose these payments before they advised and caused individual clients and the Hedge Funds to invest approximately \$25 million in the Subsidiaries after 2010. By the end of 2011, Weiss had received an additional \$50,000 in payments, bringing his total to over \$280,000. Defendants did not disclose either the 2010 or the 2011 payments before advising and causing individual clients and the Hedge Funds to invest approximately \$19 million in the Subsidiaries in 2012.

66. Weiss and Weiss Capital alone received an approximate total of \$289,000, almost half of the payments flowing to Weiss between February 2010 and September 2012. Weiss used the funds for his personal benefit, including to make deposits into his retirement account and to pay the balances on his personal credit cards.

67. Payments totaling \$327,000, representing the remainder of the payments between February 2010 and September 2012, were deposited into bank accounts in the names of relief defendants Mosaic and Mosaic Enterprises. Weiss used the funds to pay various expenses of his entities.

68. Defendants did not disclose the payments or the conflict of interest they created to individual clients or investors in the Hedge Funds, either before or after the payments occurred.

69. A reasonable investor would have viewed the payments as important in deciding whether to invest in the Subsidiaries.

**G. Defendants Falsely Represented to Clients That Their Biosyntec Investments Were Secure and Engaged in Other Deceptive Conduct**

70. Clients paid fees for FEP's advisory services based on the clients' portfolio sizes. In furtherance of Defendants' scheme to maximize FEP's fees, Defendants concealed the poor performances of clients' investments in the Subsidiaries.

71. As noted, Biosyntec Polska stopped paying interest on its notes for several months in 2011; then, in July 2011, Biosyntec CEO stated that the Biosyntec Polska would only be able to pay the outstanding interest due to clients after an additional investment by Client A. Furthermore, Biosyntec Polska stopped paying interest altogether in mid-2012.

72. Notwithstanding Defendants' knowledge of these and other events, Defendants assured clients that their prior investments in the Subsidiaries were secure. For example:

- a. At various times in 2011 and 2012, Weiss told Client A that the Biosyntec Polska notes were performing as expected. Client A did not learn that Biosyntec Polska was in default until 2013, after Client A had terminated his relationship with FEP.
- b. In November 2012, in response to an inquiry from Client C, Weiss sent a text message stating that Biosyntec Polska was working through tax issues related to repayment of principal on Client C's note. Weiss stated, "There is not an issue with the investment. . . . You will receive full interest on the amount until it is returned."
- c. Weiss also told Client C that, with respect to Biosyntec Polska's missed interest payments, the company would get new financing in April 2013 and that Client C's note was well-collateralized. However, no such financing actually occurred.
- d. In a January 2014 conference call with FEP clients, Weiss said that the Biosyntec Polska notes were secured by assets conservatively valued at five times the amount of the notes.

73. Furthermore, in periodic account statements provided to clients in 2014 and 2015, FEP continued to report to clients that their Biosyntec Polska investments were valued at their full cost, even though for purposes of its own internal accounting, FEP had valued FEP Fund I's Biosyntec Polska investment at 50% of cost, and later at \$0.

74. In addition, in early 2013, Biosyntec's then-Chief Financial Officer, who was also the Chief Executive Officer of Globe 360, told Weiss that Biosyntec CEO had misappropriated \$4 million from Globe 360 and that the company therefore lacked operating capital to conduct the business as contemplated.

75. Nevertheless, in September 2013, Defendants caused FEP Fund I, and Weiss caused the Catamaran Fund, to enter into new agreements with Globe 360 to refinance the loans for additional two-year terms.

## **II. Defendants Made Material Omissions and Breached Their Fiduciary Duties When Advising or Causing Clients to Invest in Weiss's Entities**

76. From November 2012 through December 2014, Defendants advised and caused five clients to invest over \$8 million in entities that Weiss directly or indirectly owned. As described below, in connection with these investments, Defendants failed to disclose numerous material facts.

### **A. Client A Purchased an MIP Global Note in November 2012**

77. In November 2012, Defendants caused Client A to invest \$750,000 in a note issued by MIP Global, which was an entity wholly owned by Weiss and which at the time was operating under the name Mosaic Investment Partners. MIP Global was a holding company with no independent operations; it owned interests in other financial companies controlled by Weiss.

