

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOLFF LIVING TRUST, by LAURIE LATT WOLFF
and RICHARD WOLFF as trustees, on behalf of itself
and all others similarly situated,

Case No.:

Plaintiffs,

v.

FM MULTI-STRATEGY INVESTMENT FUND, L.P.,
FAMILY MANAGEMENT CORPORATION,
SEYMOUR ZISES, ANDREA TESSLER, and FULVIO
& ASSOCIATES, LLP,

Defendants.

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JUL 19 2009

CLASS ACTION COMPLAINT

Plaintiff, the Wolff Living Trust (the “Trust”), by Laurie Latt Wolff and Richard Wolff as trustees, through its attorneys, brings this action on behalf of itself and all others similarly situated, on personal knowledge as to itself and its own acts, and on information and belief as to all other matters based on the investigation conducted by and through counsel, which included the review of complaints filed by the United States Government and the Securities and Exchange Commission (the “SEC”), news reports published in the financial press, and other available information.

NATURE OF THE ACTION

1. The Trust is a limited partner in the FM Multi-Strategy Investment Fund, L.P., a Delaware limited partnership (the “Fund”), which is managed by the Family Management Corporation (“FMC”), a New York corporation. Plaintiff and other members of the Class (defined below) are qualified investors who purchased limited partnership interests in the Fund.

2. During the Class Period (defined below), Defendants caused a material amount of the investment capital of the Fund to be invested with Bernard L. Madoff Investment Securities LLC (“Madoff Securities” or “BMIS”), an investment advisory service founded by Bernard L. Madoff (“Madoff”).

3. On December 11, 2008, Madoff was arrested by federal authorities for operating a \$50 billion Ponzi scheme, in which Madoff used the principal investments of new clients to pay the fictitious “returns” of other clients. Madoff and Madoff Securities were charged with securities fraud by the SEC. Madoff and Madoff Securities were also criminally charged with securities fraud by the United States Attorney’s Office for the Southern District of New York.

4. Although Madoff has been charged both civilly and criminally, Madoff was unable to perpetrate this fraud by himself. Numerous fund of funds (“FOF”), investment advisors, and affiliates, including Defendants, facilitated Madoff’s fraud and committed their own violations of law by investing and allowing to be invested billions of dollars of their clients’ money with Madoff and his related entities. They did so by, among other things, (a) making false and misleading statements to existing and potential investors regarding the investment objectives of the Fund, and their oversight, thorough manager research, careful due diligence, risk allocation, and portfolio management, and (b) breaching their fiduciary duties with regard to the (i) performance of, or the failure to perform, adequate due diligence into Madoff and BMIS despite the existence of myriad red flags; and (ii) monitoring of such investments.

5. The red flags included, among others, the abnormally high and stable positive investment results reportedly obtained by Madoff regardless of market conditions; inconsistencies between BMIS’s publicly-available financial information concerning its assets and the purported amounts that Madoff managed for clients; the lack of transparency into Madoff

Securities, including Madoff's refusal to disclose his investment strategy; the inability of other funds using a "split-strike conversion" strategy (which Madoff purportedly used) to generate returns even remotely comparable to those generated by Madoff; Madoff acted as his own prime broker, while most hedge funds use large banks such as Goldman Sachs and Morgan Stanley as their prime brokers; unlike most hedge funds, which charge investment management fees based on the performance of the fund, Madoff Securities only generated revenue through transaction-based commission fees; monthly account statements sent to Madoff's investors did not support the returns they reported; Madoff Securities' comptroller was based in Bermuda, while most mainstream hedge funds have in-house comptrollers; and BMIS was audited by a small, obscure accounting firm with no experience auditing entities of the apparent size and complexity of BMIS. These and other red flags (discussed below) should have alerted Defendants that Madoff's returns were suspiciously aggressive despite the performance of the overall market.

