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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBF CLEARING CORP. and
MBF ASSET MANAGEMENT, LLC,

Plaintiffs,

-against-

JPMORGAN CHASE BANK, N.A.,
JPMORGAN CHASE & CO.,
J.P. MORGAN SECURITIES, INC. ,
J.P. MORGAN SECURITIES LLC,
J.P. MORGAN INSTITUTIONAL INVESTMENTS INC.,
JPMCHASE DISTRIBUTION SERVICES, INC. ,
KEVIN T. MURPHY,
ELIZABETH M. BILLINGS,
THOMAS CHANG, AND
J.P. MORGAN INVESTMENT MANAGEMENT INC., a registered investment advisor (IARD No. 107038) doing business as JP MORGAN ASSET MANAGEMENT.

Defendants.

Index No. 652820/2014
Date Purchased: 09/16/14

AMENDED COMPLAINT
VERIFIED

ECF filed Case

Plaintiffs MBF Clearing Corp. ("MBF") and MBF Asset Management, LLC ("MBFAM"), by their counsels, Steven R. Goldberg and John Esposito, for their Complaint against the above named Defendants, jointly and severally, allege as follows:

PARTIES

1. Plaintiff MBF is a New York corporation with its principal place of business in New York, New York.

2. Plaintiff MBFAM, at all times relevant herein, was a New York limited liability company with its principal place of business in New York, New York

3. Defendant JPMorgan Chase Bank, N.A. ("Chase Bank") is a national banking association with its principal place of business in New York, New York.

4. Defendant JPMorgan Chase & Co. ("JPM") is, at all times relevant herein, a national financial institution and a Delaware corporation registered to do business in New York with a principal place of business in New York, New York.

5. Defendant Kevin T. Murphy is a resident of the State of New Jersey .

6. Defendant J.P. Morgan Investment Management Inc. (d/b/a JP Morgan Asset Management) is a registered investment advisor and a Delaware corporation registered to do business in New York with a principal place of business in New York, New York ("JPMAM").

7. Above listed defendants are collectively referred to as "Defendants". Chase Bank, JPM and JPMAM are collectively referred to as "Corporate Defendants".

JURISDICTION AND VENUE

8. This Court has jurisdiction over Defendants under CPLR §§ 301 and 302. Defendants maintain a principal place of business in New York, and many of the alleged wrongful acts occurred in New York.

9. Venue is proper in this Court under CPLR § 503. MBF, MBFAM and Chase Bank, among other defendants each reside in New York County, New York..

NATURE OF ACTION

10. This action arises from fraudulent misrepresentations that Defendants, Kevin Murphy, an individual and Chase Bank, JPM and JPMAM, a conglomerate and a giant of the financial services industry, made to induce MBF to deposit and maintain its customers' funds with Defendants. Despite Defendants' many statements to the contrary, the account failed to comply with the Commodity Exchange Act rules and regulations governing the handling of customer segregated funds, which has severely damaged Plaintiffs.

SUMMARY OF THE CASE

11. During the times here relevant, Plaintiff MBF Clearing Corp. ("MBF") was a long-established and well-regarded commodities futures commission merchant ("FCM"). It was subject to the Federal Commodity Exchange Act (the "CEA") and the rules and regulations promulgated by the United States Commodities Futures Trading Commission (the "CFTC"). To comply with among the most important of those rules and regulations, MBF was required to hold customer assets in segregated accounts and in investments that could be liquidated within one business day. As a result of the events set forth in this Complaint, MBF is no longer a FCM, but has been forced to revert to the lesser status of being an introducing broker of another FCM.

12. During the times here relevant, Plaintiff MBF Asset Management LLC ("MBFAM") invested more than $6 million in the infrastructure needed to commence and operate as an investment advisor for managed accounts. MBFAM ceased doing business and lost its investment as a result of the events set forth in this Complaint.

13. Both MBF and MBFAM were founded, operated and owned (either directly or through family trusts) by Mark B. Fisher ("Fisher"). Fisher is a nationally recognized commodities futures professional, the author of a highly regarded treatise on trading (*The Logical Trader* (John Wiley & Sons, Inc. 2002)), and a frequent print and television media commentator on market and economic issues. By reason of their common ownership by Fisher, MBF and MBFAM are affiliated entities. MBF was a customer of Corporate Defendants. At all times, MBF's account manager was Kevin Murphy. MBFAM was a customer of Chase Bank.

14. In September 2008, during the panicked few days that followed the collapse of Lehman Brothers Inc., MBF sought to move its segregated accounts (i.e. its customers'

assets) to the safest available investments and turned to Corporate Defendants[1], an entity that it had conducted business with for over 20 years, for help. MBF's primary contact , Kevin T. Murphy ("Murphy")—MBF's primary relationship manager and a specialist in the business of FCMs—acting in conjunction with another relationship manager and Chase Bank employee, Elizabeth Billings ("Billings"), advised MBF to invest its customer assets in a J.P. Morgan proprietary fund known as the J.P. Morgan U.S. Government Money Market Fund (the "USG Fund"). Murphy, Billings and asset manager Thomas Chang (employed by JPMAM), acting collectively, absolutely knew that MBF was transferring to Defendants segregated customer assets and that the USG Fund was to hold those assets, and Kevin Murphy and other Corporate Defendant employees expressly told MBF—on many occasions—that the USG Fund would meet CEA and CFTC requirements for holding segregated customer assets. They also represented to MBF—both when they sold the USG Fund and continually thereafter—that assets in the USG Fund would be liquidated the same day if instructions were received before 4:30 PM, a key regulatory requirement for all investments holding segregated customer assets.

15. In and around this time, Defendants were marketing and selling the USG Fund throughout the industry to other FCMs making the same and similar representations that the USG Fund was a permissible investment under the CEA to hold an FCM's customer assets.

[1] Defendants offers services that include investments across a full spectrum of asset classes as well as corporate banking functions; such services being offered by the respective divisions within the J.P. Morgan umbrella.

16. However, during a CFTC regulatory audit which began in March 2010, MBF learned that the USG Fund was *not* and *could never have been* an appropriate vehicle for holding FCM customers' assets, because notwithstanding Defendants' representations, the USG Fund reserved the legal right to take up to seven days to liquidate and redeem assets. The CFTC brought an enforcement action against MBF, which resulted, on November 28, 2012, in the entry of a consent order against MBF, under which MBF paid a fine of $650,000 to the CFTC.

17. Defendants knew MBF's particular regulatory requirements concerning the holding of segregated customer assets. Yet Defendants knowingly or recklessly recommended and sold the USG Fund to MBF for that purpose, knowingly or recklessly misrepresenting to MBF that the USG Fund met CEA and CFTC requirements for holding segregated customer assets of FCMs. Defendants knew or should have known that the USG Fund was unsuitable for MBF's purposes. Even worse, Defendants, in March of 2009, six months after MBF began investing in the USG Fund, without notice to MBF, changed the title of MBF's USG Fund Account by deleting reference to "commodity customer segregated bank account" from the monthly statements, thereby creating a de facto non-segregated account, because, upon information and belief, someone within Defendants realized that the USG Fund did not qualify to hold customer assets of FCMs. In addition to failing to disclose this change to the account title to MBF or their failure to advise MBF that the USG Fund did not qualify under the CEA to hold segregated customer funds, Defendants continued knowingly to hold MBF's customers' assets in a non-segregated account in violation of its obligations under the CEA. And finally, to make matters worse yet, Defendants terminated their relationship with MBF during the CFTC

investigation into MBF's and Defendants' use of the USG Fund to hold FCM customer assets, at a time when MBF could not—because of the cloud of the CFTC investigation—open a comparable banking relationship.