78. Defendants did not disclose to Client A that MIP Global was owned by Weiss, nor did Client A ever authorize its purchase of the \$750,000 note.

**B. FEP Clients Purchased MIP Global Notes in 2014**

79. From February 2014 through December 2014, Defendants advised and caused four clients to invest approximately \$6.5 million in promissory notes issued by MIP Global. The notes had maturities of one or two years and were supposed to pay interest at rates ranging from 5% to 8%.

80. Defendants did not disclose to these clients who invested in the MIP Global notes that Defendants intended to use – and did use – the funds, not for the benefit of MIP Global, but primarily to satisfy past-due notes issued by FEP in 2008 and to pay FEP’s operating costs, such as payroll and rent. To fund the start of its operations in or around 2008, FEP had raised millions of dollars through notes to investors, of which over \$3 million was still outstanding and due in 2014. The funds that clients paid for the 2014 MIP Global notes, unbeknownst to the clients, were transferred to FEP and used to pay off past-due FEP notes. Defendants also failed to disclose to the clients the significant risk, given Defendants’ intended use of the funds and the limited financial resources of Weiss’s companies, that MIP Global would be unable to repay the notes. As a holding company with no independent operations, MIP Global had limited liquid assets. As shown below for 2014, the company’s bank account was primarily funded by the \$6.5 million in note proceeds that it received from Defendants’ clients that year:

**Proceeds from Notes Issued by MIP Global in 2014**

<b>Date of Proceeds</b>	<b>Amount</b>	<b>Prior Balance</b>
2/7/2014	\$1,000,000	\$2,506
3/17/2014	\$1,250,000	\$2,667
3/28/2014	\$500,000	\$6,189
4/3/2014	\$500,000	\$76
6/5/2014	\$500,000	\$472
6/20/2014	\$250,000	\$3,012
6/27/2014	\$600,000	\$96,990
8/11/2014	\$750,000	\$711
9/24/2014	\$650,000	\$436
12/10 – 12/18/2014	\$500,000	\$276
<b>Total 2014 Proceeds</b>	<b>\$6,500,000</b>	

81. Within days or weeks after MIP Global received the proceeds of the above-described notes, the majority of those proceeds were transferred to FEP or other Weiss-controlled companies to repay the 2008 FEP noteholders or to pay FEP's business or Weiss's personal expenses. For example:

- a. On February 7, 2014, MIP Global received \$1 million in proceeds from a note issued to Client D. Over the next two weeks, Weiss used the large majority of Client D's loan proceeds for the benefit of Defendants. Specifically, MIP Global transferred over \$700,000 of Client D's investment directly to the bank account of FEP and directed another \$135,000 to a Weiss-affiliated fund that purportedly had loaned that sum to FEP. FEP's use of the loan proceeds included (1) payments totaling over \$250,000 to FEP's 2008 noteholders; (2) payments for FEP's ordinary operating expenses, including approximately \$135,000 for payroll and over \$100,000 for investment sub-advisory fees, consulting

fees, and rent; and (3) miscellaneous other payments that included a \$50,000 deposit into Weiss's personal brokerage account and \$30,000 in payments for, among other things, a line of credit in Weiss's name, sports tickets, a pool and tennis club, and a children's summer camp. The closing balance of MIP Global's bank account on February 21, 2014 was approximately \$2,667, which remained the closing balance until the proceeds of the next loan were deposited.

- b. On March 17 and March 28, 2014, MIP Global received a total of \$1.75 million from Clients B and E in connection with notes issued to these clients for \$500,000 and \$1,250,000, respectively. Similar to the use of proceeds shown above, between March 17 and March 31, 2014, over \$1.8 million was transferred from MIP Global to FEP's bank account. From that account, FEP paid over \$1.5 million to FEP noteholders. FEP spent the remainder (over \$200,000) on various other expenses, including over \$90,000 for payroll; over \$25,000 investment in sub-advisory, consulting, and insurance fees; and over \$25,000 for a foundation for a religious camp and a pool and tennis club.
- c. On June 5, 2014, MIP Global received \$500,000 in proceeds from a note issued to Client F. Within a week, over \$430,000 was transferred to FEP's bank account, from which FEP paid \$200,000 to an FEP noteholder and spent at least \$200,000 on other expenses, including credit cards, legal fees, and rent.