6. By investing with Madoff and/or in Madoff Securities, Defendants ignored these red flags that should have caused them to conduct due diligence and/or alter their investment decisions. Instead, Defendants, in particular FMC, which was paid large management and advisory fees by their clients, did little or nothing more than simply handing over the assets of the Fund to Madoff or his related entities.

7. Had Defendants acted truthfully in keeping with their statements to existing and potential investors, conducted a due diligence investigation of Madoff and Madoff Securities, or if conducted, a proper one, Plaintiff and the other members of the Class would not have invested in the Fund or once invested, would not have lost their investment. As a result of Defendants' wrongful conduct, including the failure to conduct due diligence into the legitimacy of Madoff

Securities, Defendants' investments in Madoff Securities have been wiped out, thereby damaging Plaintiff and the other members of the Class.

8. Plaintiff seeks to recover damages caused to the Class by Defendants' common law fraud, negligent misrepresentations, breaches of fiduciary duty, and aiding and abetting breaches of fiduciary duty, under Delaware and New York state law.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A).

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a). Substantial acts in furtherance of the alleged wrongdoing and/or their effects have occurred within this District, and many of the Defendants reside in and/or maintain principal executive offices in this District.

11. In connection with the acts and omissions alleged in this Complaint, Defendants, directly or indirectly, used the mail and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

12. Plaintiff, the Wolff Living Trust, by Laurie Latt Wolff and Richard Wolff as trustees, invested \$100,000 in the Fund and has suffered damages as a result of the wrongful conduct alleged herein.

13. Defendant FM Multi-Strategy Fund, L.P. is a limited investment partnership organized under the laws of the State of Delaware on March 22, 1994. Its principal office is located at 485 Madison Avenue, New York, NY 10022. On or about January 1, 2000, limited partnership interests in the Fund were offered via a Confidential Private Placement

Memorandum (the “PPM”). The minimum capital contribution entitling an investor access to the Fund was \$250,000, unless FMC determined that a lower amount was acceptable.

14. Defendant Family Management Corporation is a New York corporation, located at 485 Madison Avenue, 19th Floor, New York, NY 10022. FMC is a registered investment advisor. As of May 31, 2008, FMC had approximately \$1.3 billion in assets under management. According to its website, FMC’s “mission is to preserve capital and achieve income and appreciation goals through the understanding of the risk/reward relationship of investing. Traditional investment vehicles are employed and are blended with more modern techniques of investing. Through a thorough process of analysis and planning, Family Management strives not only to protect your capital, but to help you take advantage of important trends and opportunities as they present themselves.” FMC is the General Partner of the Fund.

15. Defendant Seymour W. Zises is the President and Chief Executive Officer of FMC, as well as the co-head of FMC’s Investment Committee with Defendant Tessler (identified below). Zises also serves as President and Chief Executive Officer of Family Management Securities, LLC (“FMS”), a registered broker dealer affiliate of FMC and Forest Hill Capital Corporation, an insurance brokerage firm.

16. Defendant Andrea L. Tessler is the Managing Director and Chief Operating Officer of FMC. She is also co-head of FMC’s Investment Committee with Defendant Zises. Tessler also serves as the Managing Director and Chief Operating Officer of FMS and Forest Hill Capital Corporation.

17. During the Class Period, Defendants Zises and Tessler made all investment, trading, allocation and reallocation decisions for the Fund.

18. Defendants FMC, the Fund, Zises and Tessler are referred to as the “FM Defendants”.

19. Defendant Fulvio & Associates LLP (“Fulvio”), located at 5 West 37th Street, New York, New York, 10018, is the Fund’s independent auditor.

SUBSTANTIVE ALLEGATIONS

I. False and Misleading Statements In the Private Placement Memorandum

20. During the Class Period, FMC offered participation in the Fund to qualified investors through the PPM. While the PPM was prepared, amended or revised from time to time, the PPM was the same in all material respects relevant hereto, and most particularly in the material information the PPM concealed, e.g., that a portion of the Fund’s assets was invested with Madoff, BMIS, and/or other Madoff-controlled entities.

