IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY J. BELMONT, et al.,	)	
	)	**CIVIL ACTION**
Plaintiffs,	)	
	)	**NO. 09-cv-4951**
v.	)	
	)	
MB INVESTMENT PARTNERS, INC., et al.,	)	
	)	
	)	
Defendants.	)	

PLAINTIFFS' CONSOLIDATED MEMORANDUM
OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS
TO DISMISS THE AMENDED COMPLAINT

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Plaintiffs Barry J. Belmont, Philadelphia Financial Services, LLC, Thomas J. Kelly, Frances R. Kelly and Gary O. Perez submit this memorandum of law in opposition to the three motions to dismiss filed by defendants MB Investment Partners, Inc. ("MB"), Robert M. Machinist ("Machinist"), Thomas N. Barr ("Barr"), Christine Munn ("Munn"), Robert A. Bernhard ("Bernhard"), P. Benjamin Grosscup ("Grosscup"),[1] Ronald L. Altman ("Altman"), Centre MB Holdings, LLC ("CMB"), Centre Partners Management, LLC ("CPM"), Lester Pollack ("Pollack"), William M. Tomai ("Tomai") and Guillaume Bébéar ("Bébéar")[2] (collectively, "Moving Defendants"). For purposes of efficiency, Plaintiffs submit this consolidated memorandum in response to all three motions.[3]

I. PRELIMINARY STATEMENT

The Amended Complaint provides a detailed description of a pyramid scheme operated and sold out of an investment advisory firm (defendant MB) that was permitted to victimize clients of the firm due to the firm's utter and complete disregard for its legally-imposed duty to supervise its representatives, in particular defendants Mark Bloom and Ron Altman. Although the Moving Defendants unite in decrying the scienter and controlling person allegations of the Amended Complaint as "conclusory," that label more aptly attaches to Defendants' motions. Those motions tout *ad nauseam* the pleading rigors of the Private Securities Litigation Reform Act ("PSLRA") and *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007), but expend little effort applying those criteria to the specific allegations of the Amended Complaint.

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1 Defendants MB, Machinist, Barr, Munn, Bernhard and Grosscup are collectively referred to herein as the "MB Defendants."

2 Defendants CMB, CPM, L. Pollack, Tomai and Bébéar are collectively referred to herein as the "Centre Defendants."

3 The Court has granted Plaintiffs leave for this consolidated memorandum to exceed 25 pages.

Although the Moving Defendants repeat and affirm at length the allegations of the Amended Complaint that describe the wrongful activities of Mark Bloom, a senior executive of MB, they examine actual passages from the Amended Complaint that describe the involvement of defendant MB itself almost not at all, to wit: the Centre Defendants just twice (at pp. 9 n.7 and 11); Altman not at all; and the MB Defendants just seven times (at pp. 10, 13, 17 and 18). Thus, for instance, no Moving Defendant bothers to deal with the detailed specifications of how MB failed to supervise Bloom and Altman and to implement reasonable anti-fraud compliance procedures (Amended Compl. ¶¶ 57-60); the specification of legal compliance requirements applicable to MB (Amended Compl. ¶ 49); the listing of ways in which North Hills was sold and operated through MB (Amended Compl. ¶ 50); the knowledge of the MB and Centre Defendants from multiple sources that Mark Bloom was operating North Hills (Amended Compl. ¶ 52); the significance of MB's unique status as an investment adviser (Amended Compl. ¶¶ 48, 110); [4] and MB's touting Robert Machinist as leading its management team (Amended Compl. ¶ 49).

Based on the narrow universe of the few allegations in the Amended Complaint selected for comment in their briefs, Moving Defendants reach the improbable conclusions that:

- neither Bloom's employer (MB), his accessory (Altman) nor any of the persons charged with responsibility for their supervision (CMB, *et al.*) have culpability, no matter how derelict they were in the discharge of their duties; and
- no one affiliated with MB as officer, director or owner occupies the role of a controlling person, although the alleged controlling persons each occupied a multiplicity of direct and indirect control positions with respect to MB, several were openly disclosed as control persons and one of them, CMB, exercised day to day control over the operations of MB under a written operating agreement.

[4] The MB Defendants gratuitously comment on the failure of another victim of Mark Bloom's fraud, the Alexander Dawson Foundation, to sue MB and others in its federal law suit. MB Defendants Mem. at 7-8. It does not appear from the Alexander Dawson complaint, however, that it was an investment advisory client of MB, that others at MB were involved in the fraud or that MB was a vehicle through which the sale of the North Hills interests was accomplished.

Moving Defendants' pick-and-choose approach to addressing the sufficiency of the allegations in the Amended Complaint is plainly contrary to the Supreme Court's mandate that in assessing the sufficiency of scienter allegations "courts must consider the complaint in its entirety" and determine whether "*all* of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323 (2007). Read in its totality, the Amended Complaint makes a compelling case that MB, its management and supervisory personnel recklessly created a unique environment in which this fraud could flourish by taking an impermissible hands-off approach to the supervision of MB personnel and failing to conduct even the most minimal supervision of their activities. Likewise, the Amended Complaint more than adequately satisfies the pleading of control person liability under applicable notice pleading requirements by pleading not only that alleged control persons were officers, directors and owners of MB, but also that the control status of these persons was either admitted in regulatory filings, touted in the press, set forth in agreements, institutionalized in interlocking directorates and/or manifested in the exercise of executive authority over the affairs of MB on a day to day basis.

