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

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STATE OF NEW YORK,	:	
Plaintiff,	:	**COMPLAINT**
-against-	:	Index No.
SAMARITAN ASSET MANAGEMENT SERVICES, INC.; JOHNSON CAPITAL MANAGEMENT, INC.; EDWARD T. OWENS; and MICHAEL A. JOHNSON,	:	
Defendants.	:	

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Plaintiff, the State of New York, by Eliot Spitzer, Attorney General of the State of New York (the "Attorney General"), on behalf of the People of the State of New York, complaining of the above-named defendants, alleges the following upon information and belief:

I. PRELIMINARY STATEMENT

1. The Attorney General brings this action against the defendants for fraud, deception, false pretenses and concealment and suppression of material facts in connection with mutual fund timing by defendants of the mutual fund holdings of several hedge funds. The defendants' acts and practices violated Article 23-A of the General Business Law, and Section 63(12) of the Executive Law.

2. The defendants in this action are Samaritan Asset Management Services, Inc. ("Samaritan"), the general partner and manager of a group of hedge funds; Edward T. Owens, the owner of Samaritan; Johnson Capital Management, Inc. ("Johnson Capital"), an investment adviser to Samaritan that made trading decisions and placed trade orders for Samaritan's hedge funds; and Michael A. Johnson, the president and an owner of Johnson Capital. Defendants

Owens and Samaritan acted as marketing agents for defendant Johnson Capital, referring hedge funds to Johnson Capital for investment advice and receiving 40 percent of the fees and profits that those hedge funds paid Johnson Capital for that investment advice.

3. This case involves fraud and other misconduct in connection with a strategy of frequent trading of mutual fund shares, known as "timing," by sophisticated financial entities known as hedge funds.

4. Mutual fund timing can cause damage to long-term shareholders of mutual funds. In discharge of their fiduciary obligations to shareholders, mutual funds (and their agents) have practices and policies that seek to identify, monitor and reject harmful "timing" transactions.

5. Defendants engaged in a series of acts constituting fraud, deception, false pretense, concealment and suppression through Security Trust Company, N.A. ("STC") and a number of securities broker-dealers ("brokerage firms"), acts designed to evade the mutual funds' efforts to detect and prevent harmful mutual fund timing.

6. Defendants' fraudulent mutual fund timing activities included using multiple account numbers, using STC's name and tax identification number, and using other deceptive means to "fly under the radar" of the mutual funds' monitoring of frequent trading in order to detect and prevent mutual fund timing.

7. Defendants' deception enabled them to evade detection by the mutual funds' "timing cops" and reap substantial profits from mutual fund timing transactions that mutual funds otherwise would have discovered and disallowed.

8. The fraudulent activities alleged herein, including but not limited to the deception and concealment necessary to engage in timing, were orchestrated by defendants Owens and

Michael Johnson for their own benefit and for the benefit of Samaritan, Johnson Capital and Samaritan's hedge fund investors.

9. Defendants' fraudulent activities harmed "long-term" or "buy-and-hold" investors in the mutual funds that the defendants timed, by causing dilution of the investors' assets in the mutual funds, and by increasing management costs of the funds, which additional costs were passed on to the investors through increased management fees.

10. Plaintiff, by the Attorney General, seeks restitution and damages to compensate long-term mutual fund shareholders for the financial harm that they suffered as a result of the defendants' fraudulent activities related to the accounts opened with STC and brokerage firms, as well as injunctive and other relief.

II. PARTIES

11. Eliot Spitzer, Attorney General of the State of New York, brings this action on behalf of the People of the State of New York pursuant to Article 23-A of the General Business Law and Section 63(12) of the Executive Law. This action is brought in the name of the State of New York pursuant to Civil Practice Law and Rules § 1301.

12. Defendant Samaritan Asset Management Services, Inc. ("Samaritan") is, and was at all relevant times, a corporation organized and existing under the laws of the State of Illinois, with its principal offices at 33 West Higgins Road, South Barrington, Illinois 60010.

13. Defendant Johnson Capital Management, Inc. ("Johnson Capital") is, and was at all relevant times, a corporation organized and existing under the laws of the State of Virginia, with its principal offices at 12500 Fair Lakes Circle, Suite 280, Fairfax, Virginia 22033, and a registered investment adviser (under the federal Investment Advisers Act of 1940).

14. Defendant Edward T. Owens ("Owens") is, and was at all relevant times, the sole owner, sole director, president and chief executive officer of defendant Samaritan.

15. Defendant Michael A. Johnson ("Michael Johnson") is, and was at all relevant times, the president of defendant Johnson Capital.

III. STATUTORY AND LEGAL FRAMEWORK

16. The Attorney General brings this action pursuant to his authority under the following provisions of law.

(a) Article 23-A of the General Business Law of the State of New York, commonly referred to as the "Martin Act," and the regulations issued pursuant thereto, regulate the offer and sale of securities within and from the State of New York and authorize the Attorney General to investigate the conduct of persons and entities engaged in, *inter alia*, the issuance, exchange, purchase, sale, promotion, negotiation, advertisement or distribution within or from the State of New York of any securities or the rendering of investment advice with respect thereto.

(b) The Martin Act proscribes fraudulent practices in connection with, *inter alia*, the purchase, sale, or exchange of securities. Among the provisions relevant to this action are the following:

(1) General Business Law § 352(1), which defines fraud and fraudulent practices and provides, *inter alia*, that a violation of any section of Article 23-A of the General Business Law is a fraudulent practice, and authorizes the Attorney General to investigate such practices;

(2) General Business Law § 352-c, which prohibits any person, partnership, or corporation from making any false representations, engaging in deception, fraud or false pretense, or concealing any material facts that the person

knew, should have known, or made no reasonable effort to ascertain the truth; and

(3) General Business Law § 353, which authorizes the Attorney General to seek a permanent injunction enjoining any individual or entity who has taken part in, or has been concerned with, fraudulent practices from directly or indirectly engaging in the issue, sale, or offer of securities within or from the State of New York, and to seek restitution.

17. Section 63(12) of the Executive Law authorizes the Attorney General to seek an injunction barring repeated fraudulent and/or illegal conduct in the carrying on, conducting or transaction of business, and to seek restitution and damages.

IV. STATEMENT OF FACTS

A. BACKGROUND ON MUTUAL FUND TIMING

18. "Mutual fund timing" or "timing," as used herein, is the frequent trading of mutual fund shares and is often conducted by sophisticated financial entities known as hedge funds. Typically, hedge funds use computerized trading models to signal when to engage in short-term purchases or sales of mutual funds or, more often, short-term exchanges of money between an equity or bond fund and a money market fund or cash management fund.

19. These trading models are often complex and vary depending upon a fund's trading strategy. For example, when a model indicates that financial markets will rise in the short-term, the hedge fund fully invests in equity mutual funds to capitalize on the expectation that the stocks making up the mutual funds' portfolios will rise in value and, consequently, the share prices of the mutual funds also will rise. When the trading model subsequently indicates that financial markets will suffer a short-term decline, the expectation changes – a drop in the share price of the mutual funds is anticipated. On a downward signal, the hedge fund sells its fully invested

position in equity mutual funds, captures a short-term profit, and typically exchanges the shares in the equity fund for shares in a virtually risk-free money market fund in the same mutual fund complex. While its investment is secure in a money market fund, the hedge fund waits for its next opportunity. When the model again predicts a short-term rise in financial markets, the hedge fund sells its money market position and again buys equity mutual funds. When the model indicates the short-term upward rally is over, the hedge fund once again sells its position in equity funds, locks in a profit, and returns the proceeds to the safety of a money market fund.