21. In the PPM, the FM Defendants stated that the Fund “will allocate its assets among various specialized Investment Advisors” and that “no Investment Advisor will be allocated greater than 33-1/3% of the Partnership’s portfolio.” The PPM went on to state that an investment company, including an open-ended regulated investment company, and an investment partnership, would be considered an Investment Advisor for purposes of “determining whether the diversification requirements” identified in the PPM were satisfied. During the Class Period, the FM Defendants invested a portion of the Fund’s assets in investment partnerships, such as Beacon Associates LLC I, which served as a feeder fund of money into Madoff, BMIS, and/or other Madoff-controlled entities. Class members would not learn until after the Class Period that a portion of the Fund’s assets were invested with Madoff, BMIS, and/or other Madoff-controlled entities.

22. The PPM falsely stated, among other things, that the Fund’s “investment objective [was] to maximize total return,” which was to be “comprised of income and capital appreciation . . . while seeking to limit risk and volatility through diversification of investment and investment strategies.” The PPM was materially false and misleading in that the FM Defendants failed to disclose that a portion of the Fund’s assets was placed with Madoff, BMIS, and/or other Madoff-controlled entities thereby undermining the stated investment objective, i.e., “limit risk and volatility.”

23. The PPM also stated that the General Partner would: (i) evaluate the investment advisers and the market conditions and economic trends relevant to the investments by the investment advisers; and (ii) “monitor the performance of each Investment Adviser retained.”

24. The statements in the PPM concerning the FM Defendants’ due diligence of the investment managers they selected were materially false and misleading because, among other things, they conveyed the false impression that the FM Defendants had conducted, and continued to conduct, a thorough investigation of Madoff and/or BMIS trading operations, assets under management, and the strategy employed by Madoff – the “split-strike conversion” strategy. The FM Defendants either did not perform due diligence, or their due diligence was so lacking as to be reckless, into the past performance and success of Madoff’s investment strategy, which performance was not based on actual returns but rather a Ponzi scheme. Had the FM Defendants reviewed the trading confirmations generated by Madoff and/or BMIS, they would have discovered that the confirmations did not support the investment strategy purportedly employed by Madoff or the returns that strategy purportedly generated. Moreover, had the FM Defendants conducted the due diligence as represented in the PPM, they would have learned of the red flags identified herein, including those relevant to the “split-strike conversion” strategy, that Madoff

did not have expertise using that strategy, and that his investment strategy was nothing more than a fraud.

25. The due diligence statements described herein were also materially false and misleading because they conveyed the false impression that the FM Defendants maintained a system of internal controls, which included continued oversight, portfolio management and due diligence of the investment managers, and which were intended to reduce the risk of loss to the limited partners.

26. The FM Defendants also disseminated false and misleading performance reports and updates to Plaintiff and Class members throughout the Class Period. For example, the October 31, 2004 report stated that “[d]uring the third quarter of 2004, your Fund advanced 0.65%, outperforming the S&P 500 return of -1.96%.... We continue to invest in a blend of traditional and hedged strategies while targeting equity-like returns with lower volatility.” These (and similar) statements were materially false and misleading because: (i) they included fund performance figures without mentioning that a part of the Fund’s investments was fed into BMIS and/or Madoff-related entities; and (ii) the investment strategy purportedly used by Madoff and/or Madoff-related entities was anything but “traditional and hedged strategies” – it was a Ponzi scheme.

27. The PPM listed Fulvio as the Fund’s independent auditor. Throughout the Class Period, Fulvio disseminated yearly audit reports and opinions for the Fund that were materially false and misleading. For example, Fulvio’s August 11, 2004 audit opinion stated that:

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes

examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements.