As to defendant Altman, the Amended Complaint makes clear that he was more than reckless. In soliciting Plaintiff Barry Belmont's $3.5 million investment in North Hills, Defendant Altman, a portfolio manager at MB, independently parroted the same lies as Bloom about the North Hills program and incorporated that investment into his overall investment strategy recommendation for Barry Belmont's portfolio although there was absolutely no basis for his representations. Altman was also portfolio manager for the Kelly family and had oversight responsibility for their investments, including North Hills, which he failed to exercise.

The actions of Bloom, MB and Altman also violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law and constitute a breach of their fiduciary duties as investment advisers or employees thereof. The MB Defendants do not dispute that these claims are sufficiently alleged. Altman, on the other hand, inexplicably ignores the plain allegations of the Complaint as to the misrepresentations made by him and contends that an UTPCPL claim is not sufficiently pled as to him because he made neither a knowing nor a reckless misrepresentation. Altman then ignores the legally-imposed fiduciary duties of investment advisers and misreads applicable case law in contending that the breach of fiduciary duty claim does not attach to him because was not a fiduciary.

Moving Defendants have not provided this Court with good reason why any of the claims in the Amended Complaint should be dismissed.

II. STATEMENT OF FACTS

Plaintiffs Barry J. Belmont, Philadelphia Financial Services, LLC, Thomas J. Kelly, Frances R. Kelly and Gary O. Perez were investment advisory clients of MB, a registered investment adviser. ¶¶ 8, 86.[5] Mark Bloom, who served as President, co-managing partner, Chief Marketing Officer and a director of MB, was at the same time the principal and sole member of the general partner of North Hills, L.P., an enhanced stock index fund. ¶¶ 12, 32. Bloom used his position at MB to sell interests in North Hills to the Plaintiffs. In meetings undertaken in the context of rendering investment advice to Plaintiffs Belmont and John Wallace (the principal of PFS) on behalf of MB, Bloom included the North Hills investment among the recommended conservative investment opportunities that were available. ¶¶ 21-22, 25-26, 29 (meetings in MB's offices). Bloom, and later Altman (a senior managing director, partner and

[5] Paragraphs in the Amended Complaint are referred to as "¶ __" in this Statement of Facts.

portfolio manager at MB (¶ 13)), touted the performance and conservative risk features of the North Hills investment to these investors, ¶¶ 23-24, 26, and included it on MB's proposed asset allocation for Belmont. ¶ 25. Thomas and Frances Kelly, also investment advisory clients of MB (¶¶ 28, 29), received the same sales pitch from Bloom at MB's New York offices, ¶ 30, as did Gary Perez over the phone. ¶ 31. Altman was responsible for oversight of the Kellys' investments. ¶ 27.

In reliance on the representations made to them by Bloom and Altman on behalf of MB, Plaintiffs' investment adviser, Plaintiffs made substantial investments in North Hills as follows:

Barry Belmont	$3,500,000
PFS	$250,000
Thomas and Frances Kelly	$375,000
Gary Perez	$100,000

¶ 63.

The information that MB's personnel provided to Plaintiffs as to the North Hills investment was not true. Bloom was systematically looting North Hills (¶¶ 34, 36, 41-45) and it was suffering significant losses of its own from Bloom's self-dealings and imprudent investments. ¶¶ 35-38. Using North Hills' assets as his own, Bloom lived a lavish lifestyle, purchasing high-end Manhattan apartments, beach homes and numerous luxury cars and boats. ¶¶ 42-44. And, like the pyramid scheme that it was, Bloom repaid earlier investors with the receipts from later investors. ¶ 46. Bloom's wrongdoing is not disputed inasmuch as he has pleaded guilty to the counts of the Criminal Information setting forth the North Hills fraud alleged in the Complaint. ¶ 47.

The North Hills fraud was orchestrated through MB. MB's personnel and its offices were used in the sale of North Hills limited partnership interests. ¶¶ 54, 64. Interests in North Hills

were sold to Plaintiffs as part of MB's recommended investment strategy for these investors. ¶¶ 25, 29, 31, 50, 64, 106. Bloom openly conducted North Hills business from MB's offices, using its computers, phones, secretarial staff, mails, office equipment, filing facilities and office supplies, including its letterhead and MB-labeled envelopes. ¶¶ 50-51. The MB and Centre Defendants were well aware of Mark Bloom's involvement with the North Hills enterprise: they were co-investors with North Hills in other ventures, were engaging in financial transactions with North Hills or secured its subscription to limited partnerships offered by them. ¶ 52.

Notwithstanding the knowledge of the MB and Centre Defendants that Bloom was operating his own investment fund and Bloom's open and notorious use of MB's offices, personnel and facilities to conduct the business of and sell interests in that fund, Bloom was left altogether unsupervised. ¶¶ 53-54, 107. MB did not undertake even the most basic compliance procedures required by law and routine in the investment advisory industry such as (i) keeping lists of securities sold by representatives, (ii) collecting, verifying and updating information on private investment funds sponsored by representatives, (iii) pre-approving Bloom's participation in his own fund, (iv) developing a code of ethics, including conflicts of interest policies, and training personnel in the code, (v) conducting comprehensive compliance reviews and testing, (vi) conducting internal audits; (vii) performing annual and periodic reviews of compliance programs, (viii) identifying potential conflicts of interest and (ix) complying with required regulatory filings. ¶¶ 57-59, 99. The red flags generated by Bloom's extraordinary lavish lifestyle, far in excess of what his income could allow, were completely ignored. ¶ 55.