82. Large portions of the other note proceeds received by MIP Global during 2014 were transferred to the bank accounts of FEP or other Weiss-controlled companies and used for similar purposes as described above, including repaying FEP noteholders.

83. A reasonable investor would have viewed the intended and actual use of the majority of the MIP Global note proceeds, namely, to repay prior FEP noteholders and to pay FEP's business or Weiss's personal expenses, as important considerations in deciding whether to purchase the notes.

**C. Client E Invests \$1 Million in MIP Bahamas**

84. Additionally, in March 2014, Weiss advised and caused Client E to make an equity investment in MIP Bahamas, a broker-dealer that Weiss indirectly owned through Mosaic Enterprises. In accordance with Weiss's recommendation, on March 25, 2014, Client E paid Mosaic Enterprises \$1 million in exchange for 200,000 shares of MIP Bahamas.

85. The funds that Client E invested were not used to benefit MIP Bahamas. Instead, on March 28, 2014, \$1 million was sent to Weiss and FEP in two transfers of \$900,000 and \$100,000, respectively. The same day, Weiss paid \$900,000 to an individual who had made a purported \$900,000 investment in MIP Global during 2013. Also on the same day, FEP used Client E's \$100,000, in conjunction with the proceeds of Client B's and Client E's loans to MIP Global (described above in Section II.B of this Complaint), to pay off FEP noteholders.

86. When Weiss advised and caused Client E to make the equity investment, he did not disclose that the purpose of the investment was simply to repay obligations of FEP and MIP Global and not for any corporate purpose of MIP Bahamas.

87. A reasonable investor would have considered the intended use of Client E's investment as important in deciding whether to purchase shares of MIP Bahamas.



**III. Defendants Diverted Income From Clients' Investments through a Sham Nominee**

88. In the fall of 2011, Defendants advised and caused four clients to enter into agreements totaling approximately \$5 million with a company ("Financing Company") that held a portfolio of consumer loans consisting of so-called "pay day" loans, which are short-term, unsecured loans issued in relatively small amounts and typically to borrowers who are experiencing cash flow difficulties.

89. Financing Company offered to pay an annual return of approximately 18% on invested principal, but Weiss structured his clients' investments so that they received only approximately 9%, while he pocketed the 9% difference for himself.

90. To carry out this scheme, Defendants arranged for the transaction to include a third-party "manager," which would receive the remaining 9% return from the clients' investments for purportedly insuring half of the clients' investments. In fact, the purported "manager" was an inactive real estate company owned by Weiss's close friend. The manager provided no insurance and performed no actual services for the clients. Instead, the manager was Weiss's nominee, which Defendants used to conceal Weiss's diversion of profits that normally would have been due, in whole or in part, to their clients. The manager received over \$321,000 in interest income from Financing Company. Weiss then directed the manager to transfer those funds to the bank accounts of Weiss and Weiss Capital and to other third-parties.

91. Defendants breached their fiduciary duties and deceived their clients by failing to disclose Weiss's true relationship with the purported "manager" and his receipt of these funds from the Financing Company transactions.

**IV. Defendants Managed FEP Fund I in a Manner Contrary to the Fund’s Offering Materials**

92. At its inception, Defendants established FEP Fund I as a hedge fund that would operate as a “fund of funds.” FEP was FEP Fund I’s general partner and investment adviser, and Weiss made or approved all significant investment decisions for FEP Fund I.

93. In a private placement memorandum (“PPM”) dated September 2009 and provided to prospective investors, including FEP clients, Defendants represented that FEP Fund I would seek “traditional and non-traditional investment opportunities,” with its portfolio consisting “primarily of interests in a small number of global multi-strategy funds or accounts managed by unaffiliated third parties.”