20. A short-term exchange into and out of a mutual fund – known as a "round trip" – often occurs in a single day, a week, or, in the case of timing in high yield bond funds, a month. Depending on the strategy, a hedge fund might engage in 50 or more "round trips" in less than a year, leaving its money in a relatively stable money market fund when it is not invested in an equity or bond fund.

21. A common strategy involves trading in international mutual funds to exploit international time zone differences.

22. "Domestic" mutual funds invest primarily in stocks of U.S. companies trading on markets within the United States. These markets usually close at 4 p.m. New York time, so domestic mutual funds calculate their Net Asset Values ("NAVs") as of 4 p.m. New York time. Thus, the stock prices are usually current as of the time when mutual funds price their fund shares.

23. By contrast, "international" mutual funds invest primarily in foreign stocks trading in financial markets outside the United States. Given time zone differences, these foreign markets close much earlier than 4 p.m. New York time and do not reopen until the next day. By

4 p.m. New York time, the prices of some foreign stocks are 12 or more hours old; nevertheless, the international mutual funds use those stale prices to calculate their NAVs.

24. During the trading day in the United States, mutual fund timers watch the American financial markets. If American markets are up significantly and continue to stay up toward the time when the market closes, 4 p.m Eastern Time, the timer buys international mutual funds, assuming that the prices of foreign stocks will rise the next day. When U.S. markets subsequently drop, a day or a few days later, the timer sells the mutual fund and thereby captures a short-term profit.

(1) Mutual Fund Timing Has Adverse Effects on Long-Term Mutual Fund Investors.

25. Mutual funds are not designed or marketed as short-term trading vehicles. Short-term round trip trading by fund timers can injure long-term shareholders in at least three ways.

26. First, short-term traders increase transaction costs for the mutual fund as a whole. Shareholders who frequently buy and sell shares cost the fund more money in processing trades than those who buy and hold for the long term.

27. Second, fund timing allows frequent traders to profit at the expense of long-term investors. This effect, known as dilution, generally works as follows: when a timer buys into an equity fund, a mutual fund portfolio manager either will invest the timer's money in stocks or hold the funds in cash. If the share price of the mutual fund rises a few days later, the timer typically will sell his or her shares in the equity fund, or exchange those shares for shares in a safe money market fund, in either case capturing the profit from the rise in the price of the equity fund shares. If the portfolio manager has held the timer's money in cash during the timer's round trip, the mutual fund, in effect, simply returns the uninvested cash to the timer, plus the timer

receives a pro rata portion of the gain on the stocks in the mutual fund's portfolio. However, because the timer's money remained in cash, the timer's "investment" has never been used to earn a profit for all shareholders. When timers make numerous uninvested round trips in and out of the fund, they substantially water down – or dilute – investment returns of long- term shareholders.

28. Third, to raise cash to meet timer redemptions, the mutual fund may incur unnecessary costs associated with drawing down on a line of credit or selling stocks. Drawing on a line of credit causes the mutual fund to incur borrowing costs. When timers conduct numerous round trips, such costs can be substantial. Selling stocks also may cause substantial harm by (1) jettisoning the long-term investment potential of the securities; (2) incurring substantial and otherwise unnecessary brokerage costs; and (3) imposing tax liabilities on the fund's shareholders.

(2) Mutual Funds Attempt to Prevent Timing.

29. As fiduciaries, mutual fund managers have an obligation to stop timing activities that increase the funds' management costs and decrease the value of the shareholders' investments in the funds.

30. Many fund prospectuses as well as fund internal policies expressly restrict timing. Some state that the mutual fund reserves the right to (a) prohibit anyone from purchasing shares (or from making an exchange from one fund to another fund in the same fund family); (b) limit the number of trades a shareholder may execute over a given period; and/or (c) prohibit harmful timing activities.

31. Many mutual funds honor their fiduciary obligations and vigilantly attempt to enforce restrictions on timing in their funds. Others do not.

(3) "Timing Police" Monitor Mutual Fund Timing.

32. Mutual funds typically employ personnel to identify timers and stop their harmful short-term trading activities in mutual funds. Such employees generally are known as the "timing police."

33. At most mutual fund families, employees of the funds' investment adviser or transfer agent monitor the frequency of exchanges (e.g., two round trips in a calendar quarter) and the size of exchanges (e.g., one million dollars or one percent of the fund's assets, whichever is less) in and out of the mutual funds.

34. After the timing police identify an account that has exceeded a certain threshold frequency or dollar amount, the mutual fund may send the investor, or (if the investor's identity is unknown, as is often the case) the investor's brokerage firm, a "stop" or "cease and desist" letter.

35. Identifying timing transactions among thousands of legitimate transactions may prove challenging for a number of reasons.

36. First, the sheer number of transactions makes it very difficult to detect timing. The multi-trillion dollar mutual fund industry processes thousands of buy, sell and exchange transactions every day on behalf of numerous institutions and individuals. To reduce the burden of having to sift through an enormous amount of data, mutual funds – aware that timers typically want to trade mutual funds in large dollar amounts to maximize profitability – often set minimum transaction thresholds before investigating a potential timer.

37. Second, a further obstacle to detecting timing is the existence of "omnibus" accounts, by which a brokerage firm bundles all of its customers' transactions in a single fund and transmits to the fund a single buy or sell order, which represents an aggregation of all of the brokerage firm's individual customers' buy and sell orders in that fund.

38. Third, many transactions are not cleared directly with the mutual funds. While some customers purchase and sell shares in direct transactions with the fund company, retirement plans and their beneficiaries typically clear transactions indirectly through a trust company or other intermediary. Most individuals, and many hedge funds, clear mutual fund transactions indirectly through brokerage firms.

39. Because of the many indirect transactions, mutual funds often do not know the identities of their shareholders, making it difficult for timing police to monitor suspected timing transactions. In some cases, the mutual fund knew the shareholders by one or more account numbers assigned by the brokerage firm; in other cases, the mutual fund knew only the identifying number that a brokerage firm has assigned to an individual broker or "registered representative"[1] (the "rep ID number") through whom the shareholder invested.

(4) Timers "Fly Under The Radar" to Avoid Detection.

40. Professional mutual fund timers know that timing harms long-term shareholders of mutual funds; that mutual funds have the right to stop timing; that timing police monitor potential timing; and that timers are frequently sent "kick-out" or "freeze" letters.

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[1] "Broker" is commonly used to refer to a salesperson, even though, under the Martin Act, "broker" or "dealer" refers to the entity that employees the salesperson. In the securities industry, salespersons are also commonly referred to as "registered representatives." To be consistent with the defendants' usage of terms, "broker" is used herein to refer to the salesperson.

41. Hedge funds and other mutual fund timers may initially seek permission to engage in timing by approaching mutual funds through brokers. Permission may be granted in the form of a "timing capacity" agreement whereby the mutual fund specifies the fund or funds that may be timed, the maximum allowable number of round trips in a period (e.g., a month, quarter or year) and the maximum dollar amount of each round trip. If, however, the mutual fund timer is unable to obtain timing capacity in the amounts, frequencies or funds desired, the timer may adopt means to disguise mutual fund timing activities, thereby making those activities more difficult to detect and prevent. These schemes are known among mutual fund timers as "flying under the radar."

42. A mutual fund timer frequently obtains an arrangement with a brokerage firm willing to conceal, disguise and/or misrepresent the source of timing activities in return for handsome "wrap" fees – often as much as one-to-two percent of the dollar amount being timed.

43. Another method of flying under the radar is to clear transactions through intermediaries other than brokerage firms. For example, some mutual fund timers clear trades through trust companies that typically process mutual fund transactions for employees participating in corporate retirement plans. Thus, hedge funds hide their timing trades among the many legitimate retiree trades.