Amazingly, MB never interviewed Bloom or made any inquiry as to his activities as an investment advisor or as to North Hills. ¶¶ 55, 99. As an investment adviser, MB was required by state and federal law to supervise its personnel to avoid violations of the Investment Advisors

Act. ¶¶ 48-49. And, although it was being touted and sold as part of MB's investment strategy for its investment advisory customers, no one at MB, including Altman, who was the portfolio manager responsible for oversight of Plaintiffs' investments, conducted even the most minimal due diligence of North Hills. ¶¶ 56, 61, 65, 116. Indeed, Altman made no compliance reports as to North Hills, did not include it on lists of securities sold and did nothing to assure that conflicts of interest would be identified, monitored and resolved (¶¶ 61, 117), although Altman knew or should have known that that the history of consistently positive financial returns he touted to Belmont was implausible and that there were inherent, unresolved conflicts of interest in selling interests in North Hills to MB's customers. ¶¶ 65, 113.

Much of the responsibility for these reckless oversights lies with those in control of MB: CMB and the officers and directors of MB. CMB, a private equity firm, acquired a controlling interest in MB in order to exploit the investment market for high net worth individuals, a market in which Bloom and others at MB had been successful. ¶ 53. CMB now owns 57% of MB's capital stock and through a contractual operating agreement exercised day to day control over MB, dictating MB's operating policies and hiring and firing personnel. ¶¶ 9, 97. CMB's affiliate CPM, in turn, owns the majority of CMB's stock, shares its offices and has an interlocking directorate with MB. ¶¶ 9-10. Defendants Pollack, Tomai and Bébéar are officers and/or directors of CPM and were placed on MB's board of directors in order to protect CMB's portfolio investment in MB and to effect the control over the affairs of MB set forth in the operating agreement. ¶¶ 14-16, 94, 97. MB specifically designated CMB, Pollack and Tomai as control persons who exercise executive responsibility for the operations of MB on its Form ADV filed with the Securities and Exchange Commission.[6] ¶ 93. Defendants Machinist, Barr, Munn,

[6] A copy of MB's Form ADV is attached hereto as Exhibit "A."

Grosscup and Bernhard are partners, managing directors and members of the board of directors of MB. ¶¶ 17-20. These directors occupy positions the same or similar to defendants Pollack and Tomai whom MB identifies as control persons on its Form ADV. ¶ 96. In public statements, MB hailed Machinist as one of the two leaders of its management team. ¶ 11.

As the senior executives of MB and (for Pollack, Tomai and Bébéar) of CMB's parent, the individual Moving Defendants (other than Altman) had duties to exercise supervisory control over MB's investment advisory personnel. ¶ 99. Those duties were recklessly ignored as the individual Moving Defendants failed to conduct or create systems to implement any meaningful supervision of MB's investment advisory personnel, including Bloom and Altman. ¶¶ 99-100.

The failure of the intertwined MB/CMB entities and their officers and directors to supervise Bloom and Altman is not surprising. As one of MB's largest producers, Bloom enjoyed strategic importance to the new venture, resulting in a hands-off approach to his activities by the officers and directors of MB. ¶ 53. Bloom also ingratiated himself to the MB and Centre Defendants by: purchasing a significant interest in CMB using monies purloined from North Hills (¶ 45(a)); causing North Hills to invest substantial funds both in DOBI Medical International, Inc., in which defendant Machinist and other MB executives were invested and in which Machinist was chairman of the board of directors (¶ 45(b)) and in Centre Capital Investors IV, L.P., a limited partnership sponsored and managed by an affiliate of CMB and CPM and operated out of their offices (¶ 52); and repaying a $300,000 personal loan from a managing director of MB using North Hills' funds. ¶ 45(c).

Ultimately, the North Hills pyramid collapsed. Investors, including Plaintiffs, demanded return of their investments, which North Hills never honored because the investments were lost. ¶¶ 40, 75-77.

III. ARGUMENT

A. Applicable Legal Standards On A Motion To Dismiss

In deciding a motion to dismiss under Rule 12(b)(6) , it is not the court's job to evaluate a plaintiff's likelihood of success on the merits. *Grier v. Klem*, 591 F.3d 672, 676 (3d Cir. 2010). Rather, the court should determine *only* whether the plaintiff has stated a legally cognizable claim. *See, e.g.*, *Fowler v. UPMC Shadyside*, 578 F.3d 203, 213 (3d Cir. 2009) ("Even post-*Twombly*, it has been noted that a plaintiff is not required to establish the elements of a *prima facie* case but instead, need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element") (citation and internal quotation marks omitted). To survive a motion to dismiss, the facts alleged need only "be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007).

Although the PSLRA requires greater specificity in pleading misrepresentation and scienter in securities cases, 15 U.S.C. § 78u-4(b)(2), it does not "demand a level of specificity in fraud pleadings that can only be achieved through discovery." *Martino-Catt v. E.I. DuPont de Nemours and Co.*, 213 F.R.D. 308, 315 (S.D. Iowa 2003); *Liberty Ridge LLC v. RealTech Sys. Corp.*, 173 F. Supp. 2d 129, 137 (S.D.N.Y. 2001). Nor does the PSLRA change the admonition that the well-pleaded allegations in the complaint must be taken as true. *Brashears v. 1717 Capital Mgmt.,* No. 02-1534, 2004 WL 1196896, at *4 (D. Del. May 21, 2004) (quoting *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 215 (3d Cir. 2002)); *see also Tellabs*, 551 U.S. at 322 (court must accept all factual allegations in the complaint as true). But regardless of what standard courts apply in examining the sufficiency of a claim, the law is clear that the courts must consider complaints in their entirety and review the allegations as a whole.