28. These statements were materially false and misleading because they were not conducted in accordance with Generally Accepted Accounting Standards (“GAAS”), which require, *inter alia*, an accountant to carefully scrutinize the financial statements being audited. Further, there was no “evidence” supporting the amounts invested by BMIS and/or the Madoff-related entities – they were a Ponzi scheme pure and simple. Moreover, had Fulvio performed an adequate audit, it would have learned of many of the red flags identified herein, including those relevant to the “split-strike conversion” strategy, that Madoff did not have expertise using that strategy, and that his investment strategy was nothing more than a fraud.

29. Fulvio’s statements also aided and abetted the FM Defendants’ breaches of fiduciary duties.

II. Defendants Ignored Red Flags Warning That Madoff’s Activities Were Illegitimate

30. For years since the inception of Madoff’s scheme, there have been myriad warnings meaningful to investment professionals that Madoff, BMIS, and/or Madoff-controlled entities were perpetrating a fraud on investors. A number of the red flags (some of which were discussed above) are discussed in the paragraphs that follow.

31. The numerous warnings signs, included, but are not limited to, the following:

- Suspect Strategy: The description of Madoff’s split-strike strategy (e.g., purchase of large cap stocks versus sale of out of the money calls) appeared to be inconsistent with the pattern of returns in the track record, which showed only seven small monthly losses in a 14 year period. Moreover, the strategy’s returns could never be replicated by quantitative analysts that attempted to do so. Michael Markov, a hedge fund consultant, said that he was hired by a fund two years ago to look into one of the FOF returns and found that it was “statistically impossible to replicate them.” In May 1999, Harry Markopolos, a derivatives expert with experience managing the “split-strike conversion” strategy used by Madoff, sent a letter to the SEC describing how Madoff

could not have generated the returns he reported using the split-strike conversion strategy. As reported in May 2001, in an article titled, “Madoff Tops Charts; Skeptics Ask How,” appearing in *MAR/Hedge*, a semi-monthly newsletter reporting on the hedge fund industry: “The best known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period.”

- Suspect Market-Timing: Account statements revealed a pattern of purchases at or close to daily lows and sales at or close to daily highs, which is virtually impossible to achieve with the consistency reflected in the documents.
- Impossible Options Volumes: Trading volumes reflected in accounts were vastly in excess of actually reported trading volumes. In particular, the S&P 100 options that Madoff purported to trade could not handle the size of the combined FOF assets. A report from Bloomberg estimated that the strategy would have required at least 10 times the S&P 100 option contracts that traded on U.S. exchanges.
- No Standalone Hedge Fund: Madoff operated through managed accounts, rather than by setting up a hedge fund of his own, where his fees would have been much higher than the brokerage commissions that Madoff was charging. This is particularly suspicious because a hedge fund requires annual audits.
- Cash Positions: BMIS liquidated its securities positions at the end of each quarter, presumably to avoid reporting large securities positions. In 2007, hedge fund investment adviser Aksia LLC (“Aksia”) urged its clients not to invest in Madoff feeder funds concluding, among other things, that, after reviewing Madoff’s holdings, they were too small to support the size of the assets Madoff claimed to be managing.
- Lack of a Third Party Custodian and Administrator: The FOF had recognized administrators and auditors, but substantially all of the assets were in the custody of BMIS. Moreover, BMIS initiated trades in the accounts, executed the trades, and served as custodian and administrator for the accounts. Madoff, instead of using an outside prime broker as nearly all hedge funds do, was his own prime broker and custodian of all the assets he managed. A December 13, 2008 article in *The Wall Street Journal* quoted Chris Addy, founder of Castle Hall Alternatives, which vets hedge funds for clients, as follows: “There was no independent custodian involved who could prove the existence of assets ... There’s a clear and blatant conflict of interest with a manager using a related-party broker-dealer. Madoff is enormously unusual in that this is not a structure I’ve seen.”
- Obscure and Ill-Equipped Auditor: BMIS was audited by Friehling & Horowitz, which had three employees, of which one was 78 years old and

living in Florida, one was a secretary, and the other was an active 47-year old accountant, whose office in Rockland County, New York was 13 feet by 18 feet.