94. The PPM further represented that FEP Fund I would limit its investments in “direct investments” – *i.e.*, investments that were not in other funds or in cash or cash-management instruments – to no more than 10% of its portfolio:

The Fund portfolio may also invest *up to ten percent (10%) of its assets* in transactions structured by managers (which may be affiliates or non-affiliates of the General Partner), other co-investment transactions, seed-capital investments representing profit-sharing interests in managers of hedge funds and other investment products, and *certain other direct investments (Direct Investments)*. (Emphasis added). . . .

The Fund’s portfolio will consist primarily of interests in Underlying Portfolios. Such Underlying Portfolios are expected to follow a global asset allocation strategy incorporating alternative asset classes such as hedge funds, venture capital, private equity, real estate, commodities funds and timber, as well as more traditional asset classes, such as public equities and fixed income securities. *The Fund portfolio may also invest up to 10% of its assets in Direct Investments in certain assets.*

95. Initially, FEP Fund I’s portfolio largely consisted of investments in three hedge funds.

96. However, by December 2012, Defendants had re-allocated the portfolio so that FEP Fund I's holdings included over 56% in direct investments. Indeed, by that time, investments in the Biosyntec Subsidiaries comprised over 40% of FEP Fund I's holdings.

97. Throughout 2013 and 2014, FEP Fund I's holdings far exceeded 10% of its portfolio. Weiss knew or was reckless in not knowing this fact.

98. After December 2012, Defendants did not inform FEP Fund I investors that its direct investments were significantly greater than the 10% amount stated in the PPM.

99. In May 2014, FEP Fund I sent a letter to fund investors, signed by Weiss, seeking to change the PPM to remove the 10% limit on direct investments. In the letter, Weiss stated that, "The fund manager would like to make more direct equity, fixed income, and hedge fund investments and utilize fewer funds of funds."

100. Weiss knew or was reckless in not knowing that the May 2014 letter was materially misleading because it failed to disclose that the FEP Fund I portfolio already exceeded the 10% limit on direct investments and had done so since December 31, 2012. A reasonable investor would have considered FEP Fund I's history of failing to adhere to the investment strategy set forth in its PPM as important in deciding whether to invest in FEP Fund I.

**V. FEP Violated the Custody Rule, and Weiss Aided and Abetted These Violations**

101. FEP, by virtue of its ability to withdraw client funds and securities from FEP Fund I accounts, had custody of FEP Fund I assets within the meaning of the Commission's regulations governing investment advisers.

102. As a result, Commission regulations required FEP either (1) to undergo an annual surprise examination by an independent public accountant to verify FEP Fund I's assets; or (2) to arrange for an annual audit, with financial statements prepared in accordance with United States

Generally Accepted Accounting Principles (GAAP) and distributed to investors within 120 days after the end of the fiscal year. This requirement is known as the “Custody Rule.”

103. Weiss was familiar with the Custody Rule and knew or was reckless in not knowing that FEP was required to comply with it, as demonstrated by the following:

- a. In March 2013, FEP filed with the Commission Part 2 of its Form-ADV, which was incorporated into the main Form-ADV that Weiss signed, stating the FEP had custody of FEP Fund I assets.
- b. Also in March 2013, Weiss received an email from an FEP employee stating that Weiss provided advisory services to unrelated accounts that “require[d] . . . recei[pt of] independent verification of the clients funds and securities at least annually by an independent PCAOB auditor,” and further stating that FEP sought to retain an accounting firm to help determine its obligations under the Custody Rule.
- c. Part 2 of FEP’s Form ADV from 2014 stated that the firm would comply with the Custody Rule by having an audit completed on an annual basis and then by distributing the audited financial statements to FEP Fund I investors.

104. However, Defendants did not arrange for audits of FEP Fund I to be completed nor did it arrange for financial statements to be distributed in a timely manner. In fact, no audits were performed on FEP Fund I for 2012 and 2013 until qualified audits were completed in March 2015. Furthermore, FEP did not distribute the qualified audit reports to FEP Fund I investors as required.

105. Weiss knowingly provided substantial assistance to FEP's violation by failing to take appropriate action to ensure FEP's compliance with the Custody Rule.