> The pertinent question is "whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether

> any individual allegation, scrutinized in isolation, meets that standard."

Institutional Inv. Group v. Avaya, Inc., 564 F.3d 242, 267-68 (3d Cir. 2009) (quoting *Tellabs*, 551 U.S. at 323). By these measures, Plaintiffs' claims are more than sufficiently pled.

B. Plaintiffs Adequately State A Claim Against MB And Altman For Securities Fraud Under Section 10(b) And Rule 10b-5

Both the MB Defendants and Altman assert that Plaintiffs have not met the PSLRA's heightened requirements for pleading scienter. According to the MB Defendants, the Amended Complaint both fails to state a claim against MB as a primary violator of the securities laws and for vicarious liability under the doctrine of *respondeat superior* and the common law theory of imputation. Altman, on the other hand, claims that he has no liability in this case because the Amended Complaint: (1) fails adequately to allege either that he knew of or participated in Bloom's fraud or knew that his representations to Plaintiffs were false[7]; and (2) fails to properly allege that he was reckless in failing to discover the fraud. Altman Mem. at 12-16. All of these contentions are without merit.

1. Plaintiffs "Failure to Monitor" Allegations Against the MB Defendants are More Than Plausible

The MB Defendants assert that it is "simply implausible" that MB would, as Plaintiffs allege, fail to monitor its employees, fail to institute and enforce adequate controls and routine compliance mechanisms, fail to collect information North Hills and other private funds, and otherwise "turn[] a blind eye" to Bloom and Altman's activities. MB Defendants' Mem. at 10. This is the case, according to the MB Defendants, because otherwise they would be breaking the

[7] In moving to dismiss the original complaint, Altman claimed that he had no reason to know of Bloom's wrongdoing. Notably, Altman no longer makes that claim in his motion to dismiss the Amended Complaint.

law.[8] MB Defendants' argument, if correct, would be a boon to every civil and criminal defendant in the United States. Thankfully, the MB Defendants' cursory "argument" is without merit.

To be sure, this Court must consider the plausibility of Plaintiffs' claims. A complaint must "state a claim to relief that is plausible on its face.'" *Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc.*, No.08-1693, 2010 WL 1508303, at *3 (3d Cir. Apr. 16, 2010) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). Under this standard, "'[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* A complaint states a viable claim so long as the factual allegations raise plaintiff's right to relief "above the speculative level." *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "Well-pleaded factual content is accepted as true for purposes of determining whether the complaint states a plausible claim for relief." *Iqbal*, 129 S. Ct. at 1950.

Here, the Amended Complaint contains significantly more than "conclusory allegations of liability" and "formulaic recitation[s] of the elements of a cause of action." *Boring v. Google Inc.*, No. 09-2350, 2010 WL 318281, at *2 (3d Cir. Jan. 28, 2010) (citing *Twombly*, 550 U.S. at 555, and *Iqbal*, 129 S. Ct. at 1950). Rather, the Amended Complaint sets forth voluminous, specific factual allegations, which when structured by supporting legal conclusions and accepted as true, "permit the court to infer more than the mere possibility of misconduct" by the MB Defendants. *Iqbal*, 129 S. Ct. at 1950.

[8] Not surprisingly, the MB Defendants do not state that they, in fact, had those procedures and compliance mechanisms in place or that they ever inquired of Bloom as to North Hills.

The allegations of the Amended Complaint, which Plaintiffs will prove true at trial, conclusively establish that the MB Defendants (1) failed to comply with their obligations under the securities laws; and (2) those failures caused Plaintiffs' harm. Those transgressions occurred in substantial part because Moving Defendants chose not to supervise or question Mark Bloom, a big producer at MB who was critical to that newly acquired company's success. Amended Compl. ¶ 53. That unfortunate business decision is not uncommon in the securities industry, as the SEC has explicitly recognized:

> The Commission also is concerned about the inherent tension between productivity and adequate supervision in light of the competitive conditions presently confronting the securities industry. A production-oriented policy raises the concern that some broker-dealers may overlook compliance related difficulties by employees who are top salesmen.

In the Matter of Smith Barney, Harris Upham & Co., Inc. and Robert G. Heck, 32 SEC Docket, 766 at 6, 1985 WL 548567 (1985). There is nothing at all implausible in the production-driven supervisory laxity pleaded in the Amended Complaint that led to Plaintiffs' losses. Indeed, because Moving Defendants offer no explanation for MB's remarkable lack of oversight, they offer no plausible alternative theory that takes into account all of the pleaded facts.

2. Plaintiffs Properly Allege Claims Against MB And Altman as Primary Violators of the Securities Laws

Plaintiffs satisfy the PSLRA's heightened requirement for pleading scienter in this case by alleging facts sufficient to give rise to a strong inference that the MB Defendants and Altman were reckless. *See, e.g.*, *Avaya*, 564 F.3d at 267 (quoting *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 534-35 (3d Cir. 1999)). Applying recklessness as a basis for their liability is particularly appropriate in this case, as it "not only is consistent with the [PSLRA's] expressly procedural language, but also promotes the policy objectives of discouraging deliberate ignorance and preventing defendants from escaping liability solely because of the difficulty of

proving conscious intent to commit fraud." *In re Advanta*, 180 F.3d at 535. Conduct is "reckless" under the securities laws if it is:

> [h]ighly unreasonable [conduct], involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, [and] which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.