- Audit Reports: Audit reports of BMIS showed no evidence of customer activity whatsoever, with neither accounts payable nor accounts receivable from customers. BMIS appeared to be nothing more than a market maker – not a firm with \$17 billion in customer accounts.
- Former Employees Noted Secrecy: Former employees stated that a high degree of secrecy surrounded the accounts of the FOF.
- Madoff Publicly Spoke of Secrecy: Madoff perpetuated the secrecy in his public statements. As reported in the May 2001 article in *MAR/Hedge*, “[Madoff] won’t reveal how much capital is required to be deployed at any given time to maintain the strategy’s return characteristics, but does say that ‘the goal is to be 100% invested.’” Additionally, “[a]s for specifics of how the firm manages risk and limits the market impact of moving so much capital in and out of positions, Madoff responds first by saying, ‘I’m not interested in educating the world on our strategy, and I won’t get into the nuances of how we manage risk.’” On May 7, 2001, *Barron’s* published an article titled “Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum.” In that article, author Erin E. Arvedlund wrote: “When *Barron’s* asked Madoff how he accomplishes this, he says, ‘It’s a proprietary strategy. I can’t go into it in great detail.’” “What Madoff told us was, ‘If you invest with me, you must never tell anyone that you’re invested with me. It’s no one’s business what goes on here,’” says an investment manager who took over a pool of assets that included an investment in a Madoff fund. ‘When he couldn’t explain to my satisfaction how they were up or down in a particular month,’ he added, ‘I pulled the money out.’”
- Family Run Operation : Key positions at BMIS were controlled by Madoff family members (Madoff’s brother, two sons, and niece).
- Lack of Electronic Access: BMIS was supposedly technologically advanced but FOF did not have electronic access to their accounts at BMIS. Paper documentations provided Madoff with the ability to manufacture trade tickets that confirm investment results, and to falsify supporting documentation.

32. In addition to the foregoing, on November 7, 2005, Harry Markopolos submitted a letter to the SEC, titled “The World’s Largest Hedge Fund is a Fraud,” in which he set forth in over 17 single-spaced pages and a two-page attachment, how Madoff’s returns could not be real.

Markopolos identified 29 red flags that were signs of highly suspicious activity in Madoff Securities, including, among others:

a. “why would B[ernie]M[adoff] settle for charging only undisclosed commissions when he could earn standard hedge fund fees of 1% management fee + 20% of the profits?”

b. “The third party hedge funds and fund of funds that market this hedge fund strategy that invests in BM don’t name and aren’t allowed to name Bernie Madoff as the actual manager in their performance summaries or marketing literature. ... *Why the need for such secrecy? If I was the world’s largest hedge fund and had great returns, I’d want all the publicity I could garner and would want to appear as the world’s largest hedge fund in all the industry rankings.*” (Emphasis in original.)

c. “It is mathematically impossible for a strategy using index call options and index put options to have such a low correlation to the market where its returns are supposedly being generated from. This makes no sense! ... However, BM’s performance numbers show only 7 extremely small [monthly] losses during 14 ½ years and these numbers are too good to be true. The largest one month loss was only -55 basis points (-0.55%) or just over one-half of one percent! And BM never had more than a one month losing streak!”

d. “Madoff does not allow outside performance audits.”

e. “Madoff’s returns are not consistent with the one publicly traded option income fund with a history as long as Madoff’s.”

f. “Why is Bernie Madoff borrowing money at an average rate of 16.00% per annum and allowing these third party hedge fund, fund of funds to pocket their 1% and 20% fees bases [sic] upon Bernie Madoff’s hard work and brains? Does this make any sense at all?”

