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

Plaintiff,

- against -

COMPLAINT

J. & W. SELIGMAN & CO. INCORPORATED,
SELIGMAN ADVISORS, INC.,
SELIGMAN DATA CORPORATION and
BRIAN T. ZINO,

Index No.

Defendants.

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The People of the State of New York ("Plaintiff"), by their attorney, Eliot Spitzer, Attorney General of the State of New York, bring this action in the name of the State of New York pursuant to Civil Practice Law and Rules § 1301, Article 23-A of the General Business Law ("the Martin Act"), section 349 of the General Business Law ("GBL"), Executive Law § 63(12) and the Attorney General's *parens patriae* authority, for a judgment and order:

(i) permanently enjoining the Defendants from engaging in fraudulent activities in connection with the purchase and sale of securities; and

(ii) awarding Plaintiff damages, restitution, disgorgement of profits and management fees, fines, penalties, punitive damages and other just and proper relief;

and allege the following upon information and belief:

SUMMARY OF THE CASE

1. This case involves mutual fund timing, a strategy used by hedge funds and other sophisticated investors to skim money out of mutual funds. The victims of the fraud described here were the ordinary buy-and-hold customers of the Seligman family of mutual funds. The

Defendants here are the managers of the Seligman funds – fiduciaries who while charged with protecting Seligman's clients from the fund timers instead secretly joined forces with the latter for more than five years through dozens of improper relationships.

2. For at least the period from 1998 to late 2003, Seligman was well aware that fund timers were preying on the Seligman Funds but allowed, and in some cases actually encouraged, this conduct. Before mid-2001, Seligman accommodated timers, only occasionally (and ineffectually) asking them to leave. After mid-2001, Seligman began to treat timing as a privilege that the company would limit to a few investors with which it had "special agreements." Even though timers with "special agreements" constituted a relatively small group, they did a large volume of illegal trading with Seligman right up to the time that the Office of the Attorney General's ("OAG") investigation of mutual fund timing became public.

3. At all times, Seligman was well aware that its timing program hurt bona fide investors. This awareness is reflected best in Seligman's own e-mail messages. For instance, at six in the morning on December 17, 2002, Seligman Advisors' National Sales Director wrote an e-mail to a subordinate with the subject line "THE HORROR." In it he confided how Seligman's embrace of one fund timer made him feel like Marlon Brando's character in the film *Apocalyse Now*, "ravaged by lack of sleep and tortured by this wrenching nightmare of timing money that is slowly churning like a cancer eroding away at the foundations of our complex . . . ." He did nothing, however, to end the timing.

4. More than a month earlier, a Seligman employee charged with monitoring fund timing activity had raised similar concerns with the President of Defendant Seligman Advisors, Inc., Stephen Hodgdon:

> Steve - I write this memo to bring to your attention an escalating problem that threatens the performance of our funds, and therefore our livelihood. It is the

> practice of [fund timing] by professional traders (usually hedge funds), *which loots percentage points in total return from the funds these traders utilize.*
>
> The practice threatens the future of fund companies that don't understand its effect on their long-term returns. In addition, *it is a ticking time bomb for the entire mutual fund industry, set to go off the day the press realizes that fund companies routinely sell the returns earned by the shareholders of their funds to short-term traders.*

(Exhibit 1, emphasis added.)

5. A year earlier, the portfolio manager of a Seligman fund actually quantified for his supervisor, the Seligman Chief Investment Officer, the damage that Seligman's timers were inflicting on the funds:

> The international fund currently has cash of $11,440,409 (17.1% of assets) due to an inflow of $9,137,307 on 1/11/01, which I was notified of this afternoon. *[This has] cost[] us 15 [basis points][1] of performance....This is the equivalent of having one of my portfolio's stocks underperform by 12% over this period.*
>
> In less than three months, the fund as [sic] had inflows of $91,991,193 (138% of assets) and outflows of $80,991,653. By my reckoning, we've had 14 round trips of massive flows in and out meaning 28 trading days I have either been scrambling to get invested or raising liquidity. There were only 49 trading sessions over this period, so *this is how I've spent about 60% of my time.*
>
> *[T]he execution costs are huge to our existing shareholders.* Most studies of trading strategies suggest that trading activity costs about 100 basis points after commissions, bid-ask spread, fx [i.e., foreign-exchange] cost, and market impact. *Thus, I think so far, this activity has cost the fund about 140 [basis points (or 1.4%)].*

(Exhibit 2, emphasis added.)

6. In fact, before Seligman reluctantly shut it down, the timing program cost its legitimate customers at least $80 million. These customers never knew it, though: Seligman was careful not to disclose its relationships with fund timers, and continually issued prospectuses suggesting that it was working to prevent fund timing.

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[1] A "basis point" is a hundredth of one percent in the yield of an investment.

7. In addition, the Defendants disseminated misleading press releases after the OAG began its industry-wide investigation into mutual fund timing. Issued in January 2004 and January 2005 and entitled "Message To Shareholders," the deceptive press releases told the public that Seligman had relationships with four timers (in fact there were at least 40) and that the damages from timing were $6 million (instead of $80 million).

8. The Defendants also concealed the timing program from the Seligman Funds' Boards. For instance, in March of 2001, only a week after receiving an e-mail detailing the trading activity of 28 timers whose accounts were tolerated due to "relationships with the [Seligman] sales force," Defendant Brian Zino (the current Chief Executive Officer of Seligman) addressed the Boards of the Seligman Funds at a meeting where the harmful effects of market timing were discussed. The minutes of the board meeting show that Zino told the Funds' Boards that Defendants Seligman Data Corporation and J. & W. Seligman & Co. Incorporated "have had limited success in preventing the activities of market timers" but not that he informed the Boards of the "relationships" that led to the timing. Later, Zino personally approved one of the "relationships" without informing the Boards of his actions.

9. Finally, the Defendants have engaged in a scheme to overcharge investors systematically for money management services. In this, Defendants have been aided by the Boards of the Seligman Funds, who acted as "rubber stamps" for numerous fee increases requested by the Defendants, even though the same investment management services were being offered by the Defendants to third parties at far lower prices. As a result, the Seligman Funds are among the five most expensive fund families in the United States, despite lackluster performance.

PARTIES

10. This action is brought by Eliot Spitzer, Attorney General of the State of New York, on behalf of Plaintiff pursuant to GBL §§ 349 and 353 and Executive Law § 63(12), and the common law of the State of New York.

11. Defendant J. & W. Seligman & Co. Incorporated ("JWS" or the "Manager") is a Delaware corporation with its corporate headquarters located at 100 Park Avenue, New York, New York 10017. JWS is a registered investment adviser (under the federal Investment Advisers Act of 1940), and provides management services to the Seligman Funds.

12. Defendant Seligman Advisors, Inc. ("Seligman Advisors") is a Delaware corporation with its corporate headquarters located at 100 Park Avenue, New York, New York 10017. Seligman Advisors is the distributor for the Seligman Funds and employs the persons responsible for marketing and selling the Seligman Funds. Defendant Seligman Advisors is wholly owned by Defendant JWS.

13. Defendant Seligman Data Corporation ("Seligman Data") is a New York corporation with its corporate headquarters located at 100 Park Avenue, New York, New York 10017. Seligman Data provides shareholder services for Seligman Funds. Seligman Data is owned by a group of the Seligman Funds and is ultimately controlled by the Boards of Directors of the Seligman Funds.

14. Defendant Brian T. Zino is and was at all relevant times the Chairman and a director of Seligman Data and each of the Seligman Funds, and the President and a director of JWS. He owns approximately 10% of JWS and has been the Chief Executive Officer of JWS since in or about 2003.

15. The corporate defendants are sometimes collectively referred to herein as "Seligman."

STATUTORY AND LEGAL FRAMEWORK

16. The OAG brings this action pursuant to the Attorney General's statutory and common law authority and under the following provisions of law.

17. Article 23-A of the GBL 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.

18. The Martin Act proscribes fraudulent practices in connection with the sale of securities. Among the provisions relevant to this action are the following:

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

(b) GBL § 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

(c) GBL § 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.

19. GBL § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New York.

Pursuant to GBL § 350-d, Plaintiff is entitled to a civil penalty of up to $500 for each of the Defendants' violations of GBL § 349.

20. 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.

21. Finally, as the State of New York's chief legal officer, the Attorney General brings this action pursuant to his *parens patriae* authority. Where, as here, the interests and well-being of the People of the State of New York are implicated, the Attorney General possesses parens patriae authority to commence legal actions for violations of state law, including the common law. The State of New York has a quasi-sovereign interest in upholding the rule of law, and in protecting the economic well-being of its residents.

STATEMENT OF FACTS

I. BACKGROUND ON MUTUAL FUND TIMING

22. The short-term trading of mutual fund shares is generally referred to as "mutual fund timing." At Seligman and other mutual fund families it is also commonly referred to as "market timing," "frequent trading," and "excessive trading." This type of trading is often conducted by sophisticated financial entities known as hedge funds. Typically, computerized trading "models" utilized by hedge funds signal when to engage in short-term buys and sells of mutual funds.

23. These "models" are often complex and vary depending upon the strategy being utilized. For purposes of illustration, the basic mechanics are as follows. When a model indicates 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 will also rise. When the 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, therefore, the hedge fund sells its fully-invested position in equity mutual funds, captures a short-term profit and typically invests the proceeds in a virtually riskless position in a money market fund. While resting in the security of the money market fund, the hedge fund lies in wait 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 sells its position in equity funds, again locks-in a profit and again returns the proceeds to the safety of a money market fund.

24. These short-term exchanges of mutual fund shares – known as "round trips" – often occur within a day, a few days, a few weeks or, often in the case of timing in high yield bond funds, a month or more of each other. Depending on the strategy, a hedge fund might engage in 50 or more "round trips" in less than a year allowing its money to rest safely in a money market fund most of the time. If a hedge fund "times the market" right, therefore, it can dramatically reduce exposure to the market risk to which ordinary investors are subject, but with limited or no loss in upside potential.

25. A common strategy has involved international time-zone differences. Rapid traders have used international mutual funds to capture an "arbitrage" profit. A typical international strategy has worked as follows.

26. "Domestic" mutual funds invest primarily in stocks of U.S. companies trading primarily on markets within the United States. These markets usually close at 4 p.m. New York time. Domestic mutual funds calculate their Net Asset Values ("NAVs") as of the 4 p.m. New

York time close of these U.S. markets. In other words, the stocks comprising the mutual fund's portfolio are usually actively traded up until 4 p.m. and, therefore, the stock prices are current as of the time at which mutual funds price fund shares.

27. 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. Consequently, the last trade in the foreign stocks comprising the international mutual fund's portfolio may have been much earlier that morning at, for example, 4 a.m New York time. By 4 p.m. that afternoon (N.Y. time), the prices of the foreign stocks are 12 hours old; they are stale, not current like the prices of the domestic stocks. The arbitrage opportunity exists because even though prices are (in this example) 12 hours old, international mutual funds use those stale prices to calculate their NAVs.

28. As a result, while the foreign markets are closed during the U.S. trading day, market timers watch what financial markets in the United States are doing. If U.S. markets are up significantly during the day and continue to stay up toward the 4 p.m New York time close of the markets, it is probable that when foreign markets open the next day (*i.e.*, at 9 p.m. that night (N.Y. time)), the foreign markets will follow suit. In a way, therefore, the international mutual fund is "mis-priced" because the rise in U.S. markets (and probable corollary rise in foreign markets) has not been factored into the mutual fund's share price. To exploit this pricing inefficiency, the timer bets on the expectation that the prices of foreign stocks will rise the next day by buying international mutual funds. When U.S. markets subsequently drop a day or a few days later, the timer sells the mutual fund, thereby capturing a short-term profit. Many timers have engaged in a cycle of short-term mutual fund investing throughout the year.

29. While international equity mutual funds have been most often targeted, many timers have executed successful market timing strategies in domestic large and small capitalization equity funds, high yield bond funds and other types of mutual funds as well. Regardless of the strategy being used, the key to success has been the availability of "round trips."

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

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

32. Second, fund timing allows frequent traders to profit at the expense of long-term investors. This effect, known as "dilution," works as follows. When a timer buys into an equity fund, a mutual fund portfolio manager will, generally speaking, either 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 will typically redeem shares in the equity fund, lock-in a profit and retreat to the safety of a money market fund. If the portfolio manager has held the timer's money in cash during the timer's round trip, the mutual fund, in effect, simply gives the uninvested cash back to the timer, plus the timer receives a pro rata portion of the gain on the stocks in the mutual fund's portfolio. Allowing the timer to share in any portion of the increase in portfolio value is unfair because the timer contributed nothing to the gain. Since the timer's money remained in cash, this "investment" was never put to work to earn a profit for all shareholders. To the contrary, the market timer darted into the equity fund at the last moment and clipped part of the upside that would otherwise have gone to buy and hold shareholders. When timers make numerous of these uninvested "round

trips" in and out of a fund, they continually "pick off" pieces of long-term shareholders' profit. This substantially waters down – or "dilutes" – investment returns.