18. As a result of Defendants' actions, MBF was forced to defend itself against and ultimately settle the matter and pay a fine to the CFTC; it was forced to cease operating as a clearing FCM and was ultimately reduced to becoming an introducing broker to another FCM; and it suffered reputational damage that prevented it from maintaining its status as a clearing FCM and prevents it from returning to the status as a clearing FCM. Defendants for all intents and purposes destroyed MBF's historical business as a leading FCM; MBF continues in existence today only as an introducing broker.

19. Likewise, MBFAM was forced to abandon the business it commenced in 2009 because, in light of the CFTC's 2010 investigation into MBF, it was impossible to attract additional investors. MBFAM therefore forfeited more than $6 million it invested to start its business, not to mention the potential profits of that business into perpetuity. Had Defendants not recommended and sold the USG Fund to MBF—and even had Defendants notified MBF of the unsuitability of the USG Fund in early 2009 when, upon information and belief, they themselves realized it, MBFAM would not have invested in its new venture and would not have incurred its losses.

20. All told, the actual and prospective losses sustained by MBF and MBFAM, as a proximate and foreseeable result of Defendants actions, exceed $50 Million. Plaintiffs seek here to recover those losses against Defendants.

PLAINTIFFS

21. Plaintiff MBF is a New York corporation with its principal place of business in New York, New York. Fisher founded MBF in 1987 as a FCM, which allowed it to clear customer's commodities futures and option contract transactions, as well as to accept orders to buy or sell such futures and contracts and to accept money and assets from customers. As its CEO, Fisher grew MBF into a highly-regarded FCM, which by 2008 had become the largest clearing firm on the NYMEX, at one time clearing 15% of the NYMEX's crude oil and natural gas futures contracts. As a direct result of Defendants' actions, MBF was forced to convert from a clearing FCM to a non-clearing FCM and ultimately to an introducing broker of another FCM, with a corresponding diminishment of its stature and reputation in its industry.

22. Plaintiff MBFAM was at all times relevant herein a New York limited liability company formed on February 2, 2009, for the purpose of starting and operating a business as an investment advisor for managed accounts, looking to serve primarily large institutional investors like fund of funds, family offices, pension funds and hedge funds. From early 2009 through its winding down in 2011, MBFAM invested approximately $6.3 million in start-up costs and operating expenses. By March 2010, when the CFTC began its investigation into the inadequacy of the USG Fund as an investment vehicle for MBF's segregated customer assets, MBFAM had begun soliciting large investments from institutional clients. However, once Fisher disclosed the pendency of the CFTC investigation, none of those prospective investors would invest. Not being able to raise the funds it sought, MBFAM ceased operations in 2011.

THE FACTS OF THE CASE

I. DEFENDANTS RECOMMEND THE USG FUND TO MBF

23. As a FCM, MBF is regulated by the CFTC. The regulations that the CFTC enforces include rules requiring FCMs to deposit and maintain customer funds in accounts that are segregated from the FCM's own funds. These accounts are referred to as "segregated accounts." The CFTC also requires that segregated accounts be labeled as such, that funds deposited in such accounts be redeemable within one day, and that "customer segregation acknowledgment letters" (commonly called "Seg Letters") be obtained for such accounts from the financial institutions holding them. Finally, the CFTC requires that the segregated funds be held in an investment vehicle that is redeemable to cash within one day.

24. Fisher and MBF are extremely careful and risk averse, especially with respect to customer funds. For example, Fisher and MBF have actively protected customer funds on numerous notable occasions, including by transferring all of MBF's customer funds from Sentinel Management Group before its insolvency in August 2007, removing all of MBF's customer funds from the Reserve Fund before it "broke the buck" in September 2008, and removing a significant amount of customer funds from MF Global Holdings Ltd. before its insolvency in October 2011.

25. The most recent financial crisis came to a head with the September 15, 2008 bankruptcy filing of Lehman Brothers. Safe investment options quickly became difficult to find, and Fisher wanted to obtain a new safe haven for MBF's customers' funds. MBF's main goal was to insure return of capital to its customers, not a return on capital.

26. On September 17, 2008, Ivan Soto, MBF's Controller, contacted MBF's representatives at Corporate Defendants to inquire about investment options for MBF's customer funds. Soto spoke with Murphy and Billings.

27. Murphy and Billings were part of a team at Defendants that included, among others, Chang (employed by JPMAM) and Jodi Wiener (employed by Chase Bank) and that regularly worked with FCMs like MBF.

28. Murphy's work with FCMs included the role of relationship manager to J.P. Morgan Futures, the FCM owned and operated by the J.P. Morgan conglomerate.

29. During the relevant period, Murphy had primary responsibility for managing the relationship between MBF and Corporate Defendants and Murphy worked with Billings, Chang and Wiener to provide and promote Corporate Defendants' produces and services. Whenever MBF opened an account at Chase Bank, it told Chase Bank that MBF was required to deposit and maintain all customer funds in segregated accounts. Additionally, in this instance, Defendants were aware of MBF's requirements, as MBF already held segregated accounts for domestic and foreign customers' funds at Defendants, Defendants received copies of MBF's regulatory financial filings (a/k/a NFA Form 1-FR) and the Defendants' team assigned to the MBF account specialized in servicing FCMs. In particular, Murphy was an Executive Director and the senior member of MBF's coverage team with 60% to 80% of Murphy's clients being registered FCMs.

30. Nevertheless, Soto explicitly told Billings that MBF was looking to invest customer "segregated funds" and that any investment options must be able to accept segregated funds.

31. Aware of MBF's express requirements, Billings, in consultation with Murphy and Chang, recommended two J.P. Morgan owned and directed money market funds that invested in U.S. Treasury securities.

32. One fund that Billings recommended to Soto, the 100% U.S. Treasury Securities Money Market Fund, was not accepting new customers. Because the marketplace was looking to Treasury securities as a safe haven for cash, there were more buyers than sellers for Treasury securities, causing extraordinarily high demand for funds that invested mainly in U.S. Treasury securities.

33. The other fund that Billings recommended to Soto was the USG Fund. The USG Fund invested in a mix of Treasury securities and U.S. government and agency bonds.