SEC v. Infinity Group Co., 212 F.3d 180, 192 (3d Cir. 2000) (quoting *McLean v. Alexander*, 599 F.2d 1190, 1197 (3d Cir. 1979)); *see also Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1249 (11th Cir. 2008) (claims are sufficiently pled so long as there is "at least a fifty-fifty chance" that defendants were reckless in not knowing about the fraud).

A defendant does not have to know that his statements are false at the time they are made for them to be actionable under the securities laws. Rather, "an opinion that has been issued without a genuine belief *or reasonable basis* is an 'untrue' statement which, if made knowingly or recklessly, is culpable conduct actionable under [the securities laws]." *Infinity Group*, 212 F.3d at 194 (quoting *Eisenberg v. Gagnon*, 766 F.2d 770, 776 (3d Cir. 1985)). As such, courts in this and other jurisdictions hold that a strong inference of recklessness -- and thus scienter -- exists where the complaint sufficiently alleges that the defendant:

> (1) knew facts or had access to information suggesting that his statements were not accurate;
>
> (2) failed to review or check information that he had a duty to monitor; or
>
> (3) ignored obvious signs of fraud.

Infinity Group, 212 F.3d at 193-94; *see also SEC v. Asset Recovery and Mgmt. Trust*, No. 2:02-CV-1372, 2008 WL 4831738, at *8 (M.D. Ala. Nov. 3, 2008) (failure to conduct investigation satisfies scienter requirement); *Nathel v. Siegal*, 592 F. Supp. 2d 452, 464 (S.D.N.Y. 2008) ("A 'strong inference' that defendants acted with scienter arises, for example, where a plaintiff

sufficiently alleges that a defendant . . . failed to check information that he had a duty to monitor"); *Schuster v. Anderson*, 413 F. Supp. 2d 983, 1011 (N.D. Iowa 2006) (similar); *Fraternity Fund Ltd. v. Beacon Hill Asset Mgmt. LLC*, 376 F. Supp. 2d 385, 404 (S.D.N.Y. 2005) (similar). Plaintiffs have met these standards and properly pled that MB and Altman acted with scienter by failing to supervise Bloom and make inquiry of North Hills.

a. The Amended Complaint Alleges Facts Sufficient To Establish That MB Was Reckless And Therefore Acted With Scienter

According to the MB Defendants, after a "holistic" review, Plaintiffs' allegations against MB are so conclusory that they fail to support "the theory that Plaintiffs are trying to sell"; namely, that MB either intentionally or recklessly violated § 10(b) and Rule 10b-5. MB Defendants Mem. at 14. The MB Defendants' argument is without merit, as it is based upon both a selective reading of the Amended Complaint and MB's obligations under the law.

(1) MB Failed To Review Or Check Information That It Had A Duty To Monitor

As alleged in the Amended Complaint, MB is a registered investment adviser. Amended Compl. ¶ 8. Bloom, in his capacity as MB's President[9] and Chief Marketing Officer, made representations to each of the Plaintiffs about MB and MB's investment philosophy in an attempt to convince Plaintiffs to enter into investment advisory agreements with MB. As chronicled in the Amended Complaint, Bloom's representations included:

- describing, as a representative of MB, at a meeting with plaintiff Belmont at the Westin Hotel in Philadelphia, Pennsylvania, the conservative investment philosophy of MB, stressing that its primary focus was preservation of principal. Amended Compl. ¶ 21.

[9] The MB Defendants claim that Bloom was "only a Vice-President, and was never the President, of MB." MB Defendants' Mem. at 6 n.6. The analysis and conclusions are the same regardless of which title Bloom actually held.

- discussing, as a representative of MB, a variety of possible investment vehicles recommended as suitable for Belmont in keeping with these objectives, including an investment in North Hills. Amended Compl. ¶ 22.

- touting, as a representative of MB, the steady positive performance of North Hills, boasting annual returns of 10-15% without significant risk. Amended Compl. ¶ 23.

- describing, as a representative of MB, North Hills as a fund of funds that generated consistently positive returns by investing in hedge funds and other well-managed funds, and factoring purchases for Costco. Amended Compl. ¶ 24.

- recommending, as a representative of MB and in the presence of other MB representatives (including Defendant Machinist), that plaintiffs Thomas and Frances Kelly make an investment in North Hills during a meeting at MB's offices in New York. Amended Compl. ¶¶ 27, 29.

- describing North Hills to Plaintiff Kelly, as a representative of MB and in the presence of other MB representatives (including Defendant Machinist), as a fund that made diversified, conservative investments (including investments in hedge funds). Amended Compl. ¶¶ 27, 29.

- representing to Kelly, as a representative of MB and in the presence of other MB representatives (including Defendant Machinist), that North Hills was sponsored by MB and enjoyed consistently positive returns. Amended Compl. ¶¶ 27, 29.

- representing to Wallace (while soliciting him to make an investment in North Hills out of funds belonging to PFS), as a representative of MB and in MB's offices, that North Hills needed additional monies invested in order to meet minimum investment size criteria for an investment that North Hills wished to make in an attractive investment vehicle. Amended Compl. ¶ 30.

- describing North Hills to Wallace, while acting as a representative of MB and in MB's offices, as a fund of funds that generated consistently positive returns without significant risk by investing in hedge funds and other well-managed funds, and factoring purchases for Costco. Amended Compl. ¶ 30.

- recommending, as a representative of MB, placement of plaintiff Perez's money in North Hills, which Bloom described as conservatively-managed and generating consistently positive returns of 10-12%. Amended Compl. ¶ 31.