B. DEFENDANTS' FRAUDULENT MUTUAL FUND TIMING PRACTICES

(1) The Samaritan Hedge Fund Complex

44. Defendant Samaritan was formed in 1996 by defendant Owens.

45. Subsequently, Owens established several limited partnerships and limited liability companies, commonly known as "hedge funds," including Samaritan Balanced Fund, LP,

Samaritan International Equity Fund, LP, Samaritan Multi-Strategies Fund, LP, Samaritan Global Fund Trading I, LP, Samaritan Long/Short Equity Fund LLC, Samaritan Enhanced Equity Fund LLC, and Samaritan Charitable Fund LLC. Samaritan was the general partner of the limited partnerships and the manager of the limited liability companies.

46. Owens found institutions and wealthy individuals to invest in, or "subscribe" to, the Samaritan hedge funds. The minimum investment for a "subscriber" was $500,000 or $1 million, depending on the hedge fund.

47. Owens controlled the nature of the investment strategy of the hedge funds that he and Samaritan created. The strategy was that the hedge funds would engage exclusively in mutual-fund timing. Because Owens considered himself to be someone who could solicit investments but who did not have the skills or experience to make day-to-day investment decisions, he sought to contract with investment advisers that had the skills and experience to select the investments and to place the trade orders for the Samaritan hedge funds.

48. Owens learned of Michael Johnson and Johnson Capital, and their success in mutual fund timing, from articles published in a newsletter called "MoniResearch."

49. Owens contracted with Johnson Capital in 1997 to engage in the mutual fund timing of the assets of Owens' clients. As Owens and Samaritan created hedge funds, Johnson Capital entered into investment management agreements with the hedge funds to invest their assets.

50. The arrangement among the defendants was that Samaritan (wholly owned by Owens) received 40 percent of all fees paid by hedge funds or other clients for the services of Johnson Capital, as a marketing fee for referring business to Johnson Capital. Johnson Capital

received the remaining 60 percent. In the unlikely event that Johnson Capital found a client on its own, Samaritan still received 40 percent of the total fees.

51. The fees paid by the Samaritan hedge funds consisted of a management fee totaling approximately six percent a year of the net amount of assets under management, not including borrowed funds, and an incentive fee or "allocation" each quarter of 20 percent of any "net new profits" (i.e., 20 percent of the net amount that the hedge fund's assets at the end of one quarter exceeded its assets at the end of the previous quarter). Thus, the greater the return earned by the investors, the higher the fees paid to the defendants.

52. At one point during the relevant period, Samaritan had approximately $500 million of investors' funds and borrowed capital under management, of which Johnson Capital had approximately half, or $250 million, to invest and time in accordance with the signals provided by its computer trading model, which was designed solely for timing mutual funds. Michael Johnson and Johnson Capital made investment decisions and placed trade orders for four of Samaritan's hedge funds: the Samaritan Multi-Strategies Fund, LP; the Samaritan Long/Short Equity Fund LLC; the Samaritan Balanced Fund, LP; and the Samaritan International Equity Fund, Ltd.

(2) Defendants' Deceptive Mutual Fund Timing through Brokerage Firms

53. Defendant Michael Johnson, assisted by his brother, Brent Johnson, the Vice President of Johnson Capital, and Mark Langer, its Chief Operating Officer, made trading decisions for approximately half the assets of the Samaritan hedge funds, and submitted those decisions in the form of "trade orders" to brokers selected by defendant Owens. Indeed, prior to doing business with Edward Owens, Johnson Capital did not execute trades through brokers.

54. Defendant Owens opened or caused to be opened each of the securities accounts in which Michael Johnson and Johnson Capital traded on behalf of the Samaritan hedge funds. Owens knew that the Johnson Capital trading model required approximately 50 round trips per year, so Owens introduced Michael Johnson to brokers who, Owens knew, had arrangements with mutual funds for "timing capacity" (i.e., permission to engage in mutual fund timing) or were unscrupulous and could avoid detection of their clients' mutual fund timing by using multiple account numbers or other evasive measures. These brokers included a senior broker, his brother, and others at the entity then known as CIBC Oppenheimer.

55. In consultation with the brokers referred by Owens, Johnson Capital and Michael Johnson selected mutual funds that suited the Samaritan hedge funds' investment objectives and that could be timed, either because the brokers had timing capacity or because the brokers thought that timing could be accomplished without being detected by the mutual funds.

56. Defendants engaged in deceptive mutual fund timing through a number of brokerage firms, including Man Financial, Prudential Securities, Bear Stearns, and CIBC Oppenheimer. These and other brokers purportedly told defendants that they had obtained timing capacity through agreements with mutual funds, but defendants knew (or, but for their reckless disregard of information, should have known) that in each case the broker obtained timing capacity either through an arrangement with a mutual fund employee who had no authority to grant capacity, or through deception of the mutual fund. Indeed, many brokers recommended that defendants take – and defendants did take – deceptive actions to hide their trades from the mutual funds and "fly under the radar" to avoid detection by the mutual funds.

57. In or about March 2000, Samaritan hired Daniel Lindquist as its Chief Operating Officer and Owens became less involved in the daily operations of Samaritan. Owens nevertheless continued to control the invested and borrowed capital of the Samaritan hedge funds and had ultimate authority over the opening of new accounts in order to facilitate "flying under the radar" and evading detection by the mutual funds that defendants timed.

58. Owens orchestrated the charade of requiring Johnson Capital to submit to Samaritan copies of the prospectuses of all mutual funds that were timed, purportedly so that Lindquist or others at Samaritan could ensure that none of the mutual funds prohibited timing. However, the defendants did not review the prospectuses or they ignored any such language in the prospectuses, as the prospectuses of several of the mutual funds which defendants timed did in fact contain language prohibiting or discouraging timing.

59. For example, the prospectus for the Franklin Strategic Series dated August 30, 2001, which included the Franklin Small-Mid Cap Growth Fund that Samaritan and Johnson Capital timed from March 2001 to April 2002 , stated in pertinent part:

> *Because excessive trading can hurt fund performance, operations and shareholders, the Funds reserve the right to revise or terminate the exchange privilege, limit the amount or number of exchanges, reject any exchange, or restrict or refuse purchases* if (i) a Fund or its manager believes the Fund would be harmed or unable to invest effectively, or (ii) a Fund receives or anticipates simultaneous orders that may significantly affect the Fund (please see "Market Timers" on page 77).
> * * *
> MARKET TIMERS The Aggressive Growth Fund, Large Cap Fund and Small Cap Fund II may restrict or refuse purchases or exchanges by Market Timers. The California Fund and *Small-Mid Cap Fund do not allow investments by Market Timers*. You may be considered a Market Timer if you have (i) requested an exchange out of any of the Franklin Templeton funds within two weeks of an earlier exchange request out of any fund, or (ii) exchanged shares out of any of the Franklin Templeton funds more than twice within a rolling 90 day period, or (iii)

> otherwise seem to follow a market timing pattern that may adversely affect the Fund. Accounts under common ownership or control with an account that is covered by (i), (ii), or (iii) also are subject to these limits.
>
> Anyone, including the shareholder or the shareholder's agent, who is considered to be a Market Timer by the Fund, its manager or shareholder services agent, will be issued a written notice of their status and the Fund's policies. *Identified Market Timers who redeem or exchange their shares of the Fund within 90 days of purchase will be assessed a fee of 2% of redemption proceeds. This redemption fee does not apply to 401(k) participant accounts*, accounts not held individually through Franklin Templeton Investors Services, LLC, and funds under the automatic dividend reinvestment program and the systematic withdrawal program. Some funds do not allow investments by Market Timers.