34. Because the USG Fund included non-Treasury agency securities like those of FNMA, GinnieMae and FreddieMac, Fisher deemed it to be slightly riskier than the fund containing only U.S. Treasuries. Fisher requested that MBF be permitted to invest in the Treasuries-only fund, but Defendants insisted that it could not be opened for the benefit of MBF. With that avenue firmly closed, Fisher, after speaking directly to Kevin Murphy who confirmed to Fisher that the USG Fund was a CEA eligible investment to hold customer funds, agreed to invest MBF's customer segregated assets in the USG Fund, as the safest investment vehicle as recommended and offered by Chase Bank.

35. Upon information and belief, although Defendants could have offered MBF other non-J.P. Morgan sponsored funds that would qualify to hold customer segregated funds, such alternatives would have resulted in substantially less fees and profits to Defendants.

36. Defendants led MBF to believe that with the USG Fund, MBF would be gaining a conservative investment vehicle for its customer funds, not that MBF would be opening a

separate, new account from its existing accounts. Billings told Soto that by applying for and investing in the USG Fund, MBF would invest customer segregated funds in the USG Fund as a sub-account of an existing customer segregated account that MBF already held at Defendants.

37. During this same period, Defendants represented to other FCMs that investment in the USG Fund was a qualified investment for customer segregated funds pursuant to the CEA.

38. Specifically, but without limitation, Defendants made these representations to Sterling Commodities Corporation (See Exhibit "1" annexed hereto).

39. Specifically, but without limitation, Defendants made these representations to Farr Financial Inc. See Exhibit "2" annexed hereto.

II. DEFENDANTS FRAUDULENTLY MISREPRESENT THAT THE USG FUND WAS A PERMISSIBLE SEGREGATED CUSTOMER ACCOUNT

40. Defendants knew that customer funds are required to be separately accounted for and are prohibited from being commingled with the funds of an FCM and that customer segregated accounts are a critical customer protection feature of the United States commodity laws. These accounts are designed to ensure that customer funds are protected and available for immediate withdrawal or transfer, even if an FCM experiences financial distress or enters into bankruptcy.

41. Defendants knew that for MBF to invest in the USG Fund, they needed to assure MBF that the USG Fund could accept customer segregated funds.

42. Defendants also knew that, because of the high demand for Treasury securities, it no longer had other Corporate Defendants owned investment options available that would satisfy MBF's safe investment criteria while allowing Corporate Defendants to maximize

their profits, and that the USG Fund therefore served as the only opportunity for Defendants to secure MBF's business for the customer funds that MBF was seeking to invest in September 2008 without having to pay a portion of the fees to the owner of the investment vehicle. Defendants also knew that if they did not persuade MBF to purchase the USG Fund investment, MBF would take its business – and therefore its fees and commissions – elsewhere. For example, Defendants knew that MBF maintained an account with Harris Bank and could have done business with Harris Bank if Defendants were not able to offer a safe and conservative investment option that was suitable for MBF's stated purposes.

43. Before MBF decided whether to apply for the USG Fund, Soto asked Billings to confirm that the USG Fund could accept segregated funds. Soto memorialized in an internal email on September 17, 2008: "JPMChase is calling me today about the ability to invest in the U.S. Gov. MM fund."

44. In response to Soto's inquiry, Billings specifically represented to Soto that the USG Fund could properly hold segregated funds.

45. Billings also told Soto that any redemption requests from the USG Fund would be processed on the same day if a request for redemption was placed on or before the cut off time of 4:30 p.m. If the request was submitted after 4:30 p.m., the funds would be redeemed the next day. This reassured MBF that the USG Fund would satisfy the redemption requirements for segregated accounts.

46. Billings' redemption procedures were so precise, that MBF was able to memorialize them into a written procedure that specifies such details as:

a. the names of six MBF employees authorized to order liquidations;

b. the telephone number to call for liquidation orders;

c. what information to provide, including the number of the segregated bank account of which the USG Fund was a sub-account, to which all funds were to be credited.

Those instructions state that all transactions "are made directly through the MBF Chase regulated A/C . . . . You will see the $$ being debited/credited to the Reg[ulated] A/C within the day. If not, call back the representative."

47. In addition, Jeff Koltay, an MBF employee responsible for the daily balancing of MBF's customer funds, contacted Jodie Wiener, a Chase Bank employee, to ask whether the USG Fund could hold customer funds. Wiener, too, confirmed that it could, and Koltay relayed her confirmation to Soto.

48. Moreover, Defendants requested and received certified financial statements from MBF before opening the USG Fund and annually thereafter. From the submitted financial statements, it was readily apparent that MBF's non-customer capital account was far less than the amount that MBF was looking to transfer to the USG Fund and ultimately was maintained in the USG Fund. From this fact alone, as Chase Bank required MBF to submit its annual financial statement to Chase Bank, it was known to Corporate Defendants at the time of the initial investment and with each submitted financial statement that the amount being transferred to the USG Fund was segregated customer assets and was being held at Chase Bank for that purpose.

49. In reliance on those representations, MBF opened a subaccount (xxxx2069) on September 17, 2008, under its primary segregated customer account (xxxx253)(the "253

Account"), as a vehicle to invest in the USG Fund ("USG Fund Account") and which was linked to the 253 Account.

50. Billings had informed MBF that because the USG Fund would constitute a sub-account of the 253 Account, in effect the master account, the previously issued Seg Letter for the 253 Account also covered the USG Fund Account. As such, Defendants led MBF to believe that it was not necessary to obtain a separate Seg Letter for the USG Fund Account. MBF accepted Defendants representation because MBF knew, from its dealings with other accounts at other banks, that sub-accounts of customer segregated accounts at the other banks did not require separate Seg Letters.

51. Before MBF began to deposit customer funds in the USG Fund, Soto again asked Billings to confirm that the USG Fund could accept segregated funds. Billings again assured Soto that it could.

52. In reliance on this additional representation, MBF proceeded with the remaining account opening procedures. Upon information and belief, Billings, Wiener, or an employee of Defendants named Zafer Uysal informed Soto that the USG Fund Account would be a sub-account of the 253 Account.

53. Only a segregated account may be a sub-account of another segregated account (*see* 7 U.S.C. § 6d(b); 17 C.F.R. § 1.20(a)); therefore, making the USG Fund Account a sub-account of the 253 Account, Defendants again represented to MBF that the USG Fund Account was segregated.

54. Later on September 17, 2008, in further reliance on Defendants' representations that the USG Fund could accept segregated funds, MBF began to deposit customer funds in the USG Fund Account. Defendants knew that if these transfers were not made into a

properly segregated customer account as required by the CEA and CFTC Regulations, it would result in a violation of Section 4d(b) of the Act, 7 U.S.C. § 6d(b) and Commission Regulation 1.20(a), 17 C.F.R. § 1.20(a)

55. Around this time, on September 17 or 18, Soto again inquired of Billings whether a separate Seg Letter was needed for the USG Fund Account. Billings again informed Soto that a Seg Letter was not needed because such a letter was already issued for the 253 Account of which the USG Fund Account was a sub-account.

56. Soto then confirmed that MBF in fact had a Seg Letter for the 253 Account.

57. In addition, Koltay independently contacted Wiener to enquire about a Seg Letter for the USG Fund Account. As with Billings' representation to Soto, Wiener told Koltay that the USG Fund Account did not need a separate Seg Letter because the 253 Account of which it was a sub-account already had one.