33. The third form of damage can result regardless of whether a timer's money is held in cash or invested by the mutual fund. In either instance, the mutual fund may incur unnecessary costs associated with having to buy and sell securities or otherwise raise cash to meet timer redemptions. In the situation where a timer's cash was not invested, in order to give the timer a piece of the increase in value of the portfolio's shares, the mutual fund may have to either draw down on a line of credit or sell stocks to raise the money. Both options result in costs to long-term shareholders.

34. 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 can also cause substantial harm. A portfolio manager may have to sell into a falling market stocks that were just purchased. This not only jettisons the *long-term* investment potential of the securities – the reason they were purchased in the first place – but causes the fund to incur otherwise unnecessary brokerage costs to sell the securities. These brokerage costs can also be substantial and are an utter waste because the securities were never given a meaningful opportunity to contribute to mutual fund returns. In addition, where the portfolio manager sells stocks that would have been held but for the timer's redemption, the fund may incur additional capital gains tax liabilities that are ultimately borne by long-term shareholders. These same adverse consequences may result when a portfolio manager has invested a timer's cash in stocks only to have to convert securities back to cash a short time later to meet the timer's redemption.

35. Significantly, mutual funds have the legal tools necessary to prevent shareholders from engaging in frequent short-term "round trips." And given the harmful effects, as fiduciaries,

mutual fund managers are obligated to use these tools affirmatively to put a stop to market timing activities. Consequently, many mutual funds employ "timing police" or "timing cops" (as they are often referred to in the industry) to identify, monitor and restrict suspected or actual market timing activities to protect shareholders.

36. Despite the harm that timing causes and the tools available to stop it, some mutual fund managers allow their funds to be timed because the fund managers are able to profit from this illegal activity. Typically, a single management company sets up a number of mutual funds to form a family. While each mutual fund or series of funds is in fact its own separate company, as a practical matter the management company runs all of them. The portfolio managers who make the investment decisions for the funds and the executives to whom they report are all typically employees of the management company, not the mutual funds themselves. Still, the management company (also known as the investment adviser) owes fiduciary duties to each fund and to each investor.

37. The management company and its affiliates profit from fees they charge the funds for financial advice and other services. These fees are typically a percentage of the assets in the fund, so the more assets in the family of funds (including timing assets), the more money the manager makes. The timer understands this perfectly, and frequently offers the manager additional assets that will not be short-term traded in exchange for the right to short-term trade other funds within the same fund family. These additional investments are known as "sticky money" or "static assets."

38. Many mutual fund managers have exercised their fiduciary duties and forgone the additional investment-advisory revenue generated by allowing timers to exploit the funds they

manage. Others, such as Seligman, have succumbed to the temptation to help timers victimize fund shareholders.

II. THE SELIGMAN PROSPECTUSES

39. At all relevant times from 1995 through 2003, prospectuses for the Seligman Funds were silent about Seligman's involvement with fund timers and created the false impression that Seligman actually combated timers.

A. The "Important Policies" in the Seligman Funds Prospectuses

40. Beginning in 1995, Seligman Funds prospectuses warned investors against the harmful effects of excessive trading and informed investors of the Funds' right to restrict it:

> *Because excessive trading (including short-term, "market timing" trading) can hurt the Fund's performance*, the Fund may refuse any exchange (1) from any shareholder account from which there have been *two exchanges in the preceding three month period*, or (2) where the exchanged shares equal in value the lesser of *$1,000,000* or 1% of the Fund's net assets. The Fund may also refuse any exchange or purchase order from any shareholder account *if the shareholder or the shareholder's broker/dealer has been advised that previous patterns of purchases and redemptions or exchanges have been considered excessive*. Accounts under common ownership or control, including those with the same taxpayer ID number and those administered so as to redeem or purchase shares based upon certain predetermined market indicators, will be considered one account for this purpose. Additionally, the Fund reserves the right to refuse any order for the purchase of shares.

(Exhibit 3, emphasis added.)

41. In 1999, when the Defendants knew that fund timing in the Seligman Funds was increasing, the following language, among other things, was deleted from prospectuses: "Because excessive trading (including short-term, "market timing" trading) can hurt the Fund's performance. . . ."[2] (See Exhibit 4.) Yet, the prospectuses retained, in substance, the one million

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[2] The following language was also deleted from the prospectuses: "Accounts under common ownership or control, including those with the same taxpayer ID number and those administered so as to redeem or purchase shares based upon certain predetermined market indicators, will be considered one account for this purpose."

dollar threshold, two-exchange limitation and other restrictions on excessive trading; the prospectuses further disclosed to shareholders that these restrictions would be used to protect them.

42. Thus, the revised prospectus disclosures that were in effect from early 1999 going forward state:

> **Important Policies That May Affect Your Account**
>
> To protect you and other shareholders, the Fund reserves the right to:
> - Refuse an exchange request if:
> 1. you have exchanged twice from the same fund in any three-month period;
> 2. the amount you wish to exchange equals or exceeds the lesser of $1,000,000 or 1% of the Fund's net assets; or
> 3. you, an authorized dealer or your financial advisor have been advised that previous patterns of purchases and sales or exchanges have been considered excessive.

(Exhibit 4.) The term "financial advisor," as used in the above prospectus language and in many Seligman e-mails, refers to a person who is also commonly known as a "broker" or "registered representative" employed by a securities brokerage firm.

43. As one Seligman employee noted, fund timing "is clearly prohibited by our prospectus language." (Exhibit 5, 2/27/98.) This language created the impression that the Seligman Funds were diligently monitoring frequent trading activities, making a determination concerning whether such activities were harmful to shareholders and, if so, terminating investors' trading privileges when those investors exceeded the stated number of exchanges or dollar volume or had been advised that previous trading was excessive. Nothing was further from the truth.

III. MUTUAL FUND TIMING AT SELIGMAN

44. The mutual fund timing at Seligman occurred in two distinct phases. Before 2001, the Seligman timing police monitored timing activity and wanted to stop it but Seligman's management took only occasional and halfhearted steps to address the problem. After 2001,

Seligman established relationships with a few major timers and systematically shut down the rest. Throughout both phases, the Defendants were well aware of the nature and extent of the harm that mutual fund timing caused the Funds and their shareholders.

A. Phase 1: Tolerating Timers through Pre-March 2001 "Relationships" and "Selective Restrictions"

45. Seligman introduced its fund timing disclosures in its prospectuses in 1995. The October 1996 meeting minutes of employees in the "Dealer Services" unit of Seligman Data reflect that fund timing continued thereafter. Those employees were apprised of the prospectus language and told: "Although this provision is rarely exercised you can refer to it if you are questioned by market timers doing excessive trading." (Exhibit 6, 10/10/96.)

46. Seligman took no significant steps to police market timing in 1997. By 1998, certain JWS portfolio managers complained that excessive trading was disrupting their ability to manage their funds efficiently. The complaints were not surprising because hedge funds were trading rapidly in and out of several Seligman Funds in large dollar amounts throughout 1998. For example, the following trading activities by hedge funds occurred in the Seligman Funds during 1998:

* from February 20, 1998 to December 17, 1998, hedge fund Millennium Partners, L.P. (or an affiliate) conducted 42 exchanges into and out of the Seligman Global Smaller Fund; 34 of the exchange transactions exceeded $4 million per transaction and the remaining eight exchanges exceeded $2 million; and

* from January 13, 1998 to December 23, 1998, hedge fund Peconic Capital (or an affiliate) conducted 48 exchanges into and out of the Seligman Communications & Information Fund all 48 of which exceed $1 million.

Despite these large trade volumes in and out of Seligman Funds, the rapid trading continued without enforcement of the anti-market timing language in the prospectus.

1. "Frequent Trading Activity Reports"

47. One Seligman Advisors employee had seen enough of these harmful, prospectus-violating activities and attempted to police them. In early 1998, he began to track timing activity in Seligman's international funds and notified the National Sales Director (who at the time was the Director of Marketing at Seligman Advisors) as follows:

> We think we have identified a couple of "market timers" who are shifting considerable assets in and out of the GT [i.e., Global Tech] fund....
>
> * * *
>
> I will speak with our marketing and sales managers to address the issue, *which is clearly prohibited in the prospectus language.*

(Exhibit 5, 2/27/98, emphasis added.)

48. In April 1998, Seligman employees began to track market timing activities in a document known as the "Frequent Trading Activity Report" or "FTAR." As discussed below, the FTARs provide a stark record of timing at Seligman. They show that Seligman knew perfectly well what its timers were doing but did little or nothing to stop them. Instead, Seligman adopted what the President of Seligman Data described as a "passive" or "bark with little bite" approach. (*See* paras. 64 and 215, *infra*.) The April 1998 FTAR detailed the trading activity of 20 financial advisors who were conducting market timing activities in Seligman Funds. For example, the April 1998 FTAR reflects that a CIBC Oppenheimer financial advisor, was a market timer in Seligman Funds; and that he had engaged in 18 round trips in the Communications & Information Fund ("C&I Fund") and nine round trips in the Global Smaller Fund in large dollars amounts. These 27 round trips substantially exceeded the two-roundtrip restriction in the prospectuses and occurred within just one month, not 90 days as stated in the disclosures. (Exhibit 7.)

49. The format for the FTAR changed in May 1998. The May 1998 FTAR detailed the year-to-date frequent trading activity of 21 financial advisors and indicated that "stops" had been placed on some financial advisors' accounts trading international funds "to disallow any further exchange activity." While "stops" or "freezes" were placed on some financial advisors' accounts, others were not stopped. For example, a stop was placed on an account associated with one financial advisor who had conducted 16 round trips in the Global Tech Fund, but no stop was placed on an account associated with a different financial advisor who had conducted 12 round trips in the Global Smaller Companies Fund. (Exhibit 8.)

50. Although stops were sometimes placed on timers in Seligman's international funds and "global" funds (consisting of both domestic and international stocks), rapid trading in Seligman's domestic funds was not restricted at all. The May 1998 FTAR reflects that no stops whatsoever were placed on the accounts of numerous financial advisors who were frequently trading the C&I Fund. For example, during the five months ending in May 1998, the CIBC Oppenheimer financial advisor conducted 107 round trips in the C&I Fund in no more than 12 accounts, but no freezes were placed on any of these accounts.

51. A Seligman employee became concerned about excessive trading activity in the C&I Fund, and sent Seligman Advisors' National Sales Director a memo on July 24, 1998 attaching an FTAR that "summariz[ed] the heavy trading activity in the Communications and Information Fund on July 21." The memo noted that many financial advisors timing the C&I Fund appeared on the report. The memo stated:

> The initial intent of this report was to identify those financial advisors who were utilizing the Seligman Funds to "time" the market. Generally, these individuals use our exchange feature well in excess of our policy of 2 round trips per quarter....

> [The timing cop] has been very active working with the external sales force to stop market timing in our Global Funds. In the report you will notice many of the advisors have been restricted from trading our Global Funds as a result of [the timing cop's] work.

(Exhibit 9.)

52. Subsequently, the timing cop communicated directly with the National Sales Director about the heavy market timing activity in the C&I Fund. He wrote the following in an August 10, 1998 memo to the National Sales Director:

> As per your request, I recommend that the strategy which we have used on the global/international funds over the past few months be consistently applied to all mutual funds which are being actively traded by brokers. *The prospectus language for every Seligman fund clearly discourages active trading and allows us to take the necessary steps to prevent excessive trading.*
>
> The strategy has been fairly simple and straightforward: once a specific broker has been identified on the monthly SDC market timer report [*i.e.*, FTAR], Product Management notifies the Seligman salesperson responsible for that relationship that a *meaningful "cease and desist" message* must be communicated <u>as soon as possible</u>....
>
> ....The salesperson again establishes a reasonable window of time (1-2 weeks max) in which the broker can consider the matter....We make it clear that we will place a stop on trading the account if we can not resolve the matter in the agreed upon time frame, permitting only exchanges from the fund into the money market fund.
>
> * * *
>
> *There is no doubt that 25 or more YTD round trips can reasonably be considered excessive from our firm's perspective; taking a proactive approach to discourage and prevent this practice can only be to the benefit of the existing shareholders of any Seligman fund.*

(Exhibit 10, italics added, underscoring in original.)

53. Despite the timing cop's urging, Seligman did not apply its prospectus language to deter excessive trading in the C&I Fund or other "domestic" mutual funds. And, as reflected on the FTAR for year-end 1998, "stops" on accounts associated with excessive trading in international funds remained inconsistent. (Exhibit 11.)

54. The FTAR for year end 1998 detailed 22 financial advisors engaged in excessive trading activities in the Seligman Funds; several of them, including the CIBC Oppenheimer financial advisor, were the same financial advisors who had been identified on the April 1998 FTAR eight months earlier. Other examples, as reflected on the May 1998 FTAR, include:

(a) A Prudential Securities financial advisor in Chicago, Illinois, who had conducted 16 round trips in the C&I Fund, 12 round trips in the Frontier Fund and 11 round trips in the Global Tech Fund in large dollar amounts through May, 1998. His excessive trading continued unabated through the end of the year; as reflected on the December 1998 FTAR, he had conducted 40 round trips in the C&I Fund, 41 round trips in the Frontier Fund and 40 round trips in the Global Tech Fund. His trading occurred in no more than four accounts; and

(b) A Paine Webber financial advisor in New York who conducted 48 round trips by year end 1998 in the C&I Fund in a single account.