Bloom was not the only MB representative to make representations to Plaintiffs about North Hills. As alleged in the Amended Complaint, Defendant Altman, in his capacity as a

portfolio manager for MB, also touted both MB and the suitability of North Hills as an investment vehicle in an effort to convince plaintiffs Belmont and PFS (through its principal Wallace) to execute investment advisory agreements with MB:

- Bloom and Altman (who had oversight and management responsibility for Belmont's investment portfolio) prepared and presented a proposed asset allocation for Belmont, on MB's letterhead, recommending that 20% of Belmont's investment with MB be allocated to North Hills. Amended Compl. ¶¶ 25, 26.

- Bloom and Altman met with Belmont and Wallace (as principal of PFS), where Altman represented that North Hills was a fund of funds that generated consistently positive returns of 10-15% by investing in hedge funds and other well-managed funds, and factoring transactions for Costco. Amended Compl. ¶ 26.

- Altman also told Belmont and Wallace that they should employ MB as an investment adviser because MB had unique access to private investment vehicles such as North Hills. Amended Compl. ¶ 26.

Altman also served as portfolio manager with oversight responsibility for Plaintiffs' investments. Amended Compl. ¶ 61.

As Plaintiffs allege in the Amended Complaint -- and both the MB Defendants and Altman concede -- the representations made by Bloom and Altman made on behalf of MB were false at the time they were made. Indeed, it is a matter of public record, as chronicled in the Amended Complaint, that Bloom misappropriated virtually all of North Hills' assets to finance his extravagant lifestyle. Amended Compl. ¶¶ 41-44. Despite Bloom and Altman's representations -- on behalf of MB -- about North Hills' stellar performance and prudent practices, North Hills had in fact also lost substantial sums through its "investments" in the Philadelphia Alternative Asset Fund ("PAAF") and Refco scandals, and had virtually no material assets at the time of Plaintiffs' investments. Amended Compl. ¶¶ 35-38. Neither Bloom nor Altman disclosed any of these facts to Plaintiffs. Amended Compl. ¶¶ 39, 71. In fact, until 2009

Plaintiffs believed that their investments in North Hills, at the recommendation of MB, were stable and secure. Amended Compl. ¶ 70.

Bloom and Altman were able to make these misrepresentations on behalf of MB -- and the MB Defendants and Altman are now able to claim that they had no knowledge of Bloom's actions -- only because MB engaged in virtually no oversight of Bloom, turned a blind eye to Bloom's activities with North Hills and failed to conduct even the minimum of due diligence into either Bloom or the North Hills investment vehicle that Bloom and others at MB (including MB's portfolio manager of enhanced equity strategy, Altman) were eagerly foisting upon MB's unsuspecting clients. *See generally* Amended Compl. ¶¶ 48-62.

Contrary to the MB Defendants' representations, the Amended Complaint specifically alleges MB's supervisory and compliance failures in this regard. As alleged in the Amended Complaint:

- MB failed to employ reasonable systems and controls that would have ensured that MB and its personnel placed the interests of customers first, that there was a reasonable basis for its and their investment advice, that investments conformed to customer objectives, that clients were treated fairly and that full and fair disclosures were made to customers regarding conflicts of interest. Amended Compl. ¶ 54.

- MB failed to inquire whether (or how) Bloom's operation and MB personnel's sales of North Hills (Bloom's private fund) comported with MB's code of ethics. Amended Compl. ¶ 55.

- MB failed to conduct even the most minimal due diligence as to the operations and assets of North Hills in connection with MB's recommendations to its customers regarding the purchase of interests in North Hills. Amended Compl. ¶ 56.

- MB failed to install or implement even the most basic of compliance mechanisms and procedures employed throughout the investment advising industry to identify and prevent instances of fraud and self-dealing such as that in which Mark Bloom was engaged. Amended Compl. ¶ 57 (**identifying eight (8) specific procedures that MB failed to perform**).

- MB failed to collect, verify and update information on private investment funds that its investment advisory representatives sponsored or managed, including North Hills, although MB was required to do so by both the SEC and standard industry practice.[10] Amended Compl. ¶ 58.

- despite knowing that Bloom controlled North Hills,[11] MB failed to interview or inquire of Bloom (or anyone else) as to North Hills and whether (or how much) it was being sold to MB's customers. Amended Compl. ¶ 59.

- MB failed to pre-approve or review Bloom's participation in North Hills and North Hills Management. Amended Compl. ¶ 60.

- MB, through its officers and directors, failed to conduct or ensure even the most minimal supervision of key personnel (including Bloom and Altman). Amended Compl. ¶ 105.

- MB, through its officers and directors, failed to have compliance personnel in place at MB. Amended Compl. ¶ 105.

- MB, through its officers and directors, failed to conduct detailed interviews of Bloom and Altman as to their outside activities or to require that information and reporting systems as to their activities, including outside activities, be implemented. Amended Compl. ¶ 105.

- MB, through its officers and directors, turned a blind eye to the activities of defendants Bloom and Altman, although those activities were taking place on MB's premises and used its facilities. Amended Compl. ¶ 105.

MB failed to take these supervisory and investigatory actions despite having a statutory duty to implement them. Under the Investment Advisers Act ("Advisers Act"), 15 U.S.C. § 80b-1, *et seq.*:

> it shall be unlawful within the meaning of section 206 of the Act for you to provide investment advice to clients unless you:

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10 "An investment adviser and its advisory representatives must maintain adequate records of personal securities transactions. These records must include: a description and amount of the security transaction; the date and nature of the transaction; the price at which it was effected; and the name of the broker, dealer, or bank that effected the transaction." 2000 WL 913730 (SEC Release).