58. In October 2008, JPMAM sent MBF the initial monthly statement for the USG Fund Account. The statements were sent by JPMAM and listed JPMorgan Treasury Technologies Corp., a division of either JPM or Chase Bank as the account advisor. On the statement, the account was titled "MBF Clearing Corp Commodity Customer Segregated Bank Account."

59. Soto reviewed the October 2008 statement and specifically noted that, consistent with CFTC requirements, Defendants had labeled the USG Fund Account a segregated account.

60. Through the account statement, Defendants further represented to MBF that the USG Fund Account was a segregated account, and that it was properly labeled as such. See Exhibit "3" annexed hereto.

III. DEFENDANTS SURREPTITIOUSLY REMOVE "COMMODITY CUSTOMER SEGREGATED BANK ACCOUNT" FROM THE TITLE OF THE USG FUND ACCOUNT

61. JPMAM's account statements for the USG Fund Account continued to bear the title "MBF Clearing Corp Commodity Customer Segregated Bank Account" until March 2009. See Exhibit "4" annexed hereto.

62. Then, beginning in March 2009, the title of the account was altered to "MBF Clearing Corp Attn: Mark Fisher." See Exhibit "5" annexed hereto.

63. This change was not ordered by MBF.

64. In or about March 2009, Defendants, specifically through Elizabeth Billings, advised MBF that Defendants were providing double credits to MBF's accounts[2]; "credits" through both the master segregated account (253 Account) and interest from the linked USG Fund account; and that the USG Fund Account had to be transferred from being a sub-account of the 253 Account to being a non-interest bearing sub-account of another MBF segregated account (number xxxxx7614)(the "614 Account").

65. MBF complied with Defendants' request.

66. However, the change in the main account to which the USG Fund Account was a sub-account from the 253 Account to the 614 Account did not change the character or title of the USG Fund Account in any way whatsoever. In both instances, the USG Fund Account remained a sub-account to and linked to a segregated account.

[2] Specifically, on July 21, 2011 during her deposition before the CFTC Ms. Billings described exactly what occurred. She stated that once Defendants realized that the checking account was receiving interest and the money market fund account was receiving dividends she stated "I was like, "Oh, my goodness, the client is now getting paid twice from the bank....So I called the client and said "De-link. De-link this immediately." CFTC Transcript pages 69-70.

67. And yet, the USG Fund Account's title *was* changed despite its continuing to be linked to a customer segregated account.

68. Defendants never informed MBF of the change in title.

69. Defendants have falsely claimed that MBF requested the change.

70. Any change not ordered by the customer could only have occurred at the order of someone with legal and/or compliance authority over the customer account.

71. Upon information and belief, the title of the account holding the USG Fund investment was changed at the order of someone within Corporate Defendants.

72. Why the Defendants' legal and/or compliance officials would have ordered the title of the account changed becomes apparent when one considers that it is a violation of the CEA for Corporate Defendants knowingly to hold FCM customer segregated assets in an investment that was not qualified to hold such assets.

73. If the USG Fund was not qualified to hold FCM customer segregated funds, then titling it as one and transferring funds between the segregated and non-segregated accounts would have proved clear violations of the CEA by Corporate Defendants.

74. In order to minimize Corporate Defendants' exposure for such a violation, it would have been prudent for Corporate Defendants to remove the "customer segregated account" language from the title of the USG Fund Account as soon as the inappropriateness of such title was discovered.

75. Therefore, Plaintiffs reasonably infer that sometime before March 2009, someone at the Corporate Defendants discovered either (a) that the USG Fund could not be used to hold FCM customer funds, or (b) that the USG Fund Account had been improperly opened and titled as a FCM customer segregated account.

76. Nevertheless, Plaintiffs were not informed.

77. The change of name was obvious only on the paper monthly statements.

78. However, Defendants knew or should have known that high-volume institutional customers like MBF transact banking electronically, and do not rely on paper monthly statements.

79. Therefore, MBF could not have known of the change in title unless Defendants disclosed it—and they did not.

80. Accordingly, MBF did not become aware of the change in title until after the CFTC investigation in 2010.

81. The change of title in and of itself left MBF open to a regulatory violation.

82. CFTC regulations not only require that segregated customer accounts be kept separate from other FCM accounts and be able to be readily liquidated, those regulations also require such accounts to be clearly titled as segregated customer accounts.

83. By changing the name of the USG Fund Account, Defendants exposed MBF to regulatory violation, even if the USG Fund had been a proper FCM segregated customer account.

84. Not only did Defendants not tell MBF in March 2009 that the USG Fund could not hold FCM customer segregated assets, they in fact continued to misrepresent that it could.

85. Under the CEA, Defendants acted as a clearing bank for the purpose of paying and collecting margin calls issued by commodities futures exchanges and owed by clearing FCMs like MBF. As such, Defendants would receive margin calls relating to MBF, and would either pay or confirm that customer segregated assets sufficient to cover the call.

86. In and around October 2008, Murphy contacted MBF to inform it that Defendants had received a segregated margin call from the Chicago Mercantile Exchange Inc. ("CME").

87. Fisher told Murphy that the call was covered by assets in the USG Fund, and Murphy confirmed it and informed Soto later that same day that those margin calls would not be an issue because MBF had excess segregated funds in the USG Fund Account to cover any margin calls that occurred.

88. Murphy thereby further represented that the USG Fund Account was a proper segregated account.

89. This scenario repeated itself on several occasions afterwards, and, most importantly, after March 2009.

90. One such call came in April 2009, after the USG Fund Account title had been changed.

91. In each of those instances, margin calls were deemed by Murphy to be covered by assets in the USG Fund Account, even though by then Defendants had realized that the USG Fund Account was not a proper investment for segregated customer funds, and was no longer even titled as such.

92. Accordingly, Defendants knowingly and deliberately permitted MBF, without its knowledge or approval, to hold—and even misled it into holding—segregated customer funds in an investment, the USG Fund, which was never qualified to hold such assets.

93. And they never told MBF that this was so.

IV. THE CFTC AUDIT AND DEFENDANTS' REFUSAL TO PROVIDE A SEG LETTER FOR THE USG FUND ACCOUNT

94. In June 2009, CME conducted its annual audit of MBF and, upon noticing segregated funds in the USG Fund Account, asked MBF to provide a copy of its Seg Letter for that

Account. Koltay requested a Seg Letter from Wiener, and Wiener again advised Koltay that such a letter was not needed because the USG Fund Account was a sub-account of the 614 Account, for which a Seg Letter was already provided. MBF relayed this information to CME auditors, who accepted the explanation. MBF passed that audit.

95. However, in March 2010, the CFTC audited MBF and it also requested MBF's Seg Letter for the USG Fund Account. Koltay again requested a Seg Letter from Wiener, and Wiener again told Koltay that MBF did not need one.

96. This time, however, when MBF relayed Wiener's information to the CFTC, the CFTC advised MBF that, contrary to Defendants' assertions, a Seg Letter *was* needed specifically for the USG Fund Account.