55. The oral "cease and desist" warnings given to financial advisors were largely being ignored. And since accounts were not being frozen, the trading continued.

56. In 1999, the lax or, with respect to some funds, non-existent enforcement of the Seligman Funds' "Important Policies" to protect shareholders from market timing continued. Seligman has lost or destroyed all but one of the FTARs for 1999. The sole surviving FTAR, dated as of March 5, 1999, indicates that excessive trading activities by many of the same financial advisors who had been identified in 1998 continued in 1999. For example, the FTAR indicates that the Prudential Securities financial advisor continued where he left off in 1998. By March 5, 1999, he had conducted six round trips in two accounts in the C&I Fund, six round trips in one account in the Frontier Fund and six round trips in one account in the Global Tech Fund. The Paine Webber financial advisor also continued his abusive trading even while Seligman tracked it in FTARs. In just over two months in 1999, he conducted nine round trips in one account in the C&I Fund. (Exhibit 12.)

2. Timing Cops Push for "Hammer Time"

57. In mid-1999, Seligman's timing cops began an effort to respond vigorously to the growing problem of timers. Because of management's lack of support, however, the attempt was ultimately ineffective. As part of the new initiative, an employee of Seligman Advisors was charged with ensuring that Seligman Advisors "wholesalers" (*i.e.*, salespersons who promoted Seligman Funds to brokerage firms) did not get paid on market timing business. In a May 26, 1999 e-mail, he wrote to a Seligman Divisional Sales Director:

> The amount of time spent monitoring [timers] makes me wonder if it's worth the trouble. I definitely don't like adjusting wholesaler comp[ensation], especially in the current sales environment. If you think it's better to let the business stay on the books and simply put an end to further trades from these brokers, I would go along with that. *The most important thing is that we protect existing fund shareholders by putting and [sic] end to this kind of business.*

(Exhibit 13, emphasis added.) Seligman took back commissions paid to wholesalers where an investment remained in the Seligman complex only a matter of days (*i.e.*, where there was a purchase followed quickly by a redemption), but Seligman rarely if ever took back commissions paid on investments that were timed over a number of months. As a practical matter, in 1999 and 2000, timers were generally not identified until they had engaged in at least six round trips in 90 days. After 90 days or more had elapsed since the initial investment, Seligman had earned fees on the investment and there was little desire to punish a wholesaler belatedly.

58. In June 1999, a Seligman Data employee distributed a draft market timer notification letter which acknowledges the prospectus language and states:

> As you should be aware Seligman allows for two round trip exchanges each quarter. As stated in the Prospectus, we reserve the right to refuse an exchange request if there have been two exchanges from the same fund in any three-month period.

> One of our main reasons for this policy is that excessive trading can hurt the Fund's performance. Also, excessive trading generates high expenses to the Fund due to the transaction processing, statements, tax forms, and mail costs involved.

Employees noted that the letter would be sent to "offenders (since calls from wholesalers were not working in most cases)" and Seligman "would not be generous in the amount of time [it] would allow to demonstrate cooperation with [its] prospectus." (Exhibit 14.)

59. In a July 7, 1999 e-mail to other sales executives, Seligman's National Sales Director wrote:

> [I]t's hammer time – these guys [*i.e.*, timers] need to be cut off!
>
> Timers, as you know, are not extended a warm welcome by J&W Seligman, nor by most other self-respecting firms in this business. *We have a number of clients who are in gross violation of the limitations we established (by prospectus) to deter timing activities. We must address this situation immediately. . . .*
>
> Once notified in the form of [the attached] letter [identifying a violation of Seligman's exchange policy], these [financial advisers] will be limited to the 2 round trips per three month period. *Additional exchanges in any three month period will simply not be honored.*

(Exhibit 15, emphasis added.)

3. Management Fails to Act

60. Unfortunately, Seligman's management, including Defendant Zino, failed to support the timing cops' effort to fight timing. Timers continued to ignore "warnings" to stop timing as reflected in the following September 27, 1999 e-mail from a senior timing cop to senior marketing staff:

> Regarding the issue of recalcitrant timers unfazed by warnings related to or delivered at the time of the "freeze" – we should take immediate steps to throw the bastards out.

One of the marketers replied: "We are attempting to *shorten* the cycle from [written warning] letter to icebox [*i.e.*, freezing timer accounts]." (Exhibit 16, emphasis in original.)

61. This, however, was lip service. Instead of shortening the time frame between when a warning letter was first issued and an account was frozen, Seligman:

(a) created a system that tracked market timing activity at "round trip" levels less restrictive than what the prospectus told shareholders would be done; and

(b) gave Seligman Advisors salesmen – whose compensation depended in part on the amount of market timing assets in the funds – the discretion to determine if an when a market timer's account should be frozen.

62. Although Seligman lost or destroyed all but one of the FTARs in 1999, a template of the FTAR from 10/15/99 indicates that Seligman Data had been tracking market timing activity in 1999 in accordance with the two-exchange limitation in the prospectus. A form of the October 15, 1999 FTAR prepared by Seligman Data indicates that the report lists financial advisors:

> who have exceeded the *limit of two* exchanges from the same fund in a calendar quarter. The criteria for being listed is [sic] that the exchanged amount must equal more than $500,000.

(Exhibit 17, emphasis added.)

63. However, at least as early as January 2000, the exchange "limit" that a financial advisor had to reach before being listed on the report was raised from two round trips in a calendar quarter to six round trips in a calendar quarter. Thus, the January 15, 2000 FTAR states: "This report lists reps who have exceeded the *limit of six* exchanges from the same fund in a calendar quarter." (Exhibit 18, emphasis added.) The FTAR criteria remained this way throughout the year 2000.

64. The President of Seligman Data called the disparity between what is stated in the prospectus and the six-exchange limitation taking a "passive approach." In his January 31, 2001 e-mail to senior Seligman executives he wrote:

> The financial advisors appearing on this monthly report qualify based on the following criteria:

*They have completed more than 6 roundtrip exchanges per quarter. *(Presently, the prospectus limits clients to 2 roundtrips per quarter but we have taken a more passive approach in enforcing).*

(Exhibit 19, emphasis added.)

65. No study or analysis was done concerning what effect changing the FTAR criteria from two to six would have on shareholders. The "passive approach" to shareholder protection was never disclosed.

66. A key element of Seligman's "passive approach" was delegating to salesmen the role of deciding which customers should have their accounts frozen. This is reflected in several documents:

(a) a September 27, 1999 e-mail from a Seligman Data timing cop to a Seligman Advisors Divisional Sales Director and others in which the timing cop wrote: "We will not restrict any broker related accounts that are timing our funds without consulting Marketing first." (Exhibit 20);

(b) a November 5, 1999 e-mail from a Seligman Data timing cop concerning "abnormal exchange activity" in the C&I Fund; the timing cop noted that two financial advisors exchanged $7.4 million and $500,000 and then e-mailed another Divisional Sales Director stating: "[The financial advisors] have both been sent written warnings regarding timing. Would you like us to freeze the accounts?" (Exhibit 21); and

(c) a March 27, 2000 e-mail from a Divisional Sales Director to other Seligman Advisors salesmen regarding market timing activities in which the Divisional Sales Director wrote: "before anyone can be frozen, the [Divisional Sales Director] has to give approval" (Exhibit 22).

67. The wholesalers' compensation depended in part upon the amount of "timing assets" their financial advisor-clients placed in the Seligman Funds. Freezing the accounts would mean that timers would take their assets (often totaling several million dollars) elsewhere. Not surprisingly, "selective restrictions" on certain preferred financial advisors and "relationships" and "special agreements" between Seligman wholesalers and financial advisors developed. These arrangements enabled the advisors to avoid having their accounts frozen.

68. By October 15, 1999 and continuing throughout 2000, the FTARs placed each financial advisor for a suspected timer into one of four categories:

Category I	"New [or "Recent"] Additions to the Report" added after a financial advisor completed a specified number of "exchange" transactions between funds.
Category II	"Verbal Warning Issued" indicated that the financial advisor had received an oral warning from an SAI salesperson to cease the timing activity or risk having the client's account frozen.
Category III	"Written Warning Issued" indicated that the financial advisor had received a warning letter from the Divisional Sales Director or other senior officer of SAI to cease the timing activity.
Category IV	"Accounts Frozen, Liquidated, or Transferred" indicated that the financial advisor's accounts that had engaged in timing activity had been frozen from making new exchanges into the fund. If applicable, a note would indicate the date on which the frozen account(s) had been liquidated or transferred, in whole or in part.

69. In theory, advisors were to be moved from one category to the next as their continued mutual fund timing caused Seligman Advisors sales managers to warn (first orally, then in writing), and then freeze, the timed accounts.

70. In practice, however, advisors rarely moved from one category to the next because Seligman Advisors salesman, with the knowledge of senior executives at Seligman Advisors, Seligman Data and/or JWS, entered into numerous secret market timing arrangements with preferred customers knowing or recklessly disregarding that these arrangements would (and did) negatively impact the investment returns of Seligman Funds' shareholders.

71. The existence of these arrangements meant that "verbal" (*i.e.*, oral) warnings and written warnings were not given, and authorization to freeze an account was not granted, so Seligman Data did not move a financial advisor from one category to the next on the FTAR. As a

result, the accounts of many financial advisors were not frozen even though Seligman Data had clearly identified them as "abusive" market timers.

72. The existence of these arrangements was clearly documented by and common knowledge among senior Seligman executives, but was never disclosed to Seligman Funds' shareholders. For example, on one occasion in late 2000, a senior Seligman Data timing cop e-mailed Seligman Advisors' three Divisional Sales Directors and others:

> Various advisors in different regions have been added to the report 6, 7, 8 or more months ago and are still listed as category I. Some of these advisors have requested in excess of 30 round trips this year. Clearly in excess of our guidelines.

(Exhibit 23, 12/13/00.)

73. In another instance in late 2000, the treasurer of the Seligman Funds asked a Seligman Data employee:

> [I]s there a reason that none of the category I brokers have gone to category II? Many have been on the list for several months and have continued to do exchanges.

The Seligman Data employee responded:

> In some instances, there are *special agreements* between the reps [i.e., the financial advisors] and the wholesaler [*i.e.*, Seligman salesperson].

(Exhibit 24, 10/19/00, emphasis added.)

74. At various times, "special agreements" to permit timing in Seligman Funds were given other monikers in communications among senior Seligman officers such as "selective restrictions," "relationships" and "exceptions." Regardless of the label given to the arrangement, one thing is clear: senior management, including Defendant Zino, knew (or with reasonable effort could have known) that dozens of such "relationships" resulted in abusive exchange activity by timers in violation Seligman Funds' policies.

B. 35 "Special Agreements" Before 2001

75. Documents indicate that there were at least 35 "special agreements," "relationships," "selective restrictions" and/or "exceptions" prior to March 2001. Many of these are listed in e-mails sent to Zino by the President of Seligman Data on March 7 and 8, 2001, prior to a Board meeting of the Seligman funds on or about March 15, 2001. The March 7 e-mail (Exhibit 25) gave Zino an overview of timing at Seligman and the March 8 e-mail (Exhibit 26) informed Zino of "abusive timers" in Seligman's global and international funds who had not been frozen. The basic facts relating to these relationships, drawn from FTARs, are set forth below.

1. Prudential Securities Financial Advisor A

76. The trading activity of Advisor A illustrates the close relationships that developed between financial advisors and members of Seligman's sales force. Advisor A was a Prudential Securities financial advisor in Deerfield, Illinois who later moved to Salomon Smith Barney. The FTARs indicate that Advisor A processed his exchange transactions in Seligman Funds via telephone or by faxing them to Seligman.

77. The FTARs reflect that Advisor A was identified as a market timer and added as a "Category I - Recent Addition" to the FTAR in August 1999. The 2000 FTARs further reflect that Advisor A conducted 112 "round trips"[3] in six Seligman mutual funds during 1999 as follows:

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[3] One "round trip" is the equivalent of two exchanges – that is, an exchange of money into a Seligman equity fund and then an exchange back out to the Seligman money market fund. Thus, the disclosures in the Seligman Funds prospectuses provided for, in effect, two round trips in a ninety day period or a maximum of eight in a calendar year.

Seligman Fund	Number of Short-Term Trades
Capital	18 round trips
Communications & Information	18 round trips
Frontier	20 round trips
Global Smaller	19 round trips
Global Tech	18 round trips
Global Growth	19 round trips
TOTAL	112 round trips

This was obviously well beyond the two round trips per quarter stated in the prospectuses, but his accounts were not frozen in 1999. Instead, Advisor A was elevated to "Category II - Verbal Warning Issued." Thereafter, his activities were continuously monitored by Seligman's timing cops and the trading continued into early 2000. But, despite completion of 13 more round trips in January, Advisor A's account still was not frozen. Instead, on or about February 9, 2000, Advisor A was issued a "written warning" to stop timing and elevated to "Category III - Written Warning Issued." The written warning was ignored. Advisor A's timing activities continued throughout the year 2000. Despite monthly documentation of his excessive round trip trading activity by Seligman Data, he remained in "Category III" without his market timing account being frozen.