11 In their motion to dismiss the original Complaint, the MB Defendants claimed they had no knowledge of Bloom's involvement with North Hills. MB Reply Mem. at 9 ("MB was not even aware of North Hills existence"). That statement was demonstrably false. *See* Amended Compl. ¶¶ 50-52. Confronted with the facts alleged in the Amended Complaint, the MB Defendants no longer make that contention.

> a. Policies and procedures. Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act.

Rule 206(4)-7(a) (Investment Advisers Act), 17 C.F.R. § 275.206(4)-7(a).[12] The Advisers Act further requires investment advisers to:

> (A) establish[] procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and
>
> (B) . . . reasonably discharge[] the duties and obligations incumbent upon [them] by reason of such procedures and system. . . .

15 U.S.C. § 80b-3(e)(6); *see also* Rule 204A-1, 17 C.F.R. § 275.204A-1 (requiring Investment Advisers to establish, maintain and enforce a code of ethics to deter fraud by supervised persons).

MB also failed to comply with SEC requirements that it collect, verify and update information on funds such as North Hills that were sponsored and managed by its personnel, including Bloom. Amended Compl. ¶ 54; *see also* SEC Form ADV, Part 1A, Item 8.A.3 (p. 12) (requiring disclosure of recommendations of securities managed by or in which related persons have an interest); *id*. at Schedule D, § 7.B (p. 24) (requiring information as to limited partnerships and private funds for which a related person is a manager).[13]

By enacting these provisions, Congress and the SEC established fiduciary standards requiring investment advisers "to act for the benefit of their clients, requiring advisers to exercise

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[12] The Pennsylvania Securities Act similarly requires registered investment advisers to supervise their employees so as to prevent violations of the Act. 70 Pa. Stat. §§ 1-102(j); 1-305(a) (requiring an investment adviser "reasonably to supervise his . . . investment adviser representatives or employees").

[13] *Related persons* are defined as any advisory affiliate and any person that is under common control with the investment adviser. Glossary of Terms, Form ADV, http://www.sec.gov/about/forms/formadv-instructions.pdf.

the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." *SEC v. Treadway*, 430 F. Supp. 2d 293, 338 (S.D.N.Y. 2006) (citing *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979)).

> [The Advisers Act] thus reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship, as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.

SEC v. Capital Gains Res. Bureau, Inc., 375 U.S. 180, 191-92 (1963) (quotation omitted).

The Advisers Act requires investment advisers such as MB to implement these express mandates to uncover (and ultimately protect against) the very conduct that Bloom and Altman, as representatives of MB, were able to perpetrate in this case. *See* 15 U.S.C. § 80b-3(e)(6) (stating the express purpose of the mandates is to "prevent[] violations of the [the securities laws]" by the investment adviser's representatives and others acting on its behalf); *see also* SEC Rule 204A-1, 17 C.F.R. § 275.204A-1. An investment adviser's failure to comply with these statutory mandates is reckless behavior that constitutes a violation of Section 10(b) and Rule 10b-5 of the Exchange Act:

> "Customers dealing with a securities firm expect, and are entitled to receive, proper treatment and to be protected against fraud and other misconduct, and they properly rely on the firm to provide this protection. . . . In the light of these considerations we are of the opinion that, where the failure of a securities firm and its responsible persons to maintain and diligently enforce a proper system of supervision and internal control results in the perpetration of fraud upon customers or in other conduct in wilful violation of the Securities Act or the Exchange Act, for purposes of applying the sanctions provided under the securities laws, such failure constitutes participation in such misconduct, and wilful violations are committed not only by the person who performed the misconduct but also by those who did not perform their duty to prevent it."

Lorenz v. Watson, 258 F. Supp. 724, 733 (E.D. Pa. 1966) (quoting *In re Reynolds & Co.*, 39 SEC 902 (1960)).

When viewed in a light most favorable to the Plaintiffs, the Amended Complaint sufficiently alleges that MB recklessly failed to comply with its statutory duty to supervise its employees (*i.e.*, Bloom and Altman) and implement internal controls designed to uncover information and protect its clients (*i.e.*, Plaintiffs) from the fraud of its representatives. As such, Plaintiffs have sufficiently alleged facts that give rise to a strong inference that MB acted with scienter, to wit, recklessly, that is substantially more compelling than the MB Defendants' and Altman's suggested opposing inference (*i.e.*, that Bloom somehow masterfully hid his fraud from MB and its officers and directors). Based on the allegations in the Amended Complaint, Bloom had no occasion to conceal the North Hills fraud from MB, because MB never inquired about it. The MB Defendants' Motion to Dismiss the Amended Complaint for failure to adequately plead scienter must therefore be denied.

(2) MB Ignored "Red Flags" And Other Obvious Signs Of Fraud

In addition to recklessly failing to comply with its statutory duty to supervise Bloom and Altman and put in place institutional controls designed to prevent the very harm Plaintiffs suffered in this case, the Amended Complaint properly alleges that MB acted with scienter by recklessly ignoring obvious signs of fraud.

"When plaintiffs 'allege the existence of specific facts that should . . . indicate reasons to question management's representations,' a refusal to react to these 'red flags' can support a strong inference of scienter." *In re Rent-Way Sec. Litig.*, 209 F. Supp. 2d 493, 508-09 (W.D. Pa. 2002) (quoting *In re SCB Computer Tech. Inc. Sec. Litig.*, 149 F. Supp. 2d 334, 363 (W.D. Tenn.