97. Koltay thereafter contacted Wiener again to request a Seg Letter for the USG Fund Account, and Wiener informed Koltay that she would obtain one from the "asset management team," presumably referring to one or another of the Corporate Defendants.

98. Billings contacted Soto regarding the Seg Letter and expressed surprise that there would be any issue with the USG Fund Account.

99. Billings also sent MBF an email indicating her belief that the account was properly treated as a segregated account, stating, "I was trying to chase down people in our 'custody' organization as you [Soto]/jeff [Koltay] said you were purchasing treasuries and holding them in custody . . . . Which I guess you are doing but within the realm of a money market gov't fund which is linked to your TS dda." A "dda" is a demand deposit account—i.e., a checking account.

100. Soon after, Defendants informed MBF that they would not issue a Seg Letter for the USG Fund Account, citing the provision of the Fund's documentation that permits it to defer liquidations for up to seven days.

101. Upon information and belief, this determination was made by Kate Tripp, an in-house lawyer employed by Corporate Defendants.

102. MBF contacted the CFTC immediately. The CFTC informed MBF that it would need to submit a statement to the CFTC indicating that the USG Fund Account was not a properly segregated account and discounting the funds in the account as having not been segregated over the prior month.

103. MBF also immediately liquidated the funds in the USG Fund Account and transferred them to an account that clearly was a proper customer segregated account.

104. Throughout the entire time period from September 2008, when the USG Fund Account was opened, through March 2010, when the account was closed, Defendants represented to MBF that the USG Fund Account was a properly segregated account and satisfied the CFTC requirements for a segregated account.

105. MBF did not know these representations were false.

106. MBF made approximately 10 to 20 redemption requests per month from the USG Fund Account, and every single request was satisfied within 30 minutes of demand, just as Defendants said they would be.

107. Moreover, as far as MBF ever knew, the USG Fund Account was properly titled as a segregated account.

108. At no time before March 2010 did MBF have any knowledge that the USG Fund Account was never a proper vehicle for customer segregated assets.

V. DEFENDANTS UNILATERALLY TERMINATE THEIR BANKING RELATIONSHIP WITH MBF

109. As the CFTC investigation continued, it began to impact Defendants.

110. By May 2011, the CFTC had issued document production requests to Defendants, and during the summer Defendants produced documents to the CFTC.

111. Murphy and Billings appeared before the CFTC and gave deposition testimony in July 2011.

112. By then, Defendants counsel surely realized and explained the magnitude of the problem that Defendants had caused by marketing the USG Fund as a proper vehicle for FCMs to invest customer segregated assets.

113. Defendants reacted to this CFTC scrutiny by terminating their long-standing clearing financial relationship with MBF.

114. Defendants complained to MBF that the relationship was "not working out," ostensibly because MBF's business was not sufficiently profitable.

115. MBF requested time to find another clearing bank. Defendants gave MBF until December 2011 to do so.

116. MBF tried in the following six months to form a relationship with another financial clearing institution, but once MBF disclosed the pending CFTC investigation to prospective banks, none of them desired to do business with MBF. This was during the time that MF Global Holdings was in the news and filed for bankruptcy protection, and there was a heightened concern by banks of dealing with FCMs standing accused of misusing customer assets. An FCM that was under such an investigatory cloud, like MBF was at the time, was deemed untouchable.

117. Indeed, the only clearing bank that knew that MBF was innocent of any wrongdoing were Defendants, the source of all MBF's problems.

118. And so, after being unable to establish an alternative clearing bank relationship, MBF informed Defendants that it had no alternatives, and asked that they reconsider their decision and let MBF stay as a clearing FCM customer.

119. MBF told Defendants that if Defendants would not continue to be MBF's clearing bank, then MBF would be forced to cease being a self-clearing firm.

120. Fisher even offered, if profitability was Defendants' concern, to pay higher fees on MBF's accounts in order to remain in business as a clearing FCM.

121. Defendants refused to reconsider maintaining their relationship with MBF, notwithstanding that the CFTC investigation had been the result of their actions, notwithstanding MBF's offer to pay higher fees to ensure profitability, and notwithstanding Defendants being on notice that MBF's business would be radically diminished as a result.

122. Defendants only permitted MBF to remain a customer temporarily past December 2011 on condition that it put up a $1 million security deposit against any undefined "contingencies" Defendants might incur.

123. MBF ultimately ended its clearing bank relationship with Defendants in January 2012.

124. As a result of not having a clearing bank and therefore being unable to hold customer assets, MBF could no longer act as a clearing FCM. It therefore was forced to become a non-clearing FCM on January 20, 2012, using the clearing facilities of another FCM.

125. On December 14, 2012, MBF reverted to being a simple introducing broker.

VI. MBF'S RESULTING DAMAGES

126. Defendants' fraudulent misrepresentations induced MBF to deposit and maintain its customers' funds in the USG Fund Account in violation of the CEA and CFTC rules and regulations.

127. Defendants' failure to inform MBF that the USG Fund could not properly hold segregated customer assets prevented MBF from self-reporting and self-correcting such violations, which would have mitigated any adverse regulatory impact.

128. As the foreseeable and proximate result of Defendants' misrepresentations, failures and omissions, on March 13, 2012, the CFTC sued MBF for failing to keep customer funds in segregated accounts. *See U.S. Commodities Futures Trading Commission v. MBF Clearing Corp.*, No. 12 CV 1803 (S.D.N.Y.).

129. The CFTC alleged, among other things, that the customer funds that MBF deposited in the USG Fund Account were not segregated because "the account was not properly titled, its redemption provisions were not compliant with CFTC Regulations, and MBF did not possess the requisite acknowledgment letters." *Id.* Compl. ¶ 3.

130. MBF ultimately settled the lawsuit with the CFTC, and a consent order was entered on November 28, 2012.

131. As a result of the CFTC action, MBF paid a fine of $650,000 and spent approximately $800,000 in legal fees.

132. As a result of Defendants termination of their clearing bank relationship, MBF had to change its status from an FCM to a non-clearing FCM and ultimately to an introducing broker, and in doing so, lost its ability to accept money or assets from customers or to clear customer's trades.

133. The change in status has forced MBF to incur not less than $600,000 of additional clearing expenses per year.

134. The change in status has also resulted in a reduction of revenues of not less than $700,000 per year, for a total aggregated loss per year of not less than $1.3 million per year.

135. Moreover, by 2010, the number of FCMs in the industry began contracting, and those remaining were picking up more and more business. MBF, before it was forced to cease being a clearing FCM, enjoyed a stable and even growing business, and clearly would have been one of the industries few surviving FCMs, acquiring market share from defunct FCMs like MF Global.

136. But for Defendants' actions in terminating MBF's clearing banking relationship as set forth above, MBF would have grown its business at least in line with the other surviving FCMs. Instead, its business declined, and it has lost forever the opportunity to gain market share that the past four years presented for it.