78. In less than eight months, by August 2000, Advisor A had completed well over 150 round trips in six Seligman Funds. Shortly thereafter, a Seligman timing cop who was tracking Advisor A's timing activities sent an e-mail to senior Seligman salesmen detailing several trades by Advisor A and others well in excess of $1 million and asked: "Any thoughts on if we can freeze these accounts?" None were elicited. Advisor A remained in "Category III" for the remainder of the year 2000 and his accounts were not frozen.

79. The FTAR as of December 31, 2000 reflects that by year end 2000, Advisor A completed 254 round trips in six Seligman Funds as follows:

Seligman Fund	Number of Short-Term Trades
Capital	42 round trips
Communications & Information	44 round trips
Frontier	42 round trips
Global Smaller	36 round trips
Global Tech	44 round trips
Global Growth	46 round trips
TOTAL	254 round trips

80. The rapid trading continued into 2001 as Advisor A completed an additional 34 round trips by early March 2001. In total, therefore, Advisor A completed at least 288 round trips in six Seligman Funds (an average of more than 48 per fund) since a "Category III - Written Warning" to stop timing had been issued approximately one year earlier.

81. Advisor A was but one of the "abusive" timing "relationships" and/or "selective restrictions" identified in the March 7, 2001 e-mail to Zino from the President of Seligman Data (Exhibit 25). There were many more such relationships, as described below.

2. Prudential Securities Financial Advisor B

82. Advisor B was a Prudential Securities financial advisor in New York, New York, and was added as a "Category I - Recent Addition" to the FTAR on May 15, 2000. There is no indication in the FTARs that Advisor B was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor B's market timing activities; he appeared on the FTARs each month from May 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Growth	32 round trips
Communications & Information	33 round trips
Frontier	40 round trips
Global Smaller	10 round trips
Global Growth	10 round trips
TOTAL	125 round trips

83. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time. Advisor B's rapid trading continued into 2001 as he completed an additional 45 round trips in six Seligman Funds by early March 2001.

84. Advisor B was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

3. Paine Webber Financial Advisor C

85. Advisor C was a Paine Webber financial advisor in Stamford, Connecticut, and was added as a "Category I - Recent Addition" to the FTAR on February 15, 2000. Seligman Data monitored Advisor C's market timing activities; he appeared on the FTARs during most months in the calendar year 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Growth	46 round trips
Capital	15 round trips
Communications & Information	55 round trips
TOTAL	116 round trips

86. The FTARs indicate that his accounts were not frozen; rather he remained as a "Category I - Recent Addition" the entire time. Advisor C's rapid trading continued into 2001 as he completed an additional 31 round trips by early March 2001.

87. Advisor C was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

4. Gruntal & Co. Financial Advisor D

88. Advisor D was a Gruntal & Co. financial advisor in Chicago, Illinois. The 2000 FTARs indicate that Advisor D was added as a "Category I - Recent Addition" on July 15, 1999 and that he was issued a "Category III - Written Warning" on August 10, 1999. Thereafter, Seligman Data monitored Advisor D's market timing activities; he appeared on the FTARs during most months in the calendar year 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	33 round trips
Frontier	36 round trips
Global Tech	40 round trips
TOTAL	109 round trips

89. The FTARs indicate that his accounts were not frozen; rather he remained in "Category III" the entire time. Advisor D's rapid trading continued into 2001 as he completed an additional 22 round trips by early March 2001. In total, therefore, Advisor D completed at least 130 round trips in Seligman Funds since a "Category III - Written Warning" to stop timing had been issued approximately one year earlier.

90. Advisor D was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

5. Paine Webber Financial Advisor E

91. Advisor E was a Paine Webber financial advisor in New York, New York, and was added as a "Category I - Recent Addition" to the FTAR on April 15, 2000. There is no indication in the FTARs that Advisor E was ever issued a verbal or written warning to cease

timing activities. Seligman Data monitored Advisor E's market timing activities; he appeared on the FTARs each month from April 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	21 round trips
Global Smaller	34 round trips
Global Tech	35 round trips
TOTAL	90 round trips

92. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time. Advisor E's rapid trading continued into 2001 as he completed an additional 30 round trips in three Seligman Funds by early March 2001.

93. Advisor E was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

6. Janney Montgomery Financial Advisor F

94. Advisor F was a Janney Montgomery Scott, Inc. financial advisor in Brooklyn, New York, and was added as a "Category I - Recent Addition" to the FTAR on July 15, 2000. Seligman Data monitored Advisor F's market timing activities; he appeared on the FTARs in several months from July 2000 to December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	28 round trips
Frontier	21 round trips
Global Tech	24 round trips
TOTAL	73 round trips

95. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time. Advisor F's rapid trading continued into 2001 as he completed an additional 22 round trips by early March 2001.

96. Advisor F was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

7. Paine Webber Financial Advisor G

97. Advisor G was a Paine Webber financial advisor in New York, New York, and was added as a "Category I - Recent Addition" to the FTAR on July 15, 2000. There is no indication in the FTARs that Advisor G was ever issued a verbal or written warning to cease timing activities with respect to this account. Seligman Data monitored Advisor G's market timing activities; he appeared on the FTARs each month from July 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	32 round trips
Global Tech	30 round trips
TOTAL	62 round trips

98. The FTARs indicate that his account was not frozen; rather he remained a "Category I - Recent Addition" the entire time. Advisor G's rapid trading continued into 2001 as he completed an additional 38 round trips in three Seligman Funds by early March 2001.

99. Advisor G was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

8. Prudential Securities Financial Advisors H and I

100. Prudential Securities Financial Advisors H and I formed a team in New York, New York. The H/I team was added as a "Category I - Recent Addition" to the FTAR on

September 15, 2000. Seligman Data monitored the H/I team's market timing activities; the team appeared on the FTARs from September 2000 to December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Growth	10 round trips
Capital	21 round trips
Communications & Information	23 round trips
TOTAL	54 round trips

101. The FTARs indicate that the team's account was not frozen; rather the team remained a "Category I - Recent Addition" the entire time. The H/I team's rapid trading continued into 2001 as the team completed an additional 21 round trips by early March 2001.

102. The H/I team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

9. Prudential Financial Advisors H and J

103. Prudential Securities Financial Advisor H also formed a team with Advisor J in New York, New York. The H/J team was added as a "Category I - Recent Addition" to the FTAR on September 15, 2000. Seligman Data monitored the H/J team's market timing activities; the team appeared on the FTARs from September 2000 to December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Growth	10 round trips
Capital	21 round trips
Communications & Information	23 round trips
TOTAL	54 round trips

104. The FTARs indicate that the team's accounts were not frozen; rather the team remained a "Category I - Recent Addition" the entire time. The H/J team's rapid trading continued into 2001 as the team completed an additional 15 round trips by early March 2001.

105. The H/J team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

10. Salomon Smith Barney Financial Advisor K

106. Advisor K was a Salomon Smith Barney financial advisor in Boston, Massachusetts, and was added as a "Category I - Recent Addition" to the FTAR on November 15, 2000. Seligman Data monitored Advisor K's market timing activities; he appeared on the FTARs in November and December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Common	11 round trips
Growth	10 round trips
Capital	12 round trips
TOTAL	33 round trips

107. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time. Advisor K's rapid trading continued into 2001 as he completed an additional 25 round trips by early March 2001.

108. Advisor K was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

11. Prudential Securities Financial Advisors L and M

109. Advisors L and M were a team of Prudential Securities financial advisors in New York, New York. The L/M team was added as a "Category I - Recent Addition" to the FTAR on

September 15, 2000. Seligman Data monitored the L/M team's market timing activities; the team appeared on the FTARs from September to December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Capital	16 round trips
Communications & Information	16 round trips
TOTAL	32 round trips

110. The FTARs indicate that the team's account was not frozen; rather the team remained a "Category I - Recent Addition" the entire time. The L/M team's rapid trading continued into 2001 as the team completed an additional 23 round trips by early March 2001.

111. The L/M team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

12. Paine Webber Financial Advisor N

112. Advisor N was a Paine Webber financial advisor in New York, New York, and was added as a "Category I - Recent Addition" to the FTAR on December 31, 2000. Seligman Data monitored Advisor N's market timing activities. Advisor N appeared on the December 2000 FTAR and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Smaller	9 round trips
Global Growth	17 round trips
TOTAL	26 round trips

113. Advisor N's account was not frozen and N's rapid trading continued into 2001 as N completed an additional 13 round trips by early March 2001.

114. Advisor N was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

13. Prudential Securities Financial Advisor O

115. Advisor O was a Prudential Securities financial advisor in Woodbury, New York, and was added as a "Category I - Recent Addition" to the FTAR on September 15, 2000. There is no indication in the FTARs that Advisor O was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor O's market timing activities; he appeared on the FTARs each month from September 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Growth	13 round trips
Capital	21 round trips
Communications & Information	22 round trips
TOTAL	56 round trips

116. The FTARs indicate that his accounts were not frozen; rather he remained as a "Category I - Recent Addition" the entire time. Advisor O's rapid trading continued into 2001 as he completed an additional 19 round trips by early March 2001.

117. Advisor O was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

14. Paine Webber Financial Advisor P

118. Advisor P was a Paine Webber financial advisor in New York, New York, and was added as a "Category I - Recent Addition" to the FTAR on August 15, 2000. There is no indication in the FTARs that Advisor P was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor P's market timing activities; he appeared on

the FTARs each month from August 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Tech	22 round trips

119. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time. Advisor P's rapid trading continued into 2001 as he completed an additional 18 round trips in three Seligman Funds by early March 2001.

120. Advisor P was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

15. Paine Webber Financial Advisors Q, R, S and T

121. Advisors Q, R, S and T formed a financial advisor team at Paine Webber in Uniondale, New York. The 2000 FTARs indicate that the Q/R/S/T team was added as a "Category I - Recent Addition" to the FTAR on November 15, 1999 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Smaller	18 round trips

122. The Q/R/S/T team was issued a "Category III - Written Warning" on March 17, 2000. Seligman Data continued to monitor the Q/R/S/T team's market timing activities. The FTARs indicate that the team's account was not frozen and rapid trading continued into 2001. The team completed an additional 18 round trips in two Seligman Funds by early March 2001.

123. The Q/R/S/T team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

16. FSC Securities Corp. Financial Advisor U

124. Advisor U was a FSC Securities Corp. financial advisor in Seal Beach, California, and was added as a "Category I - Recent Addition" to the FTAR on March 31, 1999. Advisor U was issued a "written warning" and elevated to "Category III - Written Warning Issued" on November 17, 1999. Advisor U conducted at least ten round trips in the C&I Fund during 1999. Seligman Data monitored Advisor U's market timing activities; he appeared on the FTARs throughout 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	12 round trips

125. The FTARs indicate that his account was not frozen; rather he remained in "Category III" the entire time. Advisor U's rapid trading continued into 2001 as he completed an additional five round trips in two Seligman Funds by early March 2001.

126. Advisor U was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

17. Prudential Securities Financial Advisor V

127. Advisor V was a Prudential Securities financial advisor in Garden City, New York, and was added as a "Category I - Recent Addition" to the FTAR on December 31, 2000. There is no indication in the FTARs that Advisor V was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor V's market timing activities; he appeared on the December 2000 FTAR and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	10 round trips

128. Advisor V's rapid trading continued into 2001 as he completed an additional 22 round trips in three Seligman Funds by early March 2001.

129. Advisor V was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

18. Salomon Smith Barney Financial Advisor W

130. Advisor W was a Salomon Smith Barney financial advisor in Mount Kisco, New York, and was added as a "Category I - Recent Addition" to the FTAR on October 15, 2000. There is no indication in the FTARs that Advisor W was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor W's market timing activities; he appeared on the December 2000 FTAR and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Growth	11 round trips

131. Advisor W's rapid trading continued into 2001 as he completed an additional 25 round trips in three Seligman Funds by early March 2001.

132. Advisor W was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

19. Prudential Securities Financial Advisors L and X

133. Advisor L also formed a team with Prudential Securities Financial Advisor X in New York, New York. The L/X team was added as a "Category I - Recent Addition" to the FTAR on December 15, 2000. Thereafter, Seligman Data monitored the L/X team's market timing activities; the team appeared on the December 2000 FTAR and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Smaller	9 round trips

134. The FTARs indicate that the team's account was not frozen; rather the team remained a "Category I - Recent Addition." The L/X team's rapid trading continued into 2001 as the team completed an additional 28 round trips in four Seligman Funds by early March 2001.