**VI. FEP Failed to Promptly File an Updated Form ADV, and Weiss Aided and Abetted This Violation**

106. As a registered investment adviser, FEP was required to file Forms ADV with the Commission. Form ADV is the standard form used by investment advisers to register with the Commission and to disclose information to clients and potential clients. Part 1 of the form requires information about the adviser's business, ownership, clients, employees, business practices, affiliations, and any disciplinary events of the adviser and its employees. Part 2 of the form, known as the "brochure," requires investment advisers to prepare narratives in plain English containing information about the types of services offered, the fee schedule, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel. The brochure is the primary disclosure document that investment advisers provide to their clients.

107. FEP last filed a Form ADV with the Commission on September 9, 2015. FEP's previous Form ADV filing was on March 12, 2015. FEP last filed a brochure with the Commission on March 12, 2015.

108. FEP did not update its Form ADV or its brochure to disclose recent, material events occurring from March 12, 2015 through the date of this Complaint.

109. For example, Form ADV requires an adviser to provide certain information about affiliated private funds, including whether the fund's financial statements are subject to an annual audit and whether the report prepared by the auditing firm contained an unqualified opinion. The instructions to Form ADV state that if an audit report has not been received at the time of filing, a registered investment adviser must "promptly file an amendment to [the]

Form ADV to update [the] response when the report is available.” *See* Form ADV, Section 7.B.(1).

110. In its Form ADV filed on March 12, 2015, FEP provided information regarding FEP Fund I, including a statement that an unqualified audit opinion for FEP Fund I had not yet been received.

111. In March 2015, the auditor for FEP Fund I completed an audit of the fund, but issued a qualified audit opinion, as a result of the auditor’s inability to independently value the numerous illiquid direct investments held by the fund. Despite the requirement to promptly file an amendment to the Form ADV when the audit report became available, FEP did not disclose to FEP Fund I investors in an updated filing through the date of this Complaint, including in the September 9, 2015 filing, that a qualified audit report had been received.

112. Similarly, Part 2A of Form ADV requires an investment adviser to disclose disciplinary and other information in its brochure. An investment adviser must update the brochure “promptly” when any information in the brochure becomes materially inaccurate and also must deliver an interim amendment to clients if the update includes information concerning disciplinary proceedings. *See* Instructions for Part 2A of Form ADV, items 2 and 4.

113. In its brochure filed in March 2015, FEP disclosed that it was involved in certain customer arbitrations and litigation. Subsequently, in April 2015, a \$48 million award was issued against FEP and Weiss in one of the customer arbitrations. As of the date of this Complaint, FEP has not disclosed this award in an updated brochure nor has it delivered an interim amendment to its clients.

**FIRST CLAIM FOR RELIEF**

**Fraud in the Offer or Sale of Securities: Violations of  
Section 17(a)(1) of the Securities Act  
[15 U.S.C. § 77q(a)(1)]**

114. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

115. Defendants Weiss and FEP, acting with scienter, in the offer or sale of securities and by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, employed a device, scheme, or artifice to defraud.

116. By engaging in such conduct, Weiss and FEP violated, and unless enjoined will in the future violate, Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)].

**SECOND CLAIM FOR RELIEF**

**Fraud in the Offer or Sale of Securities: Violations of  
Section 17(a)(2) and (3) of the Securities Act  
[15 U.S.C. § 77q(a)(2) and (3)]**

117. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

118. Defendants Weiss and FEP, acting knowingly, recklessly, or negligently in the offer or sale of securities and by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, (a) obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (b) engaged in transactions, practices, or a course of business which operated or would have operated as a fraud or deceit upon purchasers.

119. By engaging in the conduct described above, Weiss and FEP violated, and unless enjoined will in the future violate, Section 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

**THIRD CLAIM FOR RELIEF**

**Fraud in Connection with the Purchase or Sale of Securities: Violation of  
Section 10(b) of the Exchange Act and Rule 10b-5 thereunder  
[15 U.S.C. § 78j(b)(5), 17 C.F.R. § 240.10b-5]**

120. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

121. Defendants Weiss and FEP, acting with scienter and in connection with the purchase or sale of securities and by the use of any means or instrumentality of interstate commerce or by use of the mails or any facility of any national securities exchange, directly or indirectly, (a) employed a device, scheme, and artifice to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or a course of business which operated or would have operated as a fraud or deceit upon sellers, purchasers, or prospective purchasers of securities.