Typically FOF's [fund of funds] charge only 1% and 10%, yet BM allows them the extra 10%. Why? And why do these third parties fail to mention Bernie Madoff in their marketing literature? After all he's the manager, don't investors have a right to know who's managing their money?"

g. "BM goes to 100% cash for every December 31st year-end according to one FOF invested with BM. This allows for 'cleaner financial statements' according to this source. Any unusual transfers or activity near a quarter-end or year-end is a red flag for fraud."

33. As summed up by Markopolos:

If I was the world's largest hedge fund and had great returns, I'd want all the publicity I could garner and would want to appear as the world's largest hedge fund in all of the industry rankings. Name one mutual fund company, Venture Capital firm, or LBO firm which doesn't brag about the size of their largest funds' assets under management. Then ask yourself, why would the world's largest hedge fund manager be so secretive that he didn't even want his investors to know that he was investing their money? Or is it that [Madoff] doesn't want the SEC and [the Financial Services Authority] to know that he exists?

34. Had Defendants conducted due diligence into Madoff, BMIS, and/or Madoff-controlled entities, they would have discovered at least some of the dozens of red flags identified herein. At the very least, like Aksia, Defendants should have been able to discover the existence of Markopolos' letter, which would put them on notice of the 29 red flags identified therein.

35. Instead, Defendants relied on the "reputation" of Madoff without conducting any investigation of the bona fides of Madoff and his operations, and/or an analysis of the trading strategies and investment returns reported by Madoff, which remained consistently high even during adverse market conditions.

36. Defendants acted with gross negligence and violated their duties by failing to perform, or causing to be performed, appropriate due diligence that would have revealed that the

assets of the Fund were invested with Madoff, BMIS, and/or Madoff-controlled entities such that a portion of the Fund's losses were attributable to Madoff.

37. The FM Defendants owed fiduciary duties to the Fund's investors. The FM Defendants knew, or, in the exercise of due care in discharging their fiduciary duties, were reckless in not knowing, that Madoff was engaged in a massive Ponzi scheme, or, at a minimum, was reporting results that could neither be verified nor explained. Nonetheless, the FM Defendants knowingly and willfully invested the Fund's assets in BMIS or other Madoff-managed investment vehicles. The FM Defendants had fiduciary obligations to protect the assets of the Fund, which they failed to fulfill.

38. Despite their egregious conduct in failing to properly conduct due diligence and failing to ensure that the Fund's assets were invested in accord with the PPM instead of in a Ponzi scheme orchestrated by Madoff, Defendant FMC nevertheless collected advisory fees from the Fund's net asset value.

39. FMC also breached its fiduciary duties by hiring Defendant Fulvio, a small accounting firm consisting of a total of 35 employees, to act as independent auditor for the Fund. The PPM identified Fulvio as the Fund's auditor, which reasonably led current and potential investors to believe that the Fund's operations and financial condition would be reviewed and audited by a reputable accounting firm.

40. Defendant Fulvio either knew of or recklessly disregarded: that the Fund invested in Madoff-related entities; that there was a materially heightened risk to the Fund's assets from such reliance on Madoff-managed investments; that Madoff's operations lacked any transparency; and that BMIS was audited by a tiny accounting firm, Friebling & Horowitz, located in Rockland County, New York.

41. If Fulvio had made an adequate investigation, as it was duty-bound to do, that investigation would have raised red flags about the Fund's Madoff-related investments as described above.

III. Damages Incurred By Reason of Defendants' Wrongful Conduct

42. As a direct and proximate result of the wrongful conduct alleged herein, Plaintiff and members of the Class have lost the portion of the principal contribution in the Fund that was fed into Madoff, BMIS, and/or a Madoff-controlled entity, as well as any stated returns on that investment. Defendant FMC issued monthly and quarterly statements to each limited partner of the Fund, which purported to reflect the investments and returns of that limited partner. Those statements showed each limited partners' net opening capital, contributions for that period (if any), net income or loss, withdrawals or transfers, and net closing capital. In addition, the statements showed the monthly percentage change in investment, as well as the year-to-date change in investment. All those numbers were fictitious, as the principal of each limited partner related to investments made in Madoff, BMIS, and/or Madoff-controlled entities, was gone and the return on each limited partner's investment as it related to monies that were fed into in Madoff, BMIS, and/or Madoff-controlled entities was non-existent.