135. The L/X team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

20. Prudential Securities Financial Advisor Y

136. Advisor Y was a Prudential Securities financial advisor in Philadelphia, Pennsylvania, and was added as a "Category I - Recent Addition" to the FTAR on November 15, 2000. There is no indication in the FTARs that Advisor Y was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor Y's market timing activities; he appeared on the December 2000 FTAR and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Smaller	15 round trips

137. Advisor Y's rapid trading continued into 2001 as he completed an additional nine round trips by early March 2001.

138. Advisor Y was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

21. Prudential Securities Financial Advisor Z

139. Advisor Z was a Prudential Securities financial advisor. Although Advisor Z conducted 14 round trips in one Seligman Fund in 2000, he did not appear on the 2000 FTARs. Advisor Z conducted eight round trips in one Seligman Fund through early March 2001.

140. Advisor Z was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

22. TC Advisors Network Financial Advisor AA

141. Advisor AA was a TC Advisors Network financial advisor. Although Advisor AA conducted 31 round trips in three Seligman Funds in 2000, Advisor AA did not appear on the FTARs. Advisor AA conducted an additional six round trips in three Seligman Funds through early March 2001.

142. Advisor AA was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

23. Investec Ernst & Co. Financial Advisor BB

143. Advisor BB was an Investec Ernst & Co. financial advisor. Although Advisor BB conducted 11 round trips in three Seligman Funds in 2000, Advisor BB did not appear on the FTARs. Advisor BB conducted an additional 39 round trips in six Seligman Funds through early March 2001.

144. Advisor BB was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

24. Paine Webber Financial Advisors CC and DD

145. Advisors CC and DD were a team of Paine Webber financial advisors. Although the CC/DD team conducted 12 round trips in three Seligman Funds in 2000, the team did not

appear on the FTARs. The CC/DD team conducted an additional 32 round trips in three Seligman Funds through early March 2001.

146. The CC/DD team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

25. Salomon Smith Barney Financial Advisors EE and FF

147. Advisors EE and FF were a team of Salomon Smith Barney financial advisors. Although the EE/FF team conducted 16 round trips in three Seligman Funds in 2000, the team did not appear on the FTARs. The EE/FF team conducted an additional 18 round trips in three Seligman Funds through early March 2001.

148. The EE/FF team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

26. Deutsche Bank/Alex Brown Financial Advisor GG

149. Advisor GG was a Deutsche Bank/Alex Brown financial advisor and conducted two round trips in one Seligman Fund in 2000. Advisor GG conducted 11 round trips in one Seligman Fund through early March 2001.

150. Advisor GG was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

27. Paine Webber Financial Advisor HH

151. Advisor HH was a Paine Webber financial advisor. Although Advisor HH conducted 13 round trips in three Seligman Funds in 2000, HH did not appear on the FTARs. Advisor HH conducted an additional 16 round trips through early March 2001.

152. Advisor HH was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

28. First Albany Financial Advisors II, JJ and KK

153. Advisors II, JJ and KK were a team of financial advisors at First Albany Corp. in Chicago, Illinois. The II/JJ/KK team was added as a "Category I - Recent Addition" to the FTAR on July 15, 2000. There is no indication in the FTARs that the II/JJ/KK team was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored II/JJ/KK team's market timing activities; the team appeared on the FTARs each month from July 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Smaller	18 round trips
Global Growth	18 round trips
TOTAL	36 round trips

154. The FTARs indicate that the II/JJ/KK team's account was not frozen; rather the team remained a "Category I - Recent Addition" the entire time.

155. The II/JJ/KK team was one of the "abusive" timing "relationships" and/or "selective restrictions" identified to Zino in Exhibit 25.

29. Prudential Securities Financial Advisor LL

156. Advisor LL was a Prudential Securities financial advisor in Chicago, Illinois, and was added as a "Category I - Recent Addition" to the FTAR on April 15, 2000. There is no indication in the FTARs that Advisor LL was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor LL's market timing activities; he appeared on the FTARs each month from April 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Smaller	34 round trips
Global Growth	37 round trips
International	37 round trips
TOTAL	108 round trips

157. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time.

158. Although Advisor LL's roundtrip activity was not detailed in the March 7, 2001 e-mail to Zino, Advisor LL's trading was at least as excessive as the trading of those financial advisors whose transactions were listed in the e-mail.

30. Investec Financial Advisor MM

159. The FTARs identify MM as an Investec Ernst & Co. financial advisor in New York, New York, who was added as a "Category I - Recent Addition" to the FTAR on May 15, 2000. There is no indication in the FTARs that Advisor MM was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor MM's market timing activities; he appeared on the FTARs each month from May 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Global Smaller	21 round trips
Global Growth	20 round trips
International	36 round trips
Emerging Markets	15 round trips
TOTAL	92 round trips

160. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time.

161. Although Advisor MM's round trip activity was not detailed in the March 7, 2001 e-mail to Zino, MM's trading was at least as excessive as the trading of those financial advisors whose transactions were listed in the e-mail.

31. Lehman Bros. Financial Advisor NN

162. Advisor NN was a Lehman Bros. financial advisor in Los Angeles, California, and was added as a "Category 1 - Recent Addition" to the FTAR on June 15, 2000. There is no indication in the FTARs that Advisor NN was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor NN's market timing activities; he appeared on the FTARs each month from June 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	40 round trips
Global Tech	43 round trips
Capital	7 roundtrips
TOTAL	90 round trips

163. The FTARs indicate that his account was not frozen; rather he remained a "Category I - Recent Addition" the entire time.

164. Although Advisor NN's round trip activity was not detailed in the March 7, 2001 e-mail to Zino, Advisor NN's trading was at least as excessive as the trading of those financial advisors whose transactions were listed in the e-mail.

32. Paine Webber Financial Advisors Q, R, OO and S

165. Advisors Q, R and S also formed a financial advisor team with Advisor OO at Paine Webber in Uniondale, New York. The 2000 FTARs indicate that the Q/R/OO/S team was

added as a "Category I - Recent Addition" to the FTAR on November 15, 1999 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Frontier	17 round trips
Communications & Information	20 round trips
TOTAL	37 round trips

166. The team was issued a "Category III - Written Warning" on March 17, 2000. Seligman Data continued to monitor the Q/R/OO/S team's market timing activities; the team appeared on the FTARs during most months in the calendar year 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
Communications & Information	31 round trips
Frontier	26 round trips
TOTAL	57 round trips

167. The FTARs indicate that the Q/R/OO/S team's accounts were not frozen; rather the team remained in "Category III" through August 2000. At that time, the accounts were liquidated.

168. Although the Q/R/OO/S team's round trip activity was not detailed in the March 7, 2001 e-mail to Zino, the team's trading was at least as excessive as the trading of those financial advisors whose transactions were listed in the e-mail.

33. Nikoh Securities Financial Advisor PP

169. Advisor PP was a Nikoh Securities financial advisor in Northbrook, Illinois, and was added as a "Category I - Recent Addition" to the FTAR on May 15, 2000. There is no indication in the FTARs that Advisor PP was ever issued a verbal or written warning to cease

timing activities. Seligman Data monitored Advisor PP's market timing activities; he appeared on the FTARs each month from May 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
International	26 round trips

170. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time.

171. Although Advisor PP's round trip activity was not detailed in the March 7, 2001 e-mail to Zino, Advisor PP's trading was at least as excessive as the trading of those financial advisors whose transactions were listed in the e-mail.

34. Banc One Financial Advisor QQ

172. Advisor QQ was a Banc One Securities Corp. financial advisor in Chicago, Illinois, and was added as a "Category I - Recent Addition" to the FTAR on March 15, 2000. There is no indication in the FTARs that Advisor QQ was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor QQ's market timing activities; he appeared on the FTARs each month from March 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
International	18 round trips

173. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time.

174. Although Advisor QQ's round trip activity was not detailed in the March 7, 2001 e-mail to Zino, Advisor QQ's trading was at least as excessive as the trading of those financial advisors whose transactions were listed in the e-mail.

35. Prudential Securities Financial Advisor RR

175. Advisor RR was a Prudential Securities financial advisor in Orland Park, Illinois, and was added as a "Category I - Recent Addition" to the FTAR on August 15, 2000. There is no indication in the FTARs that Advisor RR was ever issued a verbal or written warning to cease timing activities. Seligman Data monitored Advisor RR's market timing activities; he appeared on the FTARs each month from August 2000 through December 2000 and had significant roundtrip trading activity as follows:

Seligman Fund	Number of Short-Term Trades
International	16 round trips

176. The FTARs indicate that his accounts were not frozen; rather he remained a "Category I - Recent Addition" the entire time.

177. Although Advisor RR's round trip activity was not detailed in the March 7, 2001 e-mail to Zino, Advisor RR's trading was at least as excessive as the trading of those financial advisors whose transactions were listed in the e-mail.

C. Phase 2: Five Post-March 2001"Special Agreements"

178. In or about February 2001, Seligman began "beefing up" its mutual fund timing monitoring procedures. Monthly FTARs were not issued after December 31, 2000, but by mid-2001 Seligman Data was issuing weekly market-timing "updates" identifying new market timers when they reached the two roundtrip limitation in the prospectus instead of the six used in Seligman's more "passive approach."

179. The President of Seligman Data expressed concern regarding the Seligman Funds' prospectus language. He wrote in a March 12, 2001 e-mail to Zino and other senior Seligman executives:

> As we move aggressively to halt the increased efforts of market timers in our complex, we need to ensure that our current policy is in agreement with the wording in our prospectus. We should also incorporate any recommended changes to the Law and Regulations Department for inclusion into the May prospectus. Procedures to halt market timing must conform to our stated policy and be consistent in [sic] our application as noted in the last paragraph of the attached Ignites article. Lawsuits arising from restrictions placed on market timers are becoming more common. I believe that Dan Pollack [, Seligman's outside counsel], has actually represented at least one fund family...in a similar lawsuit.

(Exhibit 27.) Ignites.com is an Internet-based news service that provides information on hot topics in the mutual fund industry. An Ignites article in Seligman's files discusses the lawsuit and quotes Pollack as follows: "'Market-timing is a privilege, not a right,' says Daniel Pollack, a partner in the firm representing [the fund family]." (Exhibit 28 at p. 2.)

180. Again Seligman's senior management undermined enforcement of the new policies. Although there were now fewer "special agreements" with financial advisors they reflected large dollar amounts. Zino and other senior Seligman managers granted five exceptions to the Funds' "Important Policies"and tracked them on an "exceptions list." And despite the focus of the President of Seligman Data on prospectus language, none of these "exceptions" was disclosed to Seligman's shareholders of the Seligman Funds. The facts relating to these "special agreements" are set forth below.

1. McDonald Investments Inc./"Chicago Escrow"

181. One of the most significant market timing relationships was granted to the Chicago office of McDonald Investments, Inc. ("McDonald"), for two of its customer accounts known collectively as "Chicago Escrow." Seligman's National Sales Director was approached by McDonald for approval to market time four of the Seligman Funds. McDonald and the National

Sales Director engaged in negotiations from June to September 2002. McDonald came to be known as "Fiebig/Maxwell" in or about March 2003.

182. McDonald proposed that Chicago Escrow be permitted timing capacity of $200 million and a frequency of approximately one and a half round trips per month, with the flexibility to occasionally make two to three round trips per month within certain capacity limits.

183. In the summer of 2002, the National Sales Director told the Seligman Advisors President Hodgdon that he had been approached by McDonald. Hodgdon met with Zino and JWS's Chief Investment Officer (who was also a fund director), and told them about the McDonald timing proposal. Without objection from Zino, Hodgdon later told the National Sales Director that he could discuss the proposal with McDonald. Hodgdon subsequently authorized the National Sales Director to grant McDonald $40 million in timing capacity.

184. Chicago Escrow made its first two investments, totaling $40 million, on or about October 1, 2002, and market-timed the C&I Fund, Global Growth Fund, Global Smaller Companies Fund, and Global Technology Fund until on or about September 15, 2003.

185. Chicago Escrow was permitted to make three round trips per month in each of the Funds in which it had invested (instead of the two round trips per quarter that ordinary investors were permitted to make).

186. In October 2002, Chicago Escrow purchased $40 million Class D shares in the Cash Fund. According to the weekly timing report distributed by a timing cop who was a Vice President of Seligman Data, on November 8, 2002, Chicago Escrow had already exchanged $80.1 million and completed five round trips within a month. The transaction total for these round trips exceeded $200 million.

187. Shortly after the timing report was distributed, several officers at Seligman expressed their concern over this arrangement. A Senior Vice President of Seligman Data who supervised the timing cop, stated that he was "extremely concerned about the market timing exception granted to 'Chicago Escrow'" and felt that Seligman should "remove their timing money from our funds immediately." He went on to say that he did not think that Chicago Escrow should be using Seligman Funds as a short-term trading vehicle.

188. The President of Seligman Data also voiced his displeasure at the arrangement between Seligman and McDonald. He listed several troubling aspects of the Chicago Escrow arrangement, including that fact that the money exchanged had been going into funds with fewer assets. For example, he cited a $25 million exchange that went into the Global Growth Fund, which had only $68 million in assets.