(Emphasis added.) Michael Johnson has testified that he read the Franklin prospectus. Nevertheless, ignoring its terms, the defendants engaged in market timing in Franklin funds, deceiving the fund by disguising their trades as 401(k) participants.

60. Defendants ignored provisions in other mutual fund prospectuses which restricted market timing. For example, the December 7, 2001 prospectus for the series of funds in the Vanguard World Fund, Inc., which included the Vanguard International Growth Fund that defendants timed through Cambridge Investment Research, Inc., from at least October 2002 through March 2003 stated in pertinent part:

> COSTS AND MARKET-TIMING
> Some investors try to profit from a strategy called market-timing--switching money into mutual funds when they expect prices to rise and taking money out when they expect prices to fall. *As money is shifted in and out, a fund incurs expenses for buying and selling securities. These costs are borne by all fund shareholders, including the long-term investors who do not generate the costs. This is why all Vanguard funds have adopted special policies to discourage short-term trading or to compensate the funds for the costs associated with it.* Specifically:
> -- *Each Vanguard fund reserves the right to reject any purchase request--including exchanges from other Vanguard funds--that it regards as disruptive to efficient portfolio management.* A purchase request could be

rejected because of the timing of the investment or because of a history of excessive trading by the investor.
-- *Each Vanguard fund (except the money market funds) limits the number of times that an investor can exchange into and out of the fund.*

* * *

THE VANGUARD FUNDS DO NOT PERMIT MARKET-TIMING. DO NOT INVEST WITH VANGUARD IF YOU ARE A MARKET-TIMER.

(Emphasis added; capitalized text in original.)

61. Notwithstanding Owens' and Samaritan's pretense that they engaged in timing without misrepresentations or subterfuge, defendants continued to do business with brokers they knew or should have known used deceptive and fraudulent practices. Defendants knew or should have known that the brokers' recommendations to open multiple accounts and break up large trades into a number of smaller trades, each of which was below a specified dollar amount were deceptive means to avoid mutual fund detection.

62. Defendants engaged in business with brokers they knew were seeking to hide their marketing timing trades from the mutual funds. For example, Michael Johnson received the following e-mail from a Johnson Capital officer on or about August 13, 2002:

> [A CIBC Oppenheimer broker] called today. They erroneously bought directly into [a small-cap fund] instead of the bond fund yesterday (this refers to replacements of kickouts). We can cancel the trade or we can stay long in this fund for 3 days. *I asked [the broker] if us cancelling would raise any red flags; he said that it could.* . . . I wanted to get your opinion.

(Exhibit 1, emphasis added.). Defendants continued to do business with CIBC Oppenheimer even after Michael Johnson and Johnson Capital knew or should have known that

Oppenheimer's timing capacity had been obtained, at least in part, through misrepresentations and subterfuge.

63. Defendants continued to do business with Trautman Wasserman & Co., Inc. ("Trautman"), even after they knew it was trying to hide its market timing from the mutual funds. For example, defendants continued to trade with Trautman even after Johnson Capital received an e-mail from a Trautman broker on or about June 25, 2002, stating:

> Due to the early closing of the money market and bond fund desks on July 3rd, we do not want to process any trades on July 3rd or 5th. The early closings of these desks effect [sic] mutual fund money markets and bond funds, plus there is heavy vacation time at the funds and most importantly these are Low-Volume days. In particular *on low volume days, it is easier for the funds to track us.*

(Exhibit 2, emphasis added.)

64. Defendants continued to do business with Bear Stearns even after the broker warned Johnson Capital that the "downside" of exchanging out of a bond fund into a money market fund to capture appreciation in the bond fund was that "the exchange could possibly trigger a quicker kick out." (Exhibit 3.)

65. Defendants engaged in business with brokers they knew to be using multiple accounts to hide their market timing from the mutual funds. For example, defendants continued to do business with Prudential Securities ("Prudential") even after a Prudential broker told Michael Johnson that Samaritan "will need to open 12 accounts to simplify the trading process." (Exhibit 4.)

(3) Defendants Engaged in Deceptive Mutual Fund Timing through STC.

66. As the number of mutual fund timers increased and mutual funds became more vigilant, it became increasingly difficult for Johnson Capital to find enough timing capacity to accommodate the invested and borrowed capital of the Samaritan hedge funds.

67. In an effort to obtain more timing capacity, Owens introduced Michael Johnson to Grant Seeger, the Chief Executive Officer of STC, in 2000. STC, which is no longer in business, was not a securities brokerage firm but a trust company and national banking association located in Phoenix, Arizona. STC's electronic trading platform allowed administrators of retirement plans and other clients to trade in hundreds of mutual funds, processing thousands of trades daily. Many of the trades were submitted by individual participants in retirement plans – in essence, when an individual shifted retirement money among the mutual funds available in his or her retirement plan, that plan in turn executed the resulting trades through STC. After aggregating the orders it received during the course of the trading day, STC submitted them to National Securities Clearing Corporation ("NSCC") in New York County. NSCC then processed the orders using its service package known as Defined Contribution Clearance & Settlement.

68. In 2000, defendants Owens, Samaritan, Michael Johnson and Johnson Capital began doing business with STC. By June 2001, Johnson Capital was trading approximately $50 million of the Samaritan hedge funds' assets (including borrowed money) through STC. Owens and his family also had custodial and IRA accounts at STC.

69. Defendants knew at all relevant times that STC was a trust company whose clients consisted of retirement plans, pension plans, deferred compensation plans, defined benefit plans and 401 (k) plans (collectively, "retirement plans"), trusts and other clients. Among the sources

of "timing capacity" that STC offered the defendants was a "piggybacking" scheme in which Samaritan's hedge fund accounts were disguised as accounts held by retirement plans for which STC served as the trust company. Defendants engaged in the fraudulent scheme by which Samaritan's timing trades were processed to piggyback on the trades by legitimate retirement plan participants in the hopes that mutual funds would not detect Samaritan's trades as timing transactions.

(a) Overview of the fraudulent activities of STC.

70. The securities practices of STC and its principals have been the subject of civil and criminal enforcement actions. On March 31, 2004, the U.S. Securities and Exchange Commission ("SEC") obtained a final judgment on consent in federal court against STC for fraudulent activities on behalf of Samaritan, Canary Capital Partners, LLC, and its related entities. Pursuant to the judgment, STC was liable for profits of $5.8 million and accrued interest of more than $1,589,000 from its fraudulent activities. Based on STC's inability to pay that amount, however, the judgment required STC to pay only $1 million in disgorgement of profits. At the same time, STC was shut down pursuant to orders from its primary regulator, the U.S. Office of the Comptroller of the Currency.

71. Grant Seeger, STC's CEO, pleaded guilty in New York County Supreme Court to felonies relating to market timing by the defendants and others. Specifically, on August 30, 2005, he pleaded guilty to Grand Larceny in the Second Degree, a Class C felony, and to violating General Business Law §352-c (6), a Class E felony. In his allocution admitting to the crimes, Seeger testified in part:

STC mutual fund trades were processed through National Securities Clearing Corporation in New York County, New York.

In 2000 I was contacted by two hedge funds that were engaged in market timing, Samaritan and Canary.

These hedge funds wanted to use STC to process their trades to the mutual fund [sic]. The reason they wanted to do this was to attempt to hide from the mutual funds the fact that they were market timing.

From approximately May 2000 to September 2003, I agreed to cause STC to process these trades on behalf of Samaritan and Canary. I also asked Mr. Kenyon to oversee the development of software that would allow the creation of omnibus accounts, thereby allowing the hedge funds' trades to be hidden among the trades made by retirement and pension plans which were being processed by STC.