137. The realities of the industry today are that no bank would act as a "pay and collect" bank for MBF given its regulatory history, without which MBF could never be a clearing FCM. Therefore, given the permanent damage to MBF's reputation resulting from the CFTC action and fine, and the additional costs of setting up a FCM today, it will be impossible for MBF ever to regain its former status and prominence. By reason of the foregoing, therefore, MBF has been damaged in an amount not now ascertainable, but believed to be not less than $25 Million.

VII. MBFAM'S RESULTING DAMAGES

138. MBFAM's success depended entirely upon the reputation in the marketplace of Fisher and MBF. That reputation, before the CFTC lawsuit, was sterling, and therefore MBFAM could hope for a successful launch and life.

139. MBFAM started in early 2009 after its formation. MBFAM used the same team of Murphy and Corporate Defendants' employees as did MBF, and through them MBFAM opened a bank account with Chase Bank in April 2009 with an initial $100,000 deposit transferred in directly from MBF. MBFAM discussed its business plans and potential with Defendants, but at no time during those discussions did Defendants advise, inform or warn MBFAM that its new venture might be at risk because of potential adverse CFTC actions against MBF. Note in particular that at this time—April 2009—Defendants had already changed the title of the USG Fund Account to omit that it contained customer segregated assets.

140. MBFAM began with nine investors—all friends and family of Fisher—investing $35 million to support $70 million in trading assets. By 2011, this amount had grown to 18 investors, still friends and family, investing a total of $60 million to support trading assets of $120 million.

141. MBFAM's business plan was to build a track record from those friend and family accounts, and to use that track record to solicit more substantial investments, in the hundreds of millions of dollars, from large institutional funds. In 2010 and 2011, MBFAM approached many fund of funds, family offices, and pension funds and many expressed interest in investing hundreds of millions of dollars.

142. In the meantime, MBFAM invested about $6.3 Million in start-up costs and operating expenses from 2009 to 2011.

143. However, it was readily foreseeable to Defendants that any tarnishing of Fisher's and MBF's reputation by a CFTC investigation would make it difficult or impossible for MBFAM to attract investors to its new hedge fund.

144. After the CFTC began its investigation in March 2010, Fisher disclosed it to all of MBFAM's potential investors. The results were predictable. In an environment which included, by then, the Madoff scandal and the MF Global bankruptcy, no institutional manager would risk placing money with an affiliate of a FCM that was under the cloud of a CFTC investigation for allegedly mishandling customer funds. All of MBFAM's prospective institutional investors refused to go forward.

145. By 2011, it was obvious that MBFAM could not raise institutional funds for its venture. It ceased operations and lost the $6.3 million it had invested in the venture, and all the potential profit it could have earned in the coming years.

146. Had Defendants told MBF or MBFAM, in April 2009, before MBFAM launched its business, that the USG Fund was not a proper vehicle for a FCM to place customer segregated assets, MBFAM would not have commenced business, and it would not have suffered its losses.

147. Defendants had the knowledge of MBF's potential exposure to regulatory action, and the resultant fallout against MBFAM, and they did not disclose it.

148. As a result, MBFAM's entire $6,300,000 start-up investment was lost, plus MBFAM's profit potential of at least $3 million per year. Accordingly, MBFAM believes it has been damaged in an amount exceeding $25 million.

FIRST CAUSE OF ACTION
(Fraudulent Inducement to open the USG Fund Account)

149. Plaintiffs incorporate by reference and re-allege the preceding allegations as though fully set forth herein.

150. To induce MBF to invest in the USG Fund and/or open the USG Fund Account, Defendants misrepresented the following material facts:

(a) That the USG Fund Account could properly hold customer segregated funds;

(b) That customer funds were always redeemable from the USG Fund Account within one day;

(c) That the USG Fund Account did not require its own Seg Letter because it was covered by the Seg Letter issued for the 253 Account of which it was ostensibly a sub-account; and

(d) That by labeling the USG Fund Account's monthly statements as a "commodity customer segregated bank account" the account was in compliance with the CEA and CFTC Regulations pertaining to the segregation rules;

151. Given that Defendants are a conglomerate and a giant of the financial services industry, MBF reasonably relied upon the aforementioned representations in opening the USG Fund Account and in depositing its customer's funds therein.

152. In fact, each of the aforementioned statements were known by the Defendants to be false, or alternatively were made with a reckless disregard as to its truth or falsity.

153. The Defendants knew or were reckless in not knowing that the USG Fund Account, which Defendants recommended and sold to MBF, was not in compliance with the CEA and CFTC Regulations. The USG Fund was not qualified to hold segregated customer

assets of a FCM, and that Defendants would not be able to issue Seg Letters with respect to the USG Fund.

154. Defendants knew or were reckless in not knowing that any investment or account they recommended and sold to MBF must have been qualified to hold segregated customer assets of a FCM, and that Defendants must have been able to issue Seg Letters with respect to any account holding the investment.

155. Nevertheless, with the intent to maximize profits Defendants recommended and sold the USG Fund to MBF which was not qualified to hold segregated customer assets of a FCM, and Defendants falsely told MBF that MBF account holding the USG Fund was already the subject of a Seg Letter issued with respect to the 253 Account of which the USG Fund Account was ostensibly a sub-account.

156. By virtue of the foregoing, MBF has been damaged in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and MBFAM has been damaged in and amount to be determined at trial but not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value, all proximately caused by Defendants' conduct.

SECOND CAUSE OF ACTION
(Fraudulent Misrepresentations – September 2008 through March 2009)

157. Plaintiffs incorporate by reference and re-allege the preceding allegations as though fully set forth herein.

158. From September 2008 through March 2009, Defendants misrepresented the following material facts:

(a) That labeling the USG Fund Account as a "customer segregated bank account" renders said account to be in compliance with the CEA and CFTC Regulations pertaining to the segregation rules; and

(b) That the USG Fund Account could properly hold customer segregated funds.

159. Given that Defendants are a conglomerate and giant in the financial services industry, MBF reasonably relied upon the aforementioned representations in maintaining and continually depositing its consumers' funds in the USG Fund Account.

160. In fact, the aforementioned representations were known by the Defendants to be false, or alternatively were made with a reckless disregard as to its truth or falsity.

161. The Defendants knew or were reckless in not knowing that the USG Fund Account was not in compliance with the CEA and CFTC Regulations. The USG Fund was not qualified to hold segregated customer assets of a FCM, notwithstanding its label of "customer segregated bank account."

162. Nevertheless, from September 2008 through March 2009 the Defendants misrepresented on its monthly account statements that the USG Fund Account was a "customer segregated bank account" to induce MBF into believing that the USG Fund Account is in compliance with the CEA and CFTC Regulations.