189. A Vice President of Seligman Advisors pointed out that the trading volume being permitted was "4 to 6 times that mentioned in the prospectus as being excessive."

190. In the fall of 2002, Hodgdon directed the National Sales Director to have Chicago Escrow remove its investments in the four Seligman Funds. Hodgdon did not specify a deadline and did not ensure that his directive was carried out.

191. Shortly thereafter, Hodgdon, the National Sales Director and the President of Seligman Data were sent an e-mail dated November 26, 2002 from a Seligman Data timing cop notifying them as follows:

> Last week $22.9 million was exchanged by market timers versus $21.3 million the previous week. Of the $22.9 million, $21.1 million is represented by the advisor [*i.e.*, McDonald] who has been granted an exception by SAI. Of the remaining $1.8 million no assets were frozen.

The President of Seligman Data replied to the National Sales Director with the following message:

> *I spoke to [the Chief Investment Officer] and Brian Zino about this relationship* and I continue to feel very uncomfortable about the risks we are assuming in keeping it on our books. Based on my prior e-mails with you, I want to move immediately in getting this group out of the complex. They show absolutely no interest in adhering to our policies and with the risks we incur, this is going to come back and bite us. Quite possibly it could also result in a big loss to the firm. Coupled this with the fact that we allow them to exchange into the global portfolios and lock in a profit based on almost certain movements in the foreign markets (far east especially), *we are allowing what the regulators and watchdogs have been calling "unethical practices" which are done at the expense of fund shareholders.*

(Emphasis added.) The National Sales Director also felt very uncomfortable; in a December 17, 2002 e-mail entitled "THE HORROR," the National Sales Director confided in a Seligman Advisors Divisional Sales Director:

> This thing with [the principal of McDonald] has become an absolute nightmare.... His one day turn arounds in the equity funds disrupts fund operations, *steals performance from the other investors*, and provides us with no way to make money. And he sits in the money funds in which we have waived virtually all the fees and have no way to pay ourselves back....[The principal of McDonald] talks of placing additional timing money and rewarding us with legitimate accounts of size... but I may have to ask him to go. I feel like Brandon [sic] in *Apocalyse Now* as I write this ravaged by lack of sleep and tortured by this wrenching nightmare of timing money that is slowly churning like a cancer eroding away at the foundations of our complex....

(Exhibit 29, emphasis added.)

192. Nevertheless, JWS continued to honor the terms of the timing arrangement at the expense of ordinary investors. Chicago Escrow was able, on January 2, 2003, to *double* its timing assets by purchasing $40 million of Class A shares in the C&I Fund. When Zino learned of the increased capacity, he personally assumed responsibility for the relationship.

193. By March 2003, Chicago Escrow had completed 34 round trips in four Seligman Funds – the Global Tech Fund, C&I Fund, Global Growth Fund, and Global Smaller Fund – within a 90-day period, resulting in $550.5 million in exchange activity.

194. That same month, Seligman finally reduced Chicago Escrow's capacity to time in the Global Growth Fund from $5 million to $2 million. McDonald's capacity in the C&I Fund was similarly reduced from $60 million to $25 million.

195. In April 2003, McDonald removed about $42 million from the funds without being subjected to an otherwise applicable contingent deferred sales charge – routinely charged to small investors, which would have been approximately $238,482.97.

196. But timing with the reminder of the monies continued. On July 2, 2003, a product manager for certain Seligman Funds, e-mailed the National Sales Director and others regarding the "Chicago Escrow Timer:"

> [The principal of McDonald] had moved another $28M and $11.5M into C&I and GT [i.e., Global Technology Fund] respectively yesterday. Attached is a summary of his YTD [year to date] activity - (15 round trips in total within C&I and 14 for GT). Presently he does not represent a problem for [the C&I Fund's portfolio manager] and C&I (as stated by [the portfolio manager] himself) since the Fund's cash is higher than usual today but will likely become an irritation again once that scenario changes. Also, as we discussed, the timer is even more problematic to [the GT Fund's co-portfolio managers'] duties with the GT Fund. At times, the movement of money have placed the Fund in "overdraft" status and has disrupted trading activity. [One of the GT Fund's co-portfolio managers] in particular continues to be concerned and would ultimately like to see the timing activity go away altogether in his Fund, especially (in his words) if the firm is not making any meaningful revenue by allowing such activity.
> Lastly, it would appear as though [the principal of McDonald] is also not adhering to the dollar amounts we last verbally agreed on which I was told was $20M and $10M in C&I and GT respectively.

(Exhibit 30, emphasis in original.)

197. As a result of the disruption, on or about July 29, 2003, the National Sales Director told Chicago Escrow that its timing activities must be limited to $10 million in the C&I Fund and $5 million in Global Tech and all timing activity must cease by the end of October. But Seligman reconsidered as reflected in an August 20, 2003 e-mail from a product manager to the portfolio manager for the C&I Fund:

> After further analysis with our Treasury department, it would appear that starting October 1, the Firm will actually begin to earn some revenue from the monies [the principal of McDonald] (the Timer) has within the complex. *As a result, we would like your approval to allow for the $28 million timer money to remain in the C&I Fund and allow [him] to remain active (typically 2-3 rounds trips per month) through the end of the year at least. At year-end, we would revisit this issue again to ensure the arrangement still made economic sense.*
>
> [The National Sales Director] has spoken with [the Chief Investment Officer] and Brian Zino and they are both fine with this new arrangement provided you are as well. We will of course reserve the right to, at anytime, further restrict or suspend [the principal of McDonald's] activities should they begin to conflict with your management of the Fund. The $28M would now represent the bulk of the timer money still with us and is the result of a two-stage reduction from the original agreement ($80M, down to $48M, now $28M).

(Exhibit 30, emphasis added.) The C&I Fund portfolio manager replied: "Go ahead, I have no problem with him." The product manager then forwarded the e-mail to the National Sales Director stating: "We have approval from [the C&I Fund portfolio manager]."

198. On the morning of September 3, 2003 at 8:15 a.m. (just a few hours prior to the Attorney General's press conference announcing an industry-wide market timing investigation), a Seligman Data timing cop sent an e-mail to the President of Seligman Data, the National Sales Director, the Chief Investment Officer, the portfolio manager of the C&I Fund and others stating:

> Attached for your review is the market timer summary report and *market timer exception report* for last week. $28.8 of the $29.1 million timed last week was generated by Chicago Escrow in the C&I Fund. Chicago Escrow's timing activity is now being monitored under the provisions of the *revised arrangement* with SAI....

(Emphasis added.)

2. Salomon Smith Barney Financial Advisor SS

199. Advisor SS was a financial advisor at Salomon Smith Barney's office at One Penn Plaza in New York, New York. In mid-November 2001, the Seligman Advisors Divisional Sales

Director for the Northeastern United States granted the approval for Advisor SS to market-time a Seligman Fund.

200. According to the timing arrangement between Advisor SS and Seligman, Advisor SS's client agreed to invest $10 million in timing money into the Seligman Global Technology Fund ("Global Tech Fund") and deposit $10 million in "sticky money" into the U.S. Government Securities Fund. The $10 million "sticky" investment in U.S. Government Securities Fund was to be a *quid pro quo* for the right to make up to three round trips per quarter with Advisor SS's clients' $10 million in the Global Technology Fund.

201. One month after being granted an exception, Advisor SS had already completed four to five round trips between the Global Tech Fund and the Seligman Cash Fund.

202. By on or about December 19, 2001, Advisor SS had completed nine round trips. Subsequently, Advisor SS was removed from the exceptions list, and his assets were frozen. In January 2002, Advisor SS had removed all but $31,256 from both the Global Technology Fund and the U.S. Government Securities Fund.

3. UBS Paine Webber Financial Advisor TT

203. On behalf of a client with a fund timing trading program who wanted to use it to time certain Seligman Funds, Advisor TT, a financial advisor in the Denver office of UBS Paine Webber, asked the Divisional Sales Director for the Chicago Region and the Western United States for permission to market time four of the Seligman Funds. The Divisional Sales Director passed the request along to the National Sales Director.

204. In November or early December 2001, the National Sales Director granted an exception to Advisor TT that allowed him to make up to four round trips per quarter. The National Sales Director and the two portfolio management teams that managed those four funds

approved Advisor TT's request of up to five round trips per quarter in an amount of $5 million (later increased to $30 million) allocated among the C&I Fund, Global Technology Fund, Growth Fund and Capital Fund. The senior timing cop at Seligman Data agreed to add Advisor TT to the exception list. Advisor TT invested about half of the permitted amount, or approximately $2.5 million.

205. The senior timing cop found Advisor TT to be a problem in part because Advisor TT believed that he was allowed to make four round trips per fund per account each quarter, whereas another timing cop understood the deal to be for four round trips per account in total. In April 2002, the Seligman Data timing cop e-mailed his supervisor about the arrangement and informed him that the agreed-upon terms included up to five round trips per 90 days. According to the timing cop, Advisor TT was spreading the exchanges over several funds, so as not to exceed the five round trip limit.

206. Two days later, the Divisional Sales Director informed the Seligman Data timing cop that Advisor TT had misunderstood the parameters of the agreements. The Divisional Sales Director spoke with Seligman Advisors President Hodgdon, who agreed to give Advisor TT up to 90 days to break the news to his clients and find another fund complex that would allow that frequency of timing. Advisor TT did not honor his commitment to the agreed-upon frequency of market timing and continued to time the Seligman Funds, making five round trips in one week and 28 round trips in 90 days. Advisor TT's account was finally closed on April 19, 2002.

4. Merrill Lynch Financial Advisor UU

207. In April 2001, Advisor UU, a financial advisor in Merrill Lynch's office in Paradise Valley, Arizona, approached Seligman for timing capacity of $3 million in the Seligman High-Yield Fund. According to the Divisional Sales Director for the Chicago Region and the Western United States, Advisor UU wanted to use a model that would require anywhere from

eight to 22 round trips per year, but Advisor UU ultimately promised to limit activity to close to two round trips per 90 days.

208. Although Advisor UU was not formally granted an exception until July 23, 2001, he began timing assets of approximately $2.5 million, divided between two accounts, in early 2001. From approximately April 11, 2001, to September 3, 2002, Advisor UU made 13 round trips in one account and 12 round trips in the other, and as many as four round trips in a 90-day period.

209. Advisor UU liquidated his accounts in September 2002.

5. Prudential Securities Financial Advisor H

210. Advisor H, a financial advisor registered with Prudential Securities (*see* paragraphs 100-105, above), was granted an exception on or about March 27, 2001. By May 30, 2001, Advisor H had made a total of 17 round trips with investments totaling approximately $8.5 million in the Capital Fund and Global Technology Fund. Advisor H engaged in $2 million of timing activity on behalf of his client(s) during the week ending June 8, 2001. That accounted for 19% of all identified market timing (authorized and unauthorized) that week. A Seligman timing cop later wrote in an e-mail dated June 13, 2001 to other timing cops:

> I just sent you last weeks [sic] timer report. [A registered representative] from Prudential is on the exception list as you know. Since being granted an exception on March 27th he has completed 13 round trips over the last 60+ days. Year-to-date, he has completed 21 round trips. This individual only has $64K in non-timer assets. His timer accounts should be frozen, now.

211. Sometime in June 2001, Advisor H's account was frozen at the instruction of the President of Seligman Data after he wrote in an e-mail to Seligman Data timing cops:

> [Advisor H] has been an abusive timer for year and the exception report highlights the fact that he has little use for our restriction policy since he has 10 roundtrips for $ 5 million since we granted him the exception at the end of March.

212. Advisor H's accounts were unfrozen on or about July 16, 2001, on the condition that Advisor H would not exceed the prospectus limitation on excessive trading. By late August 2001, however, Advisor H already had made two round trips in the amount of more than $14 million.

IV. SELIGMAN MISLEADS THE FUNDS' DIRECTORS

213. Defendants JWS and Zino made material misrepresentations to the Directors or Trustees[4] of each of the Seligman Funds in both March 2001 and December 2003 regarding the extent of mutual fund timing in the Seligman Funds, the lax enforcement of the "Important Policies" in the Funds' prospectuses, the special relationships with or exceptions granted to favored "financial advisors" at brokerage firms, and the extent of the resulting harm to the Funds' shareholders.

A. March 2001 Misrepresentations to the Funds' Boards

214. As noted above in paragraph 75, above, the President of Seligman Data and a chief proponent of the "beefed-up" second phase of monitoring and enforcement of mutual fund timing, informed Zino by e-mail on March 7, 2001 of the existence of these "relationships" and included a list of approximately 28 of what he called "continually abusive [financial] advisors" who had engaged in "excessive exchanges" in Seligman international and domestic mutual funds. The e-mail detailed the amount of "round trip" trading activity that had occurred for each advisor during the year 2000 and through January and February of 2001. Several advisors had conducted well in excess of 30 round trips in various Seligman Funds during 2000 and were continuing those excessive trading activities in 2001. (Exhibit 25.)

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[4] All of the Seligman investment companies are Maryland corporations and have Boards of Directors except the Seligman High Income Fund Series, which is a Massachusetts business trust and has a Board of Trustees.