I and others at STC referred to this as "piggybacking".

72. William Kenyon, the President of STC, pleaded guilty on August 30, 2005, to violating General Business Law §352-c (6), a Class E felony. In his allocution, Kenyon testified in part:

> I and others at STC made the hedge funds' trades falsely appear to the mutual funds to be trades by retirement, pension or employee benefit plans.
>
> * * *
>
> At Mr. Seeger's request, I oversaw the development of the software that would allow STC to piggyback and monitor [sic] the progress of the development of the piggyback software.
>
> * * *
>
> I and others at STC caused STC to misstate the true identity of the trading party in these transactions and to conceal these piggyback trades by falsely identifying them as trades by pension plans or 401Ks such as . . . Lam Research 401K Saving Plus Plan account knowing that it was material to the mutual funds to know the trading party's true identity.

73. Defendants Owens and Michael Johnson knew or should have known of the deceptive practices engaged in by STC. Defendants Owens and Michael Johnson participated in the introductory telephone conference with STC, and knew that STC offered the ability to late trade. Samaritan's chief compliance officer, Daniel Lindquist, later made a trip to STC's office in Phoenix in an effort to determine whether STC could be trusted with millions of dollars of the

Samaritan hedge funds' assets and reported his findings to Owens. From STC, Michael Johnson and Johnson Capital learned that piggybacking would involve "merging" the Samaritan hedge funds' assets with the assets of retirement plans in order to disguise Samaritan's timing of the mutual funds.

74. For its services to Samaritan hedge funds, STC received four percent of trading profits and a "wrap fee" of approximately 1.5 percent of the assets under management at STC.

(b) STC offered timing capacity through deceptive and fraudulent practices.

75. In March 2001 STC offered Samaritan and Johnson Capital the opportunity to piggyback in mutual funds held by five retirement plans, provided that each trade was less than five percent of the holdings of a particular mutual fund in the retirement plan's portfolio (e.g., Exhibit 5). STC provided Johnson Capital with confidential or "inside" information showing the portfolio holdings of the five retirement plans so that Johnson and Johnson Capital could select mutual funds that they wished to time. At the defendants' request, STC increased that capacity limitation to seven percent on January 23, 2002.

76. By disguising Samaritan trades as those of retirement plan participants, STC's piggybacking program offered defendants substantial benefits: first, Samaritan hedge funds could avoid paying redemption fees and contingent deferred sales charges ("CDSCs") that had been waived by mutual funds for plan participants but not for other investors; and second, Samaritan hedge funds could avoid having their accounts frozen for timing because the mutual funds did not know that non-plan participants were investing through the plans and the mutual funds were reluctant to freeze a plan's account and punish all its participants because one or two presumed participants were engaged in mutual fund timing.

77. To enable Samaritan and Johnson Capital to choose which plans best suited their piggybacking timing strategy, STC provided Johnson Capital with confidential "portfolio appraisals" showing the mutual funds in which a retirement plan invested and the amount held in each mutual fund. Johnson Capital received portfolio appraisals for two retirement plans in which it eventually opened piggyback accounts for Samaritan – the Lam Research Corporation 401K plan and the U. A. Local 467 Defined Benefit Plan. Johnson Capital also received portfolio appraisals for three other retirement plans – the Group Health, Arup, and Fringe (Benefit) plans – but decided not to piggyback in those plans because, to the extent that the plans invested in mutual funds that were desirable (i.e., they "fit" into Johnson Capital's trading model), the dollar amount that Johnson Capital would be allowed to invest was too small to be practical (Exhibits 6 and 7).

(c) Defendants engaged in timing in piggyback accounts.

78. Once the defendants had disguised their accounts as participants in retirement plans, the defendants were able to make the number of trades required by their computer trading model. The defendants had three piggyback accounts – two accounts in one retirement plan and one account in another retirement plan – at various times during the period March 2001 to September 2003.

79. The first Samaritan account, numbered n2417a, used STC's name and tax identification number to piggyback on the Lam Research Corporation 401(k) plan from March 13, 2001, to November 7, 2002.

(a) Defendants made 79 round trips in the Fidelity Advisors Overseas Fund, Class T shares, between 3/13/01 and 11/7/02 for an average of one round trip every 7.66 days. The approximate amounts of the trades ranged from $375,000 to $618,000.

(b) Defendants made 18 round trips in the Fidelity Advisors Growth Opportunities Fund, Class T shares, between 5/16/01 and 10/12/01 for an average of one round trip every 8.33 days. The approximate amounts of the trades ranged from $490,000 to $710,000.

(c) Defendants made 52 round trips in the Franklin Small-Mid Cap Growth Fund, Class A shares, between 3/13/01 and 4/2/02 for an average of one round trip every 7.42 days. The approximate amounts of the trades ranged from $687,000 to $1.1 million. After ceasing trading for the remainder of April 2002 while STC "mended" its relationship with Franklin, defendants made a purchase of $731,000 of the fund's shares on May 8, 2002, and then "bled out" of the position by making 10 sales of varying amounts between May 10 and May 29, 2002. See paragraph 86, below.

80. The second Samaritan account, numbered n2417b, also used STC's name and tax identification number to piggyback on the Lam Research plan, and timed the MFS Emerging Growth Fund, Class A shares, from August 21 to October 31, 2002. Defendants made 12 round trips in 71 days for an average of approximately one round trip every 5.9 days. The approximate amounts of the trades ranged from $384,000 to $429,000.

81. The third Samaritan account, numbered n2508a, used STC's name and tax identification number to piggyback on the U. A. Local 467[2] Defined Benefit Plan from March 15, 2002, to September 3, 2003.

(a) Defendants made 59 round trips in the Artisan International Fund between 3/15/02 and 4/24/03 for an average of one round trip every 6.35 days. The approximate amounts of the trades ranged from $250,000 and $289,000.

(b) Defendants made 68 round trips in the FMI Focus Fund between 3/18/02 and 7/29/03 for an average of one round trip every 7.34 days. The approximate amounts of the trades ranged from $535,00 to $597,000.

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[2] Local Union 467 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry.

(c) Defendants made 43 round trips in the Janus Overseas Fund between 3/15/02 and 1/24/04 for an average of one round trip every 7.35 days. The approximate amounts of the trades ranged from $311,000 to $482,000.

(d) Defendants made 72 round trips in the RS Emerging Growth Fund between 3/18/02 and 9/3/03 for an average of one round trip every 7.43 days. The approximate amounts of the trades ranged from $173,000 to $229,000.

(e) Defendants made 68 round trips in the Wasatch Core Growth Fund between 3/18/02 and 7/29/03 for an average of one round trip every 7.34 days. The approximate amounts of the trades ranged from $253,000 to $326,000.

(d) Langer and Defendant Michael Johnson were aware of STC's deceptive practices.

82. Langer and Michael Johnson knew that STC was a trust company whose clients consisted primarily of trusts and retirement plans. Langer and Michael Johnson also knew that the piggyback accounts were set up and traded in ways to deceive mutual funds into believing that the piggyback accounts were the accounts of retirement plans. Specifically, Langer and Michael Johnson knew that piggyback accounts involved the "merging" of the Samaritan hedge funds' assets with the assets of retirement plans, and therefore were nothing like "omnibus accounts" in which the trade orders of various STC customers were aggregated or "bundled" together. Langer received an e-mail on or about April 27, 2001, from an STC employee who provided a file listing mutual funds that could be mutual fund-timed by piggybacking on a retirement plan's account, and informed Langer that in the proposed Fringe piggyback account STC would be "*merging* your assets with retirement assets." Langer sent that e-mail to Michael Johnson on April 30, 2001, with his own e-mail stating in part that "I will fill you in on the details of the piggy-backing process . . .." (Exhibit 5, emphasis added.)