43. Plaintiff and members of the Class have lost the amount they paid in taxes to federal, state, and local taxing authorities on their non-existent earnings. The tax statements that FMC issued to each limited partner on a yearly basis purported to reflect income earned by the respective partner and member that did not exist. Plaintiff and members of the Class relied on those statements in completing federal, state, and local tax returns.

44. Plaintiff and members of the Class have lost their share of the millions of dollars in management and advisory fees and administrative service fees that were paid to Defendant

FMC. Despite collecting those enormous fees, Defendant FMC failed to provide those services, or provided them so inadequately as to be reckless and in breach of its fiduciary duty to each limited partner of the Fund.

45. Plaintiff and members of the Class have lost the opportunity to make a different investment and to earn real returns on their individual investments.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a "Class" consisting of all persons and entities who purchased and/or held limited partnership interests of the Fund between August 1, 2002 through and including December 11, 2008 (the "Class Period"). Excluded from the Class are Defendants, members of the immediate family of Defendants Zises and Tessler, any affiliate of FMC and/or Fulvio, and the executive officers of FMC and Fulvio, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

47. This action is properly maintainable as a class action because:

a. the members of the Class are dispersed geographically and are so numerous that joinder of all Class members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that Class members number in the hundreds;

b. Plaintiff's claims are typical of those of all members of the Class because all have been similarly affected by Defendants' actionable conduct in violation of state law as alleged herein;

c. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel competent and experienced in class action litigation. Plaintiff has no interests antagonistic to, or in conflict with, the Class that Plaintiff seeks to represent;

d. a class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein because joinder of all members is impracticable. Furthermore, because the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to redress the wrongs done to them. The likelihood of individual Class members prosecuting separate claims is remote;

e. Plaintiff anticipates no unusual difficulties in the management of this action as a class action; and

f. the questions of law and fact common to the members of the Class predominate over any questions affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(1) whether the Defendants' Class Period representations to Plaintiff and the other Class members misrepresented and/or omitted material facts;

(2) whether Defendants acted with knowledge or with reckless disregard for the truth in misrepresenting and/or omitting material facts;

(3) whether Defendants' conduct alleged herein was intentional, reckless, or grossly negligent or in violation of fiduciary duties owed Plaintiff and other Class members and therefore violated the statutory and common law of New York;

(4) whether Fulvio aided and abetted the FM Defendants' breaches of fiduciary duties; and

(5) to what extent the members of the Class have sustained damages and the proper measure of damages.

COUNT I
For Violation of Common Law Fraud (Against the FM Defendants)

48. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

49. Plaintiff and other members of the Class, in reasonable and justifiable reliance upon the statements and representations made by the FM Defendants, as previously set forth herein, purchased limited partnership investment interests in the Fund. Plaintiff and other members of the Class would not have purchased their limited partnership investment interests in the Fund except for their reliance upon the representations made by the FM Defendants in the PPM and performance reports and would never have purchased them had they been aware that the FM Defendants failed to conduct due diligence, or if conducted, failed to conduct an adequate due diligence, of Madoff and Madoff Securities.

50. At the time the statements and representations were made by the FM Defendants in the PPM and performance reports, the FM Defendants knew them to be false and intended to deceive Plaintiff and other members of the Class by making such statements and representations.

51. At the time of the false statements, misrepresentations and omissions, set forth above, each of the FM Defendants intended that Plaintiff and other members of the Class would act on the basis of the misrepresentations and omissions contained in the PPM and performance reports in determining whether to purchase limited partnership interests in the Fund. Plaintiff and other Class members reasonably relied thereon to their detriment in making such decisions.