215. In the e-mail, the Seligman Data President explained the reason that these abusive activities continued despite the Seligman Funds' "Important Policies" designed to restrict it. He wrote to Zino:

> *There are still numerous advisor's [sic] who have not been frozen due to "relationships" that exist with members of the sales force*, but when you review the activity of these advisor's [sic] (click on the icon that reads "excessive exchanges"), you will note that their activity is generally all timing related and in large dollar amounts. I realize that assets are critical to the complex but I can't see how these types of assets are profitable based on portfolio disruption and operational liability. I also understand that the Sales Team has compensation programs based on assets but I really need to discuss how we proceed with SAI in making more aggressive moves with these timers....*It seems as if we are selectively placing restrictions on advisor's [sic] and that the sales force does not want to follow the harder line we should be following.*

(Exhibit 25, emphasis added.) One day later, on March 8, 2001, the President of Seligman Data informed Seligman's Chief Investment Officer by e-mail that:

> Our response to timer's [sic] has not been swift enough and our approach has been much too passive. The e-mail below [identifying excessive exchange activity]...clearly highlights the abuses that are taking place in our global and international funds. I also covered this with Brian [Zino] in an attempt to get some teeth behind our constant "bark with little bite policy" to date.

(Exhibit 31.)

216. Approximately one week later, the Boards of the Seligman Funds held a meeting at which the harmful effects of market timing were openly discussed. Minutes of the March 15, 2001 meeting reflect:

> Mr. Zino explained that there had been a substantial increase in market timers buying and selling shares of Seligman Emerging Markets Fund, Seligman Global Growth Fund, Seligman Smaller Companies Fund and Seligman International Growth Fund....He explained that marker timers buy and sell shares with high frequency and, as a result are a detriment to long-term shareholders because they force portfolio managers to hold extra cash to meet redemptions and cause an increase in operating costs. *SDC and the Manager [i.e., JWS] have had limited success in preventing the activities of market timers....*

(Exhibit 32, emphasis added.) The minutes do not reflect that Zino told the Boards the information he learned from the Seligman Data President just one week before the meeting – that the "limited success" was due to "relationships" between Seligman Advisors salesman and numerous market timers identified as such by Seligman Data.

217. By Seligman's own estimation, the effect of these unrestrained timing activities was dramatic. In a January 12, 2001 e-mail from a portfolio manager to the Chief Investment Officer, the portfolio manager explained:

> The international fund currently has cash of $11,440,409 (17.1% of assets) due to an inflow of $9,137,307 on 1/11/01, which I was notified of this afternoon. *[This has] cost[] us 15 [basis points] of performance....This is the equivalent of having one of my portfolio's stocks underperform by 12% over this period.*
>
> After a long string of problems with money coming into and out of the fund, I had [a JWS employee] run a report of all the capital stock activity from 11/01/00, the date of our new fiscal year. In less than three months, the fund as [sic] had inflows of $91,991,193 (138% of assets) and outflows of $80,991,653. By my reckoning, we've had 14 round trips of massive flows in and out meaning 28 trading days I have either been scrambling to get invested or raising liquidity. There were only 49 trading sessions over this period, so this is how I've spent about 60% of my time.
>
> Given that we can not employ futures and our systems for notifying me of activity do not allow me to get invested on a timely basis, the execution costs are huge to our existing shareholders. Most studies of trading strategies suggest that trading activity costs about 100 basis points after commissions, bid-ask spread, fx [i.e., foreign-exchange] cost, and market impact. *Thus, I think so far, this activity has cost the fund about 140 [basis points].*

(Exhibit 2, emphasis added.)

B. Post-September 3, 2003 Misrepresentations to the Funds' Boards

218. After the OAG's announcement on September 3, 2003 of its investigation of mutual fund timing and late trading, the Defendants made material misrepresentations to the independent directors of the Seligman Funds on at least three occasions.

219. At a joint meeting of the Board Operations Committee of each Seligman Fund held on or about September 18, 2003, Defendant Zino discussed a number of topics, including Seligman's response to the SEC's September 4, 2003 information request regarding mutual fund timing, and Seligman's process for monitoring and deterring market timing in the Seligman Funds. According to the minutes of the meeting, Defendant Zino also told the independent directors that

> over the past 3 years, a limited number of exceptions had been made for certain brokers in connection with trading activities, although only one such arrangement had been identified as being in existence at the time of the response to the SEC [on or about September 15, 2003].

(Exhibit 33.) Although Zino did not disclose that the "arrangement" was with McDonald for the benefit of Chicago Escrow, the meeting minutes show that

> [Zino] stated that arrangement began in October 2002, lasted approximately a year and involved four Funds under controlled circumstances. *However, [JWS] had already been in the process of reducing the amounts traded and the frequency of the trading under the arrangement (prior to the announcement of the Spitzer investigation) with a view toward ending it entirely by year-end.* [Zino] reviewed the specifics of the arrangement and responded to various questions and noted that [JWS] was conducting a detailed analysis of the arrangement (including an analysis of the effects of the trading activity) as well as any other potential arrangements and would report back to the Board at the November meeting.

(*Id.*, emphasis added.)

220. Defendant Zino's statement to the independent directors about "a view toward ending the [Chicago Escrow arrangement] entirely by year-end" was false. Although Seligman had reduced the amounts traded by Chicago Escrow, Seligman's internal e-mail shows that the arrangement with Chicago Escrow was to be revisited at year end to see whether Seligman was still making money from it, not out of any concern to whether the arrangement was proper. An e-mail on or about August 20, 2003 from a product manager seeking approval from the C&I Fund's portfolio manager for a revised relationship explains this clearly:

> After further analysis with our Treasury department, it would appear that starting October 1, the Firm will actually begin to earn some revenue from the monies [the principal of McDonald] (the Timer) has within the complex. As a result, we would like your approval to allow for the $28 million timer money to remain in the C&I Fund and allow [him] to remain active (typically 2-3 rounds trips per month) through the end of the year at least. *At year-end*, we would *revisit* this issue again to ensure the arrangement still made economic sense.

(Exhibit 30, emphasis added; *see, also*, Exhibit 34, 8/27/03.)

221. Even more significant distortions of the truth appear in (i) Zino's representations to the Board Operations Committees concerning the number of mutual fund timing relationships that Seligman had maintained, and (ii) Zino's failure to inform the Boards of the Seligman Funds that in 2002 he had personally approved the "special agreement" with McDonald for the benefit of Chicago Escrow.

222. At a joint meeting of the Board Operations Committee of each Seligman Fund held on or about November 19, 2003, Defendant Zino told the independent directors that JWS's Law and Regulation Department handled the internal investigation with respect to market timing, late trading, and disclosure of portfolio holdings; that it was determined that there were three "arrangements" or "relationships" in addition to the Chicago Escrow arrangement, the last of which ended in September 2002; and that JWS was "highly confident that all potential timing arrangements had been identified." (*See* Exhibit 35.)

223. Defendant Zino's representation to the independent directors that JWS entered into only four arrangements to permit frequent trading was false. The Defendants' records show that there were dozens of other arrangements with financial advisors whereby Seligman permitted frequent trading in Seligman Funds. An e-mail sent by the President of Seligman Data to Zino on or about March 7, 2001 makes this plain by stating that: "There are still numerous advisor's [sic]

who have not been frozen due to 'relationships' that exist with members of the sales force . . . ." (Exhibit 25.)

224. Zino knew of the existence of these "relationships" but, as he had previously failed to do in March 2001, Zino once again failed to disclose to the Funds' Boards the existence of the "relationships" and "selective restrictions" that led to abusive exchange activity and clear violations of Seligman's market timing policies by the many timers described above.

225. During the same meeting on or about November 19, 2003, Defendant Zino also suggested that the Board Operations Committees "consider establishing a subcommittee to begin to review the findings of these investigations at some time in December and to consider appropriate remedies in consultation with their counsel." Later in the meeting, each Board Operations Committee formed a special subcommittee of independent directors to address timing in that Fund. (Exhibit 35.)

226. At a joint meeting of each of those special subcommittees held on or about December 9, 2003, the Defendants made a "Power Point" presentation to the subcommittees' members and the other independent directors in attendance. The presentation was entitled "Timer Policing at Seligman [,] Evolution & Process" and included materially false information regarding, *inter alia*, procedures that were in place to monitor and restrict market timers in the pre-2001 time frame. (*See* Exhibits 36 and 37.)

227. The presentation was given by two Seligman employees at the direction of the Defendants. The employees were a Seligman Advisors timing cop and a Seligman Data timing cop, but they had had no responsibilities for monitoring and freezing timers in the pre-2001 time frame nor, in preparing the presentation, did they consult with anyone who did. Rather than attempting to verify what the procedures were prior to 2001, the two timing cops "assumed" that

the revised, more stringent monitoring and freezing procedures adopted by Seligman in mid-2001 were the same procedures that were in effect prior to that time. Based on this "assumption," the two timing cops wrote the following in the presentation: in the "Process Before 2001" there were "infrequent violations" and "accounts [were] typically frozen if activity continued." That information was false. The violations before 2001 were frequent. Defendant Zino, who attended the timing cops' presentation and who made the "Manager's [*i.e.*, JWS's] Report" at the meeting, knew that there were numerous pre-March, 2001 "relationships" and "selective restrictions" that enabled many known market timers to avoid having their accounts frozen. But he said nothing.

228. It is not surprising that the presentation given by the employees was false because the information they used to prepare it was also false. The employee who was the Seligman Advisors timing cop had earlier prepared a document entitled "Seligman's Timer Policing Process" at the request of Frank Nasta, Seligman's General Counsel. The document was e-mailed to Nasta on September 11, 2003 and states, among other things:

> *During 1999 and 2000*, the timer policing process was fairly basic:
>
> • SDC monitored exchange activity in fund accounts over *$250,000*
>
> • SDC notified SAI of any accounts exceeding the *two-roundtrip-per-quarter limitation*
>
> • SAI notified the appropriate wholesaler via phone call of any such accounts in their territories, so the wholesaler could contact the FA
>
> • *SDC generally placed stops on any such accounts* so that once they exchanged into the cash fund so [sic] they were prevented from moving back to an equity fund for 90 days
>
> • Concurrently, SAI monitored purchase and redemption activity of large accounts (generally over $1 million). Accounts that redeemed after a short holding period were investigated, usually via wholesaler. No action was typically taken unless this activity was repeated. In that case, the FA involved was asked to take his business elsewhere.

• SAI's main concerns in monitoring trading activity were to ensure wholesalers were not paid more than once on the same business and that activity in multi-million dollar accounts did not hinder the portfolio manager's ability to manage the fund. Hence, any accommodations made to FAs who asked for permission to trade more frequently than twice per quarter were made only after consulting the appropriate portfolio manager. *There were not more than a handful of these.* The FA in these cases typically described his client as a "high-net worth" or "institutional" client.

(Exhibit 38, emphasis added.)

229. As with the presentation on December 9, 2003, in preparing the September 11, 2003 document the Seligman Advisors employee "assumed," without ever attempting to verify, that the more stringent process that was put into effect in mid-2001 was also in effect during 1999 and 2000. And, in preparing the document, he did not review any of the FTARs which clearly document that Seligman Data did not "generally" place stops on market timers' accounts who had exceeded the "the two-roundtrip-per-quarter limitation." Had he bothered to do so, he would have known that much of what he wrote was false, including the following:

- Seligman Data did not begin monitoring exchange activity at a $250,000 threshold until October 1999 at the earliest; prior to that time, the threshold was $500,000.

- During at least the year 2000, Seligman Data did not notify Seligman Advisors of accounts exceeding "the two-roundtrip-per-quarter limitation" because it did not add financial advisors to the FTAR until the account exceeded six round trips (*i.e.*, the "passive approach").

- Seligman Data did not generally place stops on market timing accounts; it only placed stops on accounts when Seligman Advisors' salesman directed them to.

- Portfolio managers were not typically consulted before "an accommodation" to permit frequent trading was made.

- as the FTARs and Seligman Data President's March 7, 2001 e-mail to Zino clearly demonstrate, there were many more than just "a handful" of "accommodations."

230. In addition, the Seligman Advisors employee's statement that Seligman Advisors monitored purchase and redemption activity over the $1 million prospectus threshold is misleading. He failed to note that "exchange" activity (as distinct from "purchase and redemption" activity) over the $1 million threshold was not monitored. And, in fact, had he (or anyone else involved in Seligman's "internal review") bothered to check, he would have learned that short-term exchanges of this magnitude ran rampant from 1998 to 2000.

231. During that period, there were more than 4000 exchange transactions in excess of $1 million that were executed by just a "handful" of hedge funds and their financial advisers. Most of these transactions occurred in 1999 and 2000. For example, during 1999 and 2000, the following round trip trading activity occurred:

(a) accounts associated with a CIBC Oppenheimer financial advisor conducted more than 500 exchange transactions each in excess of $1 million in Seligman Funds;

(b) accounts associated with hedge fund Millennium Partners, L.P. (or its affiliates) conducted more than 200 exchange transactions each in excess of $1 million in Seligman Funds; and

(c) accounts associated with affiliated hedge funds MVP I, LLC and MVP II, Ltd. conducted more than 400 exchange transactions each in excess of $1 million in Seligman Funds.