83. Langer and Michael Johnson knew that STC tried to hide the extent of its piggyback accounts. For example, an October 17, 2001 e-mail from STC to a Johnson Capital employee which was forwarded to Langer and Michael Johnson on October 22, 2001 provided:

> When trading the piggy back accounts, try to adjust the buy and sell amounts. Meaning, do not complete the sell trades for the same amount as the buy trade from the previous day. Same with rounding [sic] tripping, do not use the same amount--vary each in and out trade.
> For ex. by [sic] 520,000.00 then sell 506,600.00 . . . . then buy 498,000.00 and sell 536,000.00.
>
> This will assist us in trying not to bring attention to the trading.
>
> Let me know if this presents a problem for you.

(Exhibit 8.)

(e) Defendants engaged in deceptive efforts at damage control after timing was detected.

84. Even after the Franklin Small-Mid Cap Growth Fund detected timing by Langer and defendants Johnson Capital and Michael Johnson on behalf of Samaritan funds in the Lam Research piggyback account in violation of the terms of the Franklin fund's prospectus, Langer and these defendants continued to engage in deceptive practices to continue the trades. In an e-mail dated April 9, 2002, Langer notified three Johnson Capital employees, including defendant Michael Johnson, of STC's request that Johnson Capital not make any trades in the Franklin Funds from the Lam Research piggyback account for the next week, because Franklin had discovered timing in that account. Later that day, Langer notified the same three employees, including Michael Johnson, of additional advice from STC regarding the Franklin Funds, which defendants were also timing in Samaritan's piggyback accounts, as follows:

> Franklin Funds - *we should not trade these for the rest of April as [STC] "mend[s] the relationship"*. We can start trading in May unless we hear from Security Trust. Once we resume trading in May, we must limit our trading to one purchase per week (w/ a corresponding sale if necessary)
>
> . . . .
>
> In addition, [STC] believe[s] that we are getting flagged as we are requesting the same amounts for most purchases. *Security Trust would like us to vary our purchase requests each week (e.g. $550K buy one week and $487 K next week).* This will cause our idle cash to vary from week to week but I said we would comply at their request. *This request to alter dollar purchase amounts applies to ALL funds we trade in piggyback accounts.*

(Exhibit 9, emphasis added.)

85. A month later, in May 2002, as Franklin detected that one of the Samaritan piggyback accounts continued to market time its funds, Franklin threatened to close Franklin Funds to all STC accounts. In an e-mail dated May 9, 2002, Langer informed Michael Johnson, Brent Johnson, and two other Johnson Capital employees that:

> [STC] called to inform me that they had a major issue with Franklin Funds today when they saw our purchase in the piggy back account (this is the second discussion they had with Franklin who identified this previously and we stopped trading it for 3 weeks at Security Trust's request). Bottom line is that Franklin originally rejected the purchase, Grant Seger [sic] got involved and threw a fit thinking they rejected the trade from the retirement plan but it was our trade. Franklin put the trade through but they threatened to close their funds to all of Security Trust's accounts and *they said they better not see any more activity in the account*. Because of this threat to Security Trust's overall platform, our $679 K must stay long today. [STC] said that *in order to redeem the [$679,000] position without flagging the account again (for the third time), they want us to make gradual w/drawals from the account.* They will call back to provide us with suggested dollar amounts.

(Exhibit 10, emphasis added.)

86. STC e-mailed Langer on May 9, 2002, asking him to "bleed out" the position at Franklin Funds in amounts corresponding to the piggyback account's normal trading activity.

Langer forwarded that e-mail the next day to three fellow employees including Michael Johnson along with his own e-mail, which requested of one of the employees:

> Pursuant to the analysis done by Sec Trust, *please process sales requests in amounts ranging from $65 K to $85 K (vary amount each day)* to liquidate the Franklin position. This will average close to [an STC employee's] email to meet [STC's] request that we don't flag our account to Franklin. Based on our current Franklin investment, *we will have to bleed this sale in over ten days* to get fully out.

(Exhibit 11, emphasis added.) As shown in subparagraph 79(c), above, defendants did "bleed out" the position over the next ten days.

87. STC also instructed defendants to take evasive action at Turner Funds, which defendants also were timing in Samaritan's piggyback accounts.

> Turner Funds - [STC] received a letter from the fund company who said they are specifically monitoring the trading activity which all pertained to our account (the retirement plan participants had no exchange request during the period reviewed). Security Trust has asked us to immediately limit ourselves to one purchase per week (w/a corresponding sale if necessary).

(Exhibit 9.)

88. On April 12, 2002, Langer informed Michael Johnson and another Johnson Capital employee of STC's advice on how to take evasive action regarding a third mutual fund company in the piggyback accounts:

> [STC] asked us to *stop trading Freemont [sic] Funds for the next 3 weeks and then to resume trading using various $ requests* (change amount each time we trade like she requested for the other fund families).

(Exhibit 12, emphasis added.)

89. Defendants were stopped from piggybacking in other families of mutual funds. STC notified Langer that defendants could no longer trade in Fidelity funds, the Janus Overseas Fund, and the Artisan International Fund.

(4) Defendants Made Considerable Profits from Their Fraudulent Activities.

90. As a result of the fraudulent mutual fund timing in the three piggyback accounts at STC, defendants Samaritan, Johnson Capital, Owens, and Michael Johnson obtained profits for the hedge funds (and fees for themselves) totaling more than $1.2 million. The financial harm caused by the defendants' piggybacking and other fraudulent mutual fund timing through STC, due to (i) dilution of mutual fund shareholders' investments and (ii) increased costs to the mutual funds themselves, exceeded that amount.

91. From all their fraudulent timing activities during the relevant period, both at the brokerage firms and at STC, defendants received tens of millions of dollars in profits. Johnson Capital received as much as $8 million in net profits in its most profitable year alone, of which Michael Johnson personally received approximately $5 million. Samaritan and its sole owner, Owens, received even more in net profits than did Johnson Capital.

VI. CONCLUSION

92. The fraud, deception, false pretense, concealment and suppression by all defendants in connection with mutual fund timing in the purchase, sale or exchange of shares in mutual funds constitute violations of Article 23-A of the General Business Law and entitle plaintiff to permanent injunctions, restitution, and statutory costs and additional allocations, as set forth below.

93. These fraudulent timing activities by all defendants also constitute repeated or persistent fraudulent and illegal acts in the conduct of business and entitle plaintiff to permanent injunctions, restitution and damages pursuant to Executive Law § 63(12), as set forth below.

FIRST CAUSE OF ACTION

94. The acts and practices of the defendants alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of a fraud, deception, concealment, suppression, or false pretense, engaged in to induce or promote the exchange, sale or purchase of securities within or from this state.

SECOND CAUSE OF ACTION

95. The acts and practices of the defendants alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of a representation or statement which was false, where the person who made such representation or statement: (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation made, and where such acts or practices were engaged in to induce or promote the exchange, sale or purchase of securities within or from this state.

THIRD CAUSE OF ACTION

96. The acts and practices of the defendants alleged herein violated Article 23-A of the General Business Law, in that defendants engaged in an artifice, agreement, device or scheme to obtain money, profit or property by a means prohibited by section 352-c of the General Business Law.

FOURTH CAUSE OF ACTION

97. The acts and practices of the defendants alleged herein constitute conduct proscribed by section 63(12) of the Executive Law, in that defendants engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of a business.