163. By virtue of the foregoing, MBF has been damaged in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and MBFAM has been damaged in and amount to be determined at trial but not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value, all proximately caused by Defendants' conduct

THIRD CAUSE OF ACTION
(Fraudulent Concealment – March 2009 through March 2010)

164. Plaintiffs incorporate by reference and re-allege the preceding allegations as though fully set forth herein.

165. To induce MBF to invest and maintain funds in the USG Fund Account, Defendants made material misrepresentations to MBF in connection with the USG Fund Account. Defendants misrepresented, among other things, that:

(a) The USG Fund Account could properly hold customer segregated funds;

(b) The customer funds were always redeemable from the USG Fund Account within one day;

(c) The USG Fund Account did not require its own Seg Letter because it was covered by Seg Letter issued for the 253 Account of which it was ostensibly a sub-account; and

(d) The USG Fund was in compliance with the CEA segregation rules between September 2008 and February 28, 2009 by titling MBF's USG Fund Account monthly statements as a customer segregated account.

166. But subsequently, in or about February of 2009, Defendants unilaterally – without notice to MBF – changed the title on the USG Fund Account statements from "MBF Clearing Corp. Commodity Customer Segregated Bank Account" to "MBF Clearing Corp Attn: Mark Fisher."

167. Upon information and belief, said title change was done because someone at Defendants discovered either (a) that the USG Fund could not be used to hold FCM customer funds, or (b) that the USG Fund Account had been improperly opened and titled as a FCM customer segregated account.

168. Upon discovering that the USG Fund is not qualified to hold FCMs' customer segregated assets, the Defendants had a duty to disclose this information to Plaintiffs. Defendants failed, however, to disclose same to Plaintiffs but instead concealed same.

169. As a financial institution that targeted FCMs and marketed the USG Fund as an investment vehicle that is in compliance with the applicable CEA and CFTC rules and regulations, Defendants had superior and special knowledge regarding the USG Fund's requirements, liquidation limitations and Defendants' ability to issue Seg Letters. Defendants, moreover, had essential and unique knowledge and expertise that MBF could not replicate, including intimate familiarity with the characteristics of the USG Fund Account and whether those characteristics were compliant with CFTC requirements. MBF did not have reasonable access to the same information to verify Defendants' representations, which unbeknownst to MBF, were partial, ambiguous, and incomplete.

170. Plaintiffs reasonably relied upon Defendants' knowledge of and expertise in the regulatory requirements governing FCMs, and as a result maintained and continually deposited its customer funds in the USG Fund Account.

171. As a result of Defendants' superior knowledge, representations of a half-truth -- in titling the USG Fund Account as a "commodity customer segregated back account" from September 2008 to March 2009 -- and other misleading partial disclosures, Defendants had a duty to disclose that the USG Fund Account is not in compliance with the CEA and CFTC rules and regulations regarding FCM segregation requirements.

172. In breach of this duty, Defendants failed to disclose to MBF, among other things, that:

(a) the USG Fund Account could not properly hold customer segregated funds;

(b) it could sometimes take up to seven days to redeem customer funds from the USG Fund Account;

(c) the USG Fund Account was in fact a separate and different account from the Segregated Account to which it was linked;

(d) the USG Fund Account required its own customer segregation acknowledgement letter; and

(e) the title on the USG Fund Account had changed and was no longer properly labeled a segregated account.

173. Nevertheless, without notifying MBF, in or about February 2009, Defendants unilaterally removed from the USG Fund Account's title "customer segregated back account," but by the same token allowed MBF to continue to rely on Defendants prior misrepresentations that the USG Fund Account was properly compliant with the segregation rules and regulation, when Defendants had knowledge to the contrary.

174. As a result of Defendants' failure to disclose the reasons underlying the title change on the USG Fund Account, namely that said account is not in compliance with the CEA and CFTC rules and regulations, MBF continued to deposit customer assets into the USG Trust Account and continued to maintain customer funds until the CFTC audit in 2010.

175. Had Defendants disclosed to Plaintiffs in early 2009 that they had changed the title of the USG Fund Account to omit any reference to customer segregated assets and/or advised MBF that the USG fund did not qualify to hold customer segregated funds, MBF would have immediately self-reported same to the CFTC and thus mitigated its adverse regulatory impact, and MBFAM would not have launched its business until the matter was concluded, and therefore avoided the losses it sustained.

176. By virtue of the foregoing, MBF has been damaged in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and MBFAM has been damaged in and amount to be determined at trial but not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value, all proximately caused by Defendants' conduct.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

177. Plaintiffs incorporate by reference and re-allege the preceding allegations as though fully set forth herein.

178. By virtue of the forgoing, Defendants are liable for negligently misrepresenting and omitting the material facts concerning the USG Fund to MBF.

179. By virtue of the foregoing, MBF has been damaged in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and MBFAM has been damaged in and amount to be determined at trial but not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value, all proximately caused by Defendants' conduct.

FIFTH CAUSE OF ACTION
(Aiding and Abetting)

180. Plaintiffs incorporate by reference and re-allege the preceding allegations as though fully set forth herein.

181. Defendants Murphy and JPMAM, , knowingly willfully aided and abetted, counseled and assisted Chase Bank in the sale of the USG Fund and received financial remunerations from Chase Bank.

182. Defendants Murphy and JPMAM, , provided the product, the back-office support, the execution services and assisted Chase Bank in the sale of the USG Fund to MBF.

183. By virtue of the foregoing, MBF has been damaged in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and MBFAM has been damaged in and amount to be determined at trial, but not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value, all proximately caused by Defendants' conduct.

SIXTH CAUSE OF ACTION
(Deceptive Conduct Aimed at the FCM Community Generally)

184. Plaintiffs incorporate by reference and re-allege the preceding allegations as though fully set forth herein.

185. Defendants comprise a large and sophisticated financial institution that acted as a depository holding customer segregated funds for many FCM clients. Defendants in general were, and Murphy in particular was, well aware of the CFTC's rules and regulations applicable to depositories under the CEA, especially those regulations governing segregated customer funds. Defendants therefore knew or were reckless in not knowing that the USG Fund was not an appropriate investment for holding FCM customer segregated funds. Yet, Defendants misrepresented that the USG Fund was appropriate, and they marketed it as such to FCM generally.

186. Billings and Murphy knew and understood that the CFTC required that customer funds be segregated, and they were familiar with CFTC regulations for providing Seg Letters and how segregated customer accounts must be titled. Billings and Murphy signed customer Seg Letters for FCM clients as a regular part of their jobs.

187. Murphy was also especially familiar with the CFTC's rules governing segregated accounts. In addition to being the manager of the MBF account, up to 80% of Murphy's customers were FCMs, and he has devoted a significant amount of his professional life to working with FCMs, including J.P. Morgan Futures, Inc., JPM's own FCM. Murphy was well aware of the CFTC requirements that FCMs face.

188. Murphy even monitored changes in CFTC rules and provided updates on those changes to MBF and his other customers.

189. Murphy understood the CFTC's requirements and procedures for segregated accounts, was familiar with the CFTC regulations governing Seg Letters, and has signed numerous Seg Letters over the last 20 years.

190. Thus, Murphy could well anticipate that the CFTC would be critical of Defendants' treatment of the USG Fund.

191. In April 2010, in an internal e-mail following the CFTC's criticism of MBF's use of the USG Fund Account, Murphy openly speculated that the CFTC was "less than pleased" with Defendants' "role" in promoting the USG Fund to be used by FCMs to hold segregated customer assets.