122. By engaging in the conduct described above, Weiss and FEP violated, and unless enjoined will in the future violate, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b)(5), 17 C.F.R. § 240.10b-5].

**FOURTH CLAIM FOR RELIEF**

**Fraud by an Investment Adviser: Violations of  
Section 206(1) of the Advisers Act  
[15 U.S.C. § 80b-6(1)]**

123. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

124. At all relevant times, Defendants Weiss and FEP acted as investment advisers by managing investments in exchange for compensation in the form of fees.

125. Defendants Weiss and FEP, with scienter and while acting as investment advisers, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, employed a device, scheme, or artifice to defraud their clients or prospective clients.



126. By engaging in the conduct described above, Weiss and FEP violated, and unless enjoined will in the future violate, Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

**FIFTH CLAIM FOR RELIEF**

**Fraud by an Investment Adviser: Violations of  
Section 206(2) of the Advisers Act  
[15 U.S.C. § 80b-6(2)]**

127. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

128. At all relevant times, Defendants Weiss and FEP acted as investment advisers by managing investments in exchange for compensation in the form of fees.

129. Defendants Weiss and FEP, with knowledge, recklessness, or negligence and while acting as investment advisers, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon clients or prospective clients.

130. By engaging in the conduct described above, Weiss and FEP violated, and unless enjoined will in the future violate, Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

**FIFTH CLAIM FOR RELIEF**

**Fraud by an Investment Adviser: Violations of  
Section 206(3) of the Advisers Act  
[15 U.S.C. § 80b-6(3)]**

131. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

132. At all relevant times, Defendants Weiss and FEP acted as investment advisers by managing investments in exchange for compensation in the form of fees.

133. Defendants Weiss and FEP, with knowledge, recklessness, or negligence and while acting as investment advisers, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting as principal for his own account, knowingly sold a security to a client, without disclosing to such client in writing before the completion of

such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.

134. By engaging in the conduct described above, Weiss and FEP violated, and unless enjoined will in the future violate, Section 206(3) of the Advisers Act [15 U.S.C. § 80b-6(3)].

**SIXTH CLAIM FOR RELIEF**

**Fraud upon Investors or Prospective Investors in Pooled Investment Vehicles: Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8]**

135. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

136. At all relevant times, Defendants Weiss and FEP acted as investment advisers by managing investments in exchange for compensation in the form of fees.

137. FEP Fund I and the Catamaran Fund were “pooled investment vehicle[s]” under Rule 206(4)-8(b) because, among other things, each fund held itself out as being engaged primarily in the business of investing, reinvesting, or trading in securities, but qualified for an exclusion from the definition of an “investment company” under Section 3(a) of the Investment Company Act of 1940 pursuant to Section 3(c)(1) of that section [15 U.S.C. §§ 80a-3(a) and (c)(1)].

138. Defendants Weiss and FEP, with knowledge, recklessness, or negligence and while acting as investment advisers to FEP Fund I, and Defendant Weiss, with knowledge, recklessness, or negligence while making certain investment decisions for the Catamaran Fund, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, engaged in acts, practices, or courses of business which were fraudulent, deceptive, or manipulative, in that they:

- a. made untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances

under which they were made, not misleading to an investor or prospective investor in the pooled investment vehicle; or

- b. otherwise engaged in acts, practices, or courses of business that were fraudulent, deceptive, or manipulative with respect to an investor or prospective investor in the pooled investment vehicles.

139. By engaging in the conduct described above, Weiss and FEP violated, and unless enjoined will in the future violate, Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8].

#### **SEVENTH CLAIM FOR RELIEF**

##### **Custody Rule: Violations of and Aiding and Abetting Violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-2]**

140. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

141. At all relevant times, Defendant FEP acted as an investment adviser by managing investments in exchange for compensation in the form of fees.