98. Plaintiff has been irreparably harmed and has no other adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against defendants as follows:

A. That defendants be permanently restrained and enjoined from engaging in any fraudulent practices in violation of Article 23-A of the General Business Law or proscribed by section 63(12) of the Executive Law;

B. That defendants be permanently restrained and enjoined from directly or indirectly engaging in the sale, offer to sell, purchase, offer to purchase, investment advice, promotion, negotiation, exchange or distribution of any mutual funds;

C. That defendants and any of their agents or others acting on their behalf be permanently restrained and enjoined from conducting deceptive timing transactions in any mutual funds;

D. That defendants, pursuant to General Business Law § 353(3) and Executive Law § 63(12), pay restitution of monies obtained directly or indirectly by means of, and damages caused directly or indirectly by, the fraudulent acts complained of herein;

E. That each of the defendants pay Plaintiff costs and additional allowances in the maximum amount allowable under General Business Law § 353(1) and CPLR § 8303(a)(6); and

F. That the Court award such other and further relief to Plaintiff as the Court may deem just and proper in the circumstances.

Dated: New York, New York
November 16, 2006

ELIOT SPITZER
Attorney General of the State of New York
Attorney for Plaintiff
120 Broadway, 25rd Floor
New York, New York 10271
(212) 416-8054

By: [signature]
DEBRA L. W. COHN
Deputy Attorney General

Of Counsel:
R. VERLE JOHNSON
Assistant Attorney General

Exhibit 1

[redacted]

From: [redacted]
Sent: Tuesday, August 13, 2002 12:59 PM
To: Mike Johnson
Subject: Oppenheimer

Mike,
[redacted] called today. They erroneously bought directly into the Salomon Small Cap fund totaling $500K instead of the bond fund yesterday (this relates to replacements of kickouts). We can cancel the trade or we can stay long in this fund for 3 days. I asked [redacted] if us cancelling would raise any red flags; he said that it could. Since the market is currently up and it's a small dollar amount, I was leaning towards telling him to not cancel the trade. However, I wanted to get your opinion.

Please let me know so I can call [redacted] back.

Thanks,

[redacted]
Johnson Capital Management, Inc.

JCM 8010435
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Exhibit 2

From: [redacted] [[redacted]@tkco.com]
Sent: Tuesday, June 25, 2002 3:26 PM
To: 'mlanger@jcminc.net'
Subject: Trading

Mark,

As I am sure you are well aware, we have the July 4th holiday right around the corner. Due to the early closing of the money market and bond fund desks on July 3rd, we do not want to process any trades on July 3rd or 5th. The early closings of these desks effect mutual fund money markets and bond funds, plus there is heavy vacation time at the funds and most importantly these are Low-Volume days. In particular on low volume days, it is easier for the funds to track us. We do not want to drop buys, but will do sells if we have to. Baring any disaster we advise no trading and hope you see it that way to. Historically the window for opportunity is tight on these days. This year should be real slow.

Thanks.

[redacted]
Vice President - Institutional Services
Trautman Wasserman & Co., Inc.
500 Fifth Avenue - Suite 1440
New York, NY 10110
tel: 212-[redacted]
fax: 212-[redacted]
cell: 917-[redacted]
www.trautmanwasserman.net

Exhibit 3

[redacted]

From:	[redacted]
Sent:	Thursday, August 30, 2001 12:11 PM
To:	Mark Langer
Subject:	[redacted] question

[redacted] had noticed that we are making money in some of our bond positions (due to the recent increase in bond prices). He wanted to throw out the idea of moving from bond to money market at the end of the day to capture this appreciation. It's a couple thousand dollars in some positions - if you are interested, please give him a call. He said that the only downside would be that the exchange could possibly trigger a quicker kick out.

[redacted]
Johnson Capital Management, Inc.

Exhibit 4

Mike Johnson

From: Mike Johnson
Sent: Thursday, April 18, 2002 1:00 PM
To: Mark Langer; Brent Johnson
Subject: FW: va/cl: 12 trips

johnson 12 trips.xls

FYI

-----Original Message-----
From: [redacted] [mailto:[redacted]@prusec.com]
Sent: Thursday, April 18, 2002 10:47 AM
To: mjohnson
Subject: va/cl: 12 trips

Mike:

Here is the preliminary list of mutual funds and comfort levels. The amount for American Funds is under review and I will advise to suitable amounts. The amount is on 60 million. We can increase investments amounts on a as need basis. We will need to open 12 accounts to simplify the trading process. Thanks. [redacted]
(See attached file: johnson 12 trips.xls)

Exhibit 5

Mark Langer

From: Mark Langer
Sent: Monday, April 30, 2001 9:22 AM
To: Mike Johnson
Subject: FW: Fringe Omnibus

fringeomnibus.pdf

Mike,
We received the attached file based on our conference call with Security Trust on Friday. The file contains the funds that will be included in our next Ominbus Account (piggy-back). We can trade 5% of the MV of any of the funds listed in the file except for the funds [redacted] has noted below. As you will see, there are probably a few funds we can use but the 5% cap will mean that this new account will not offer substantial capacity.

I will fill you in on the details of the piggy-backing process and the timetable that [redacted] presented based on the internal issues she is dealing with. Because [redacted] had to run to another meeting, the only topic I explored on the call was piggy-backing.

Regards,
Mark

-----Original Message-----
From: [redacted] [mailto:[redacted]@securitytrustco.com]
Sent: Friday, April 27, 2001 3:18 PM
To: [redacted]@jcminc.net'; 'mlanger@jcminc.net'
Cc: [redacted]
Subject: Fringe Omnibus

<<fringeomnibus.pdf>>

This is what we are going to call the first stage of the omnibus where we are merging your assets with retirement assets. The group name is Fringe.

Keep in mind, only the mutual funds are available and the following mutual funds are not available
Schwab money market
Metlife Stable Value
American Express Stable Value

[redacted] will confirm the other mutual funds which will not allow omnibusing.

Thanks

[redacted]

Exhibit 6

[redacted]

From: Mark Langer [mlanger@jcminc.net]
Sent: Thursday, October 11, 2001 4:18 PM
To: [redacted] (E-mail)
Subject: FW: piggy back

piggyback.pdf

[redacted]

Please call me to discuss these accounts.
Thanks,
Mark

-----Original Message-----
From: [redacted] [mailto:[redacted]@securitytrustco.com]
Sent: Thursday, October 11, 2001 3:56 PM
To: [redacted] (E-mail)
Cc: 'mlanger@jcminc.net'; [redacted]; [redacted]; [redacted]
Subject: piggy back

[redacted]

New piggy back accounts:

When using any of the funds under the Group Health account (a2000) please use the account #n2000a. MULTI-C

When using any of the funds under the Arup plan (a2260) please use the account na2260a. MULTI-C

Attached is a file which contains the portfolio appraisals for both plans as of 10/10.

<<piggyback.pdf>>
Now, I am assuming that both of these accounts will be CIBC pledged accounts. We have named both accounts "Samaritan". Please verify with [redacted] how he would like these accounts officially named. We will need CIBC to sign off on these transactions prior to any trades taking place. The accounts can be funded either by new monies or by transferring cash from one of the other sub accounts. Again, as you know, we will need CIBC to sign off on any transactions.

Let me know if you have any questions.

[redacted]
Relationship Manager
602-[redacted] direct line
602-[redacted] fax

SAM 002347

Exhibit 7

[redacted]

From: Mark Langer [mlanger@jcminc.net]
Sent: Monday, April 30, 2001 1:48 PM
To: [redacted]
Cc: [redacted] [redacted] 'dlindquist@samaritanasset.com'
Subject: RE: Fringe Omnibus

[redacted]

Thanks for sending this list. Mike Johnson and I have reviewed this and want to fund the respective omnibus account so that we can start trading some of the funds. Please let me know as soon as possible what Security Trust account number we should reference that will be related to the Fringe funds. If a new account needs to be set up, please work with Dan Lindquist or [redacted] at Samaritan to ensure that the paperwork can be completed as soon as possible and to ensure that the account is properly referenced as part of the CIBC loan agreement. We want to establish the account for the Multi Strategies C interest class and will want to leverage it after it is funded.