52. Had Plaintiff and other members of the Class known of the material facts that the FM Defendants wrongfully concealed and misrepresented, and the falsity of the FM Defendants' representations, Plaintiff and other Class members would not have purchased their limited partnership investment interests in the Fund.

53. Plaintiff and other members of the Class, as a result of their purchase of limited partnership investment interests in the Fund and by reason of the FM Defendants' wrongful concealments and misrepresentations, have sustained damages, losing all or substantially all of their respective investments in the Fund in an amount yet to be determined, and to be proven at trial.

54. By reason of the foregoing, the FM Defendants are jointly and severally liable to Plaintiff and other Class members.

55. The FM Defendants' fraudulent acts were willful and wanton and Plaintiff and other Class members are entitled to punitive damages.

COUNT II
Negligent Misrepresentation (Against the FM Defendants)

56. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

57. The FM Defendants owed to Plaintiff and other Class members a duty: (a) to act with reasonable care in preparing and disseminating the PPM and other reports, which were relied upon by Plaintiff and other Class members in deciding to purchase their limited partnership investment interests in the Fund; and (b) to use reasonable diligence in determining the accuracy of and preparing the information contained in the PPM and other reports.

58. The FM Defendants breached their duties to Plaintiff and other Class members by failing to investigate, confirm, prepare and review with reasonable care the information contained in the PPM, reports, and other materials.

59. As a direct, foreseeable and proximate result of the FM Defendants' negligence in performing their duties, Plaintiff and other Class members have sustained damages, losing all or a substantial part of their respective investments in the Fund attributable to Madoff, BMIS, or other Madoff-related entities in an amount yet to be determined, and to be proven at trial.

60. By reason of the foregoing, the FM Defendants are jointly and severally liable to Plaintiff and other Class members.

COUNT III
For Breach of Fiduciary Duty (Against the FM Defendants)

61. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

62. The FM Defendants breached their fiduciary duties to Plaintiff and other Class members.

63. As a result of their conduct, particularly FMC's conduct as general partner with respect to the management of the assets of the Fund, for the purported benefit of its limited partners, as alleged herein, the FM Defendants have failed to fulfill their fiduciary duties owed to Plaintiff and other members of the Class by acting in bad faith, with gross negligence, and in utter disregard for due care and reasonable and prudent investment standards.

64. As a proximate result of the FM Defendants' bad faith breach of fiduciary duties, Plaintiff and other Class members have sustained damages, losing all or substantially all of their

Madoff-related investments in the Fund in an amount yet to be determined, and to be proven at trial.

COUNT IV
Aiding And Abetting a Breach Of Fiduciary Duty
(against Fulvio)

65. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

66. The FM Defendants owed Plaintiff and the Class fiduciary duties as alleged herein.

67. By committing the acts alleged herein, the FM Defendants breached their fiduciary duties owed to Plaintiff and the Class.

68. Defendant Fulvio aided and abetted the FM Defendants in breaching their fiduciary duties owed to Plaintiff and the Class. Fulvio colluded with or aided and abetted the FM Defendants' breaches of fiduciary duties, and was an active and knowing participant in the FM Defendants' breaches of fiduciary duties owed to Plaintiff and the Class. Among other things, Fulvio knowingly or recklessly ignored information that indicated or should have indicated the money invested by Plaintiff and the Class in the Fund was, in part, invested with Madoff and/or BMIS and that Madoff and/or BMIS were involved in a Ponzi scheme.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

1. Determining that this action to be a proper class action and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure;
2. Awarding damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' common law fraud, negligent misrepresentation, breach of fiduciary duty,

and aiding and abetting breaches of fiduciary duty, under the laws of New York State, in an amount to be proven at trial, including interest thereon;

3. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and


4. Such other and further relief as is just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

BERNSTEIN LIEBHARD LLP

Dated: February 19, 2009

By: 
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