142. Defendant FEP, while acting as an investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, engaged in acts, practices, or courses of conduct which were fraudulent, deceptive, or manipulative by maintaining custody of client funds or securities without either (a) verifying all of the funds or securities within its custody through an annual, unannounced examination by an independent public accountant; or (b) engaging an independent public accountant to prepare audited financial statements and distributing those financial statements to investors within 120 days after the end of the fiscal year.

143. Weiss knowingly or recklessly provided substantial assistance to FEP's violations described in the previous paragraph.

144. By engaging in the conduct described above, FEP violated, and unless enjoined will in the future violate, Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. 275.206(4)-2]. Weiss aided and abetted FEP's violations, and unless enjoined will in the future violate or aid and abet, those violations.

### **EIGHTH CLAIM FOR RELIEF**

#### **Failure to Update Form ADV: Violations of Section 204(b)(5) of the Advisers Act and Rule 204-1(a)(1) thereunder [15 U.S.C. § 80b-4(b)(5) and 17 C.F.R. § 275.204-1(a)(1)]**

145. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

146. At all relevant times, Defendant FEP acted as an investment adviser by managing investments in exchange for compensation in the form of fees.

147. Defendant FEP, while acting as investment adviser, failed to update its Form ADV filed with the Commission pursuant to the instructions to that form, which required an investment adviser (1) to promptly amend any previous filing of Form ADV where the earlier filing disclosed that an audit report had not been received, when such report becomes available; and (2) to promptly submit updated information concerning disciplinary information submitted in response to Item 9 of the form.

148. Weiss knowingly or recklessly provided substantial assistance to FEP's violations described in the previous paragraph.

149. By engaging in the conduct described above, Weiss and FEP violated, and unless enjoined will in the future violate, Section 204(b)(5) of the Advisers Act and Rule 204-1(a)(1) thereunder [15 U.S.C. § 80b-4(b)(5) and 17 C.F.R. § 275.204-1(a)(1)].

### **NINTH CLAIM FOR RELIEF**

#### **Disgorgement by Relief Defendants**

150. Paragraphs 1 through 113 are realleged and incorporated by reference herein.

151. Relief defendants Weiss Capital, MIP Global, Mosaic, and Mosaic Enterprises received improper and illegal transfers of investor funds or unlawful proceeds arising from the violations alleged herein by defendants Weiss and FEP.

152. These relief defendants should be compelled to return any investor funds or unlawful proceeds received by them as a result of the violations alleged herein.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that the Court:

A. Permanently enjoin Weiss and FEP and each of their agents, servants, employees, and attorneys, and any other 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 conduct in violation of the following provisions: (a) Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; (b) Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; (c) Sections 206(1), 206(2), and 206(3) of the Advisers Act [15 U.S.C. § 80b-6(1)-(3)]; (d) Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-8 thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. §§ 275.206(4)-2 and 206(4)-8]; and (e) Section 204(b)(5) of the Advisers Act and Rule 204-1 thereunder [15 U.S.C. § 80b-4(b)(5) and 17 C.F.R. § 275.204-1].

B. Order that defendants Weiss and FEP jointly and severally disgorge all ill-gotten gains obtained as a result of the violations alleged in this Complaint, with prejudgment interest;

C. Order that Weiss Capital, MIP Global, Mosaic, and Mosaic Enterprises disgorge any amounts constituting unjust enrichment that they received;

D. Order that Weiss and FEP pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and

Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] in an amount to be determined by the Court; and

E. Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Respectfully submitted,

/s/ David Mendel

David Mendel  
D.C. Bar No. 470796  
Tel: (202) 551-4418  
E-mail: mendeld@sec.gov

Kevin Lombardi  
D.C. Bar No. 474114  
Tel: (202) 551-8753  
E-mail: lombardik@sec.gov

Stacy Bogert  
New York Bar  
Tel: (202) 551-4847  
E-mail: bogerts@sec.gov

Division of Enforcement  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549  
Fax: (202) 772-9292

Of Counsel:

M. Alexander Koch, Esq.  
Division of Enforcement  
Securities and Exchange Commission