Thanks again for your help,
Mark

-----Original Message-----
From: [redacted] [mailto:[redacted]@securitytrustco.com]
Sent: Friday, April 27, 2001 3:18 PM
To: '[redacted]@jcminc.net'; 'mlanger@jcminc.net'
Cc: [redacted]
Subject: Fringe Omnibus

<<fringeomnibus.pdf>>

This is what we are going to call the first stage of the omnibus where we are merging your assets with retirement assets. The group name is Fringe.

Keep in mind, only the mutual funds are available and the following mutual funds are not available
Schwab money market
Metlife Stable Value
American Express Stable Value

[redacted] will confirm the other mutual funds which will not allow omnibusing.

Thanks

[redacted]

STC 10311
Confidential Treatment
Requested by STC

[redacted] [redacted] [redacted]

Exhibit 8

[redacted]

[redacted]om: [redacted]
Sent: Monday, October 22, 2001 8:50 AM
To: Mark Langer
Cc: Mike Johnson
Subject: FW: Trading on piggy back accounts

-----Original Message-----
From: [redacted] [mailto:[redacted]@securitytrustco.com]
Sent: Wednesday, October 17, 2001 3:48 PM
To: '[redacted]@jcminc.net'
Cc: [redacted]
Subject: Trading on piggy back accounts

Good morning [redacted],

When trading the piggy back accounts, try to adjust the buy and sell amounts. Meaning, do not complete the sell trades for the same amount as the buy trade from the previous day. Same with rounding tripping, do not use the same amount--vary each in and out trade.
For ex. by 520,000.00 then sell 506,600.00....then buy 498,000.00 and sell 536,000.00

This will assist us in trying not to bring attention to the trading.

Let me know if this presents a problem for you,

Thanks

[redacted]
Relationship Manager
602-[redacted] direct line
602-[redacted] fax

JCM 8012244
CONFIDENTIAL

Exhibit 9

Mark Langer

From: Mark Langer
Sent: Tuesday, April 09, 2002 3:06 PM
To: [redacted]
Cc: Mike Johnson; [redacted]
Subject: Security Trust Update

[redacted] called me this afternoon to provide the latest update regarding our piggyback accounts. She talked to Grant Seger and confirmed the following plan applies to future trading of our piggyback accounts:

Franklin Funds - we should not trade these for the rest of April as they "mend the relationship". We can start trading in May unless we hear from Security Trust. Once we resume trading in May, we must limit our trading to one purchase per week (w/ a corresponding sale if necessary)

Turner Funds - they received a letter from the fund company who said they are specifically monitoring the trading activity which all pertained to our account (the retirement plan participants had no exchange requests during the period reviewed). Security Trust has asked us to immediately limit ourselves to one purchase per week (w/ a corresponding sale if necessary).

In addition, they believe that we are getting flagged as we are requesting the same amounts for most purchases. Security Trust would like us to vary our purchase requests each week (e.g. $550K buy one week and $487 K next week). This will cause our idle cash to vary from week to week but I said we would comply at their request. This request to alter dollar purchase amounts applies to ALL funds we trade in piggyback accounts. We can discuss the range of purchase requests if you would like.

Please let me know if you have any questions.

Regards,
Mark

Exhibit 10

Mark Langer

From: Mark Langer
Sent: Thursday, May 09, 2002 1:28 PM
To: [redacted]
Subject: RE: Sec Trust

I don't think he has any silver bullets -- I think he is going to pitch funds where they take buy/hold in return for trading dollars. I think he realizes that they haven't added the value he expected and understands why we can't keep our asset level high.

Maybe he will surprise me but I doubt it.

Mark

-----Original Message-----
From: [redacted]
Sent: Thursday, May 09, 2002 11:47 AM
To: Mark Langer
Subject: RE: Sec Trust

I will be interested to see how your meeting with Grant goes next week; and what his long-term plans are regarding our relationship.

[redacted]
Johnson Capital Management, Inc.

-----Original Message-----
From: Mark Langer
Sent: Thursday, May 09, 2002 11:44 AM
To: [redacted]
Cc: Mike Johnson; Brent Johnson; [redacted]
Subject: Sec Trust

[redacted] called to inform me that they had a major issue with Franklin Funds today when they saw our purchase in the piggy back account (this is the second discussion they had with Franklin who identified this previously and we stopped trading it for 3 weeks at Security Trust's request). Bottom line is that Franklin originally rejected the purchase, Grant Seger got involved and threw a fit thinking they rejected the trade from the retirement plan but it was our trade. Franklin put the trade through but they threatened to close their funds to all of Security Trust's accounts and they said they better not see any more activity in the account. Because of this threat to Security Trust's overall platform, our $679 K must stay long today. [redacted] said that in order to redeem the position without flagging the account again (for the third time), they want us to make gradual w/drawals from the account. They will call back to provide us with suggested dollar amounts.

[redacted] said that Grant will be updating us on his thoughts of the piggyback accounts and other mutual fund capacity arrangements during his visit next week.

I told [redacted] that if they had called us originally, we would have told them not to push the Franklin trades through but since Grant jumped the gun and got into an argument with Franklin, there was nothing [redacted] can do. We will have to call [redacted] and Grant if we are not comfortable with the withdrawal plan they provide. Since this is MS F money and we can hedge or put this in our variance trade, I didn't blow a rocket on the call knowing that Grant was about to visit.

Let me know of any questions.
Mark

JCM 8011430
CONFIDENTIAL

Exhibit 11

Mark Langer

From: Mark Langer
Sent: Friday, May 10, 2002 8:40 AM
To: [redacted]
Cc: Mike Johnson; [redacted]
Subject: FW: Franklin

Pursuant to the analysis done by Sec Trust, please process sales requests in amounts ranging from $65 K to $85 K (vary amount each day) to liquidate the Franklin position. This will average close to the $77 K noted in [redacted]'s email to meet their request that we don't flag our account to Franklin. Based on our current Franklin investment, we will have to bleed this sale in over ten days to get fully out. We could stay longer if we didn't want to process the partial investment on day's when we wanted to be in but I don't think it is worth it for a solo position (Mike can advise if he thinks otherwise).

Please let me know if you have any questions.

Mark

-----Original Message-----
From: [redacted] [mailto:[redacted]@securitytrustco.com]
Sent: Thursday, May 09, 2002 6:27 PM
To: 'Mark Langer'
Cc: [redacted]
Subject: Franklin

I have attached a purchase/sales spreadsheet detailing the piggyback account's normal trading activity. It looks like during the period of about a month and a half, 7 liquidations were done ranging in lot size from about 33,000 - 238,000 the average lot size being about 77,000. Please bleed out the position in accordance with this activity. Should you have any questions, please feel free to contact [redacted] or myself. Thank you.

[redacted]

Exhibit 12

Mark Langer

From: Mark Langer
Sent: Friday, April 12, 2002 9:01 AM
To: [redacted]
Cc: Mike Johnson; [redacted]
Subject: Security Trust

[redacted] called to say that another fund company (Freemont Funds) in the piggy back accounts has investigated timing business w/in the accounts. Accordingly, [redacted] has asked us to stop trading Freemont Funds for the next 3 weeks and then to resume trading using various $ requests (change amount each time we trade like she requested for the other fund families).

Mark