V. SELIGMAN MISLEADS THE PUBLIC

232. After misleading the independent directors of the Seligman Funds on September 18, November 19, and December 9, 2003, the Defendants misled the investing public by issuing, on January 7, 2004 and then again on January 31, 2005, "Message[s] to Shareholders" of the Seligman Funds, both of which claimed that Seligman had conducted and completed an "internal review" relating to market timing. But rather than fully disclosing the facts relating to the numerous "special agreements," "relationships," "selective restrictions" and "exceptions" that should have been disclosed in the first place, the Defendants committed another fraud upon

shareholders of the Seligman Funds by failing to disclose that during JWS's internal investigation (or "internal review"), the Defendants provided incomplete, inaccurate and misleading information to the Seligman Funds' directors about the extent of expressly permitted and tolerated timing in Seligman Funds.

A. The Misleading January 2004 "Message to Shareholders"

233. The first "Message to Shareholders" concerning market timing was issued on or about January 7, 2004. The "Message," which was signed by Defendant Zino and incorporated into the Seligman Funds' prospectuses in 2004, states in part:

> As the investment manager of the Seligman Funds, we [defined as JWS and its affiliates and related parties] have been conducting *an extensive internal review* in response to recent developments regarding disruptive or illegal trading practices within the mutual fund industry....Our review noted *one market timing relationship [i.e., Chicago Escrow] that was in the process of being closed down by us before the first proceedings relating to trading practices within the mutual fund industry were publicly announced last September.* Additionally, we identified *three other* market timing arrangements....
>
> The results of this internal review *covering the past three years* have been presented to the Independent Directors of the Boards of the Seligman Funds. Although the review by the Independent Directors is not final, we are confident that any financial impact of these arrangements on the Seligman Funds has been minimal.

(Exhibit 39, emphasis added.) The January 7, 2004 "Message to Shareholders" was materially misleading in that it failed to disclose that the Defendants knew, but did not inform the Independent Directors of the Funds' Boards of Directors, that there had been "financial impact" on the Seligman Funds by the "special agreements," "relationships" and "selective restrictions" that existed before 2001, and that the Defendants had limited the scope of the "extensive internal review" to only the "past three years" in order to avoid having to make restitution for the tens of millions of dollars of harm caused to the Funds as a result of those "special agreements," "relationships" and "selective restrictions."

234. The Message was also misleading because the Chicago Escrow relationship was not "in the process of being closed down by [Seligman] before the first proceedings relating to trading practices with the mutual fund industry were publicly announced last September," *i.e.*, the OAG's action styled *State v. Canary Capital Partners, L.P., et al.*, Supreme Court, New York County, Index No. 03-402830, which was filed September 3, 2003. The relationship was scheduled to remain in place until year-end 2003, and then the relationship was to be "revisited" to see whether it was still profitable to Seligman. *See* paragraph 220, above, and Exhibit 30.

235. The January 7, 2004 "Message to Shareholders" also states:

> If any Seligman Fund has incurred financial harm as a result of violations of law or internal policies by the Manager or its employees, the Manager will make restitution to that Fund.

The plain meaning of this statement is that the Defendants will make restitution for any and all financial harm to the Seligman Funds caused by "violations," even the harm that occurred before the "past three years," *i.e.*, before 2001. By this action, the OAG seeks in part to hold the Defendants to their representation that they will make full restitution to the affected Funds.

B. The Misleading January 2005 "Message to Shareholders"

236. Prospectuses issued in 2005 by the Seligman Funds include a new "Message to Shareholders," dated January 31, 2005 and written after Seligman had completed its "extensive internal review." The January 31, 2005 "Message to Shareholders" states:

> The Manager [defined as JWS and its affiliates and related parties] has completed its internal review. As of September 2003, the Manager had one arrangement [*i.e.*, Chicago Escrow] that permitted frequent trading. This arrangement was in the process of being closed down by the Manager before the first proceedings relating to trading practices within the mutual fund industry were publicly announced. *Based on a review of the Manager's records for 2001 through 2003*, the Manager identified three other arrangements that had permitted frequent trading in the Seligman Funds. All three had already been terminated prior to the end of September 2002. The results of the Manager's internal review were presented to the Independent Directors of the Seligman Funds. In order to resolve matters with

> the Independent Directors relating to *the four arrangements*, the Manager has paid approximately $75,000 to Seligman Global Growth Fund, $300,000 to Seligman Global Smaller Companies Fund and $1.6 million to Seligman Global Technology Fund in recognition that these global investment funds presented some potential for time zone arbitrage. The amounts paid by the Manager represented less than ½ of 1% of each such Fund's net asset value as of the date such payments were made. In addition, with respect to Seligman Communications and Information Fund and notwithstanding that time zone arbitrage opportunities did not exist, the Manager, at the request of the Independent Directors, has agreed to waive a portion of its management fee, amounting to five basis points (0.05%) per annum, for that Fund for a period of two years commencing on June 1, 2004.

(Exhibit 40, emphasis added.) The 2005 Message announced a less-than-$2 million settlement and a fee reduction valued at approximately $ 4.2 million that reimburses the Funds for only a small fraction of losses sustained as a result of timing activities. In reality, however, as Defendant Zino and other senior Seligman executives knew (or with reasonable effort could have known), there were at least 40 "special agreements," "relationships," "selective restrictions" and "exceptions."

VI. SELIGMAN CHARGES EXCESSIVE MANAGEMENT FEES

237. For years, JWS has asked for excessive fees for providing advisory services to the Seligman Funds. And for years, the Boards of Directors of the Seligman Funds have approved these exorbitant fee requests.

238. The Boards of Directors are aware that performance has been poor and expenses high for many Seligman Funds relative to their peers.

239. The following table shows that, as a group, non-municipal Seligman funds with at least five years of returns have performed miserably relative to appropriate benchmarks. Much of this poor performance is driven by the high fees that the Seligman Funds' Boards of Directors approved. Only three out the 15 Seligman Funds listed below are in the top half of their peer group. The remaining 12 Funds fall in the bottom quarter and eight fall in the bottom 10 percent. This has led to extremely low ratings from Morningstar, Inc., a service that offers evaluations of

mutual funds. Twelve of the 15 Seligman Funds listed below received only one or two stars from Morningstar. Perhaps the most remarkable finding is that only one of these Seligman Funds beat its Morningstar benchmark.

Fund	5 or 10-Year Annualized Return	5 or 10-Year Annualized Return Relative to Morningstar Benchmark Index	5 or 10-Year Performance Percentile Rank ("1" is highest) Among Peers	Expenses	Morningstar Stars
Seligman Global Growth Class A	3.53%	-2.93%	94 (from the top)	2.10%	1
Seligman Global Smaller Companies Class A	4.23%	-2.23%	92	1.98%	2
Seligman International Growth Class A	0.33%	-6.13%	96	2.08%	1
Seligman Emerging Markets Class A	5.44%	-1.02%	77	2.58%	1
Seligman Capital Class A	7.76%	-0.59%	47	1.52%	3
Seligman Communications & Information Class A	8.32%	-0.03%	22	1.53%	4
Seligman Frontier Class A	1.07%	-7.28%	92	2.01%	2
Seligman Common Stock Class A	3.01%	-5.34%	98	1.29%	1
Seligman Global Technology Class A	6.86%	-1.49%	43	1.83%	4
Seligman Harvester Class A	1.79%		80	1.73%	2
Seligman High-Yield Class A	1.96%	-4.38%	95	1.36%	1
Seligman Income and Growth Class A	3.12%	-5.26%	97	1.42%	1
Seligman Growth Class A	3.40%	-4.95%	82	1.38%	2
Seligman Investment Grade Fixed Income Class A (3-year data)	0.01%		97	1.25%	1
Seligman Large Cap Value Class A	1.99%	3.51%	86	1.61%	2

Median	3.12%	-2.93%	92	1.61%	2
Vanguard S&P 500 Index Fund (for comparison)	8.27%	-0.08%	26	0.18%	4

240. The Boards are also aware that the investment advisory services provided by JWS to its institutional clients (*e.g.*, pension funds) are identical to the services provided to the Seligman Funds. Both types of accounts are generally managed by the same portfolio managers who invest in comparable asset categories. JWS' costs in providing these services to institutional clients and the Seligman Funds are essentially identical. Despite this equivalence of services and costs, the fee percentage charged to the Seligman Funds' shareholders is, in some cases, more than twice as high as that charged to the institutional clients.

241. The chart below, derived from 2003-2004 information provided by JWS and presented to the Funds' Boards, shows that several Seligman Funds – including at least one that was the target of professional timing traders – were charged fees that were significantly higher than those for similar institutional accounts. Furthermore, the last column of the chart shows that five of the six funds indicated below underperformed their category counterparts, with the Income and Growth Fund lagging behind 88% of its peers. Meanwhile, the indicated funds continued to generate profit margins of up to 56% for JWS.

Retail Fund	Estimated Retail Manage-ment Fee Ratio	Estimated Institutional Manage-ment Fee Ratio	Estimated 2003 Retail Fund Profit Margin	5-Year Annualized Fund Return	5-Year "Lipper" Performance Rank
Seligman Growth Class A	0.70%	0.32%	53%	-7.94%	263rd of 390
Seligman Common Stock Class A	0.65%	0.35%	53%	-5.67%	475th of 590
Seligman Income and Growth Class A	0.60%	0.35%	44%	-0.39%	71st of 79
Seligman Large Cap Value Class A	0.80%	0.35%	48%	2.45%	96th of 217
Seligman Capital Fund Class A	0.85%	0.35%	56%	1.58%	239th of 390
Seligman Frontier Class A	0.95%	0.46%	36%	0.75%	164th of 288

242. In addition, internal Seligman projections for 2004 reflect that despite having the same basic costs, JWS's retail mutual fund business was expected to be more than twice as profitable as its institutional asset management business.

243. Documents in the possession of the OAG indicate that the independent directors received, and presumably reviewed, data relating to this fee disparity and the likeness of the services and costs. Yet, despite lackluster performance and high profit margins, the independent directors appear to have done nothing to achieve better fee arrangements for the shareholders of the listed Seligman Funds and possibly others.

244. Instead, the independent directors have routinely approved JWS's excessive fee demands. The fee disparity, profit margins and performance data indicate that the excessive fees charged by JWS were not the product of required arm's-length negotiation between the Boards of Directors of the Seligman Funds and JWS. The Defendants have concealed from shareholders of

the Seligman Funds both the fee disparity and the fact that there has been no arm's-length negotiation of JWS's fees.

FIRST CAUSE OF ACTION

245. The acts and practices of the Defendants violated Article 23-A of the GBL, in that they involved the use or employment of a fraud, deception, concealment, suppression, or false pretense, engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of securities or commodities.

SECOND CAUSE OF ACTION

246. The acts and practices of the Defendants violated Article 23-A of the GBL, 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 issuance, distribution, exchange, sale, negotiation or purchase of securities or commodities within or from the State of New York.

THIRD CAUSE OF ACTION

247. The acts and practices of the Defendants violated Article 23-A of the GBL, in that the 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 GBL.

FOURTH CAUSE OF ACTION

248. The acts and practices of the Defendants were fraudulent and deceptive in violation of GBL § 349.

FIFTH CAUSE OF ACTION

249. The acts and practices of the Defendants violated section 63(12) of the Executive Law, in that the Defendants engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in carrying on, conducting or transaction of a business.

SIXTH CAUSE OF ACTION

250. The acts and practices of the Defendants alleged herein constitute actual and/or constructive fraud under the common law of the State of New York.

251. Plaintiff State of New York, on behalf of the People of the State of New York, has been irreparably harmed and has no other remedy at law.

WHEREFORE, Plaintiff demands judgement against the Defendants as follows:

A. That the Defendants be permanently restrained and enjoined from engaging in any fraudulent practices in violation of Article 23-A of the GBL and Section 349 of the GBL or proscribed by section 63(12) of the Executive Law;

B. That the Defendants and any of their agents or others acting on their behalf be restrained and enjoined permanently from allowing market timing or excessive trading in any Seligman Funds or any other funds to which the Defendants provide services;

C. That the Defendants and any of their agents or others acting on their behalf be compelled to issue appropriate disclosures in Seligman Fund prospectuses and on JWS's Internet web site correcting the false disclosures contained in the 2005 "Message To Shareholders" concerning the extent of market timing activities in Seligman Funds;

D. That the Defendants, pursuant to § 353(3), GBL § 349 and Executive Law § 63(12), disgorge all fees earned during the period of time illegal activity was permitted, disgorge all profits obtained from their illegal activities, and pay all restitution and damages caused, directly or indirectly, by the fraudulent acts complained of herein;

E. That the Defendants pay penalties pursuant to GBL § 350-d;

F. That the Defendants pay costs;

G. That the Defendants pay punitive damages; and

H. 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
September 2, 2006

ELIOT SPITZER
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