192. That "role" was simply this: That despite Defendants' familiarity with CFTC requirements for segregated accounts, and their actual or constructive knowledge that the USG Fund did not qualify, Defendants intentionally and/or recklessly misrepresented to

MBF and other FCMs that the USG Fund Account was a CFTC-compliant segregated account.

193. Defendants solicited other FCMs to invest customer segregated funds in the USG Fund including Sterling Commodities Corporation and Farr Financial, Inc. and upon information and belief other additional FCMs did invest customer segregated funds in the USG Fund as MBF did.

194. Thus, Defendants' conduct was not limited to MBF, but was aimed at the FCM community generally.

195. Moreover, Defendants' action in changing the title of the USG Fund Account to remove reference to it being a segregated customer account constituted willful and egregious conduct, exacerbating their initial misfeasance by then "covering up" the fact that the USG Fund could not legally hold FCM customer assets.

196. Defendants must be penalized to as to deter them from ever treating the regulatory requirements of FCMs so disdainfully.

197. By reason of the foregoing, Defendants acted recklessly and maliciously against FCMs like MBF, inducing them to buy and hold securities that were not qualified to hold FCM customer assets under CEA and CFTC rules and regulations.

198. Upon information and belief, Defendants did so in order to acquire as many FCM customer assets as they could at a time of extreme financial crisis.

199. Defendants took undue advantage of the financial crisis to acquire as many FCM customer assets as they could, and in furtherance of that goal they misrepresented to FCMs like MBF that the investment vehicles available to hold such assets (like the USG Fund) were legally permitted to do so.

200. Then they engaged in actions designed to cover-up and prevent their wrong-doing coming to light prematurely, such as their surreptitiously changing the title of the USG Fund Account without telling MBF, so as to prevent MBF from exposing to the FCM community that the USG Fund was not a proper investment for customer segregated assets. Defendants' conduct was therefore willful, malicious, and reckless.

201. By virtue of the foregoing, Defendants are liable for punitive damages in an amount to be determined at trial as appropriate to deter Defendants from engaging is similarly deceptive conduct against FCMs in the future.

SEVENTH CAUSE OF ACTION
(Contribution and Indemnity)

202. Plaintiffs incorporate by reference and re-allege the preceding allegations as though fully set forth herein.

203. As a result of Defendants' acts or omissions complained of herein, on March 13, 2012, the CFTC sued MBF in the United States District Court, Sothern District of New York, in an action entitled *U.S. Commodities Futures Trading Commission v. MBF Clearing Corp.*, Index No. 12-CV-1803.

204. The CFTC alleged, among other things, that the customer funds that MBF deposited in the USG Fund Account were not segregated because "the account was not properly titled, its redemption provisions were not compliant with CFTC Regulations, and MBF did not possess the requisite acknowledgment letters." (*Id.* Compl. ¶ 3)

205. MBF ultimately settled the lawsuit with the CFTC, and a consent order was entered on November 28, 2012.

206. As a result of the CFTC action, MBF paid a fine of $650,000, and spent approximately $800,000 in legal fees.

207. By virtue of the foregoing, Defendants are obligated to contribute and indemnify MBF of the regulatory and legal expenses it incurred in the approximate sum of $1.5 Million, as determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

(a) On the first cause of action in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and, in favor of MBFAM, not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value;

(b) On the second cause of action in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and, in favor of MBFAM, not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value;

(c) On the third cause of action in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and, in favor of MBFAM, not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value;

(d) On the fourth cause of action in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and, in favor of MBFAM,

not less than (d) $6.3 Million in lost start-up costs and operating expenses, (e) $25 Million in lost enterprise value, and (f) punitive damages to be determined at trial but not less than $10 Million;

(e) On the fifth cause of action in an amount to be determined at trial but not less than (a) $1.5 Million in regulatory and legal expenses; (b) $1.3 Million per year in clearing expenses and lost profits, and (c) $25 Million in lost enterprise value, and, in favor of MBFAM, not less than (d) $6.3 Million in lost start-up costs and operating expenses, and (e) $25 Million in lost enterprise value;

(f) On the sixth cause of action punitive damages to be determined at trial as appropriate to deter Defendants from engaging is similarly deceptive conduct against FCMs in the future.

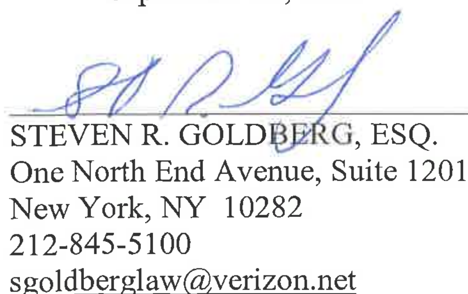
(g) On the seventh cause of action in an amount to be determined at trial but not less than $1.5 Million in regulatory and legal expenses;

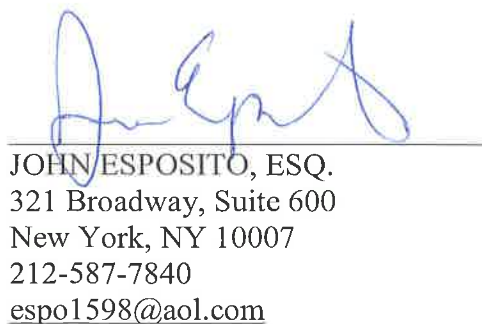
(h) Attorneys' fees, costs and disbursements;

(i) Prejudgment interest at the maximum legal rate; and

(j) Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 16, 2014





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Attorneys for Plaintiffs
MBF Clearing Corp. and
MBF Asset Management LLC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBF CLEARING CORP. and MBF ASSET MANAGEMENT, LLC, Plaintiffs, -against- JPMORGAN CHASE BANK, N.A., JPMORGAN CHASE & CO., J.P. MORGAN SECURITIES, INC. , J.P. MORGAN SECURITIES LLC, J.P. MORGAN INSTITUTIONAL INVESTMENTS INC., JPMCHASE DISTRIBUTION SERVICES, INC. , KEVIN T. MURPHY, ELIZABETH M. BILLINGS, THOMAS CHANG, AND J.P. MORGAN INVESTMENT MANAGEMENT INC., a registered investment advisor (IARD No. 107038) doing business as JP MORGAN ASSET MANAGEMENT. Defendants.	Index No. 652820/2014 Date Purchased: 09/16/14 **VERIFICATION** ECF filed Case

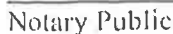
STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

MARK B. FISHER, being duly sworn, deposes and says:

I am the President and CEO of MBF Clearing Corp. and at all times relevant to the Amended Verified Complaint I was the managing member of MBF Asset Management, LLC, the plaintiffs in the within action. I have read the foregoing Verified Amended Complaint and know the contents thereof; that the same is true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to these matters, I believe them to be true.

By: MARK B. FISHER

Sworn to before me this
15th day of December, 2014



Notary Public

ELIBERTO CAMPOS
MY COMMISSION # EE 843573
EXPIRES: October 14, 2016
Bonded Thru Budget Notary Services