2001)); *see also In re Stonepath Group, Inc. Sec. Litig.*, 397 F. Supp. 2d 575, 588 (E.D. Pa. 2005) (quoting *In re Rent-Way*).

When coupled with allegations of other wrongdoing, including the failure to comply with statutory requirements or standards of practice, the existence of such "red flags" establishes "a strong inference of scienter sufficient to withstand a motion to dismiss." *In re Res. Am. Sec. Litig.*, No. Civ. 98-5446, 2000 WL 1053861, at *9 (E.D. Pa. July 26, 2000); *see also In re Suprema Specialties, Inc. Sec. Litig.*, 438 F.3d 256, 279 (3d Cir. 2006); *In re Am. Bus. Fin. Servs., Inc. Noteholders Litig.*, No. 08-0784, 2008 WL 3405580, at *8 (E.D. Pa. Aug. 11, 2008) (concluding that allegation with sufficient particularity of reckless or knowing disregard of red flags was sufficient to defeat a motion to dismiss for failure to adequately plead scienter). This is the case even if the defendant is under no legal or contractual obligation to investigate the red flags. *In re Blech Sec. Litig.*, No. 94 Civ. 7696, 2003 WL 1610775, at *24 (S.D.N.Y. Mar. 26, 2003).

In this case, Plaintiffs allege the existence of numerous "red flags" that should have alerted MB and its officers and directors (including Altman) to the fraud that Bloom was perpetrating on MB's clients through their investments in North Hills. These "red flags" included, among other things:

- Bloom's boast (subsequently repeated by Altman) that North Hills enjoyed consistent, low-risk returns of 10-15% per year during a time when the Dow Jones Industrial Average, S&P 500 and NASDAQ Composite Index all experienced significant volatility. Amended Compl. ¶¶ 23; 26; 29, 30; 31.

- The Moving Defendants' awareness that Bloom was operating a proprietary fund. Amended Compl. ¶¶ 52, 65.[14]

[14] Operation of a proprietary account at an investment advisor constitutes a heightened conflict of interest requiring high internal controls. *SEC v. K.W. Brown and Co.*, 555 F. Supp. 2d 1275, 1290 (S.D. Fla. 2007).

- Bloom's purchase of multiple, multi-million dollar apartments in Manhattan, and multiple beach houses in the Hamptons, Florida and New Jersey. Amended Compl. ¶ 41-42.

- Bloom's purchase of a fleet of luxury automobiles, including two (2) BMWs, two (2) Land Rover SUVs, four (4) Mercedes-Benz's and a Porsche. Amended Compl. ¶ 43.

- Bloom's purchase of several luxury boats, including a 33 ft. Thunderbird, a 24 ft. Monterey and 18 ft. Monterey. Amended Compl. ¶ 43.

Despite the promises of constant, positive returns that could generally not be obtained on the open market,[15] MB's knowledge of the significant conflict of interest posed by Bloom's operation of his own proprietary fund and Bloom's purchase of tens of millions of dollars in real estate and luxury items (in addition to the $12.6 million penthouse condominium that Bloom owned in Manhattan) -- all of which were far in excess of what Bloom's legitimate income would allow -- MB did not inquire into North Hills or question "how [Bloom] was able to accumulate and enjoy such an ostentatious level of wealth." Amended Compl. ¶¶ 43, 55, 59. Moreover, despite its obligations under the Advisers Act (as discussed more fully above), MB failed to conduct adequate due diligence into North Hills to determine whether it was an appropriate investment vehicle, failed to interview Bloom or pre-approve his involvement with North Hills, failed to adopt and implement the required compliance procedures to identify and prevent instances of fraud and self-dealing, and failed to collect, verify and update information on the private investment funds that it recommended for investment to its clientele. Amended Compl. ¶¶ 56-61.

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[15] Altman claims that the failure to investigate "extremely positive results" does not amount to recklessness. Altman Mem. at 15. Contrary to Altman's assertions, "outsized returns" can be suspicious enough to constitute a "red flag" requiring additional investigation under the securities laws. *See, e.g., SEC v. Cohmad Sec. Corp.*, No. 09 Civ 5680, 2010 WL 363844, at *5 (S.D.N.Y. Feb. 2, 2010) (noting that excessive returns could be an indication of fraud if properly alleged). *See also SEC v. Asset Recovery and Mgmt. Trust*, No.2:02-CV-1372, 2008 WL 4831738, at *8 (M.D. Ala. Nov. 3, 2008) (representation of large return and no risk is inconceivable on its face requiring heightened investigation, the absence of which is reckless).

Under these circumstances and considering the magnitude of the fraud, *In re Rent-Way*, 209 F. Supp. 2d at 511, MB's failure to investigate these "red flags" -- all of which raised significant questions regarding Bloom's operation and management of North Hills -- establishes "a strong inference of scienter" sufficient to withstand the MB Defendants' Motion to Dismiss. For this additional reason, the MB Defendants' Motion to Dismiss the Amended Complaint for failure to adequately plead scienter fails as a matter of law.

b. The Amended Complaint Alleges Facts Sufficient To Establish That Altman Was Reckless And Therefore Acted With Scienter

Like MB, Altman argues that the Amended Complaint does not plead facts sufficient to give rise to the strong inference that he acted with scienter. This is the case, according to Altman, because Bloom, and Bloom alone, committed and benefited from his fraud, and the allegations of the Amended Complaint constitute little more than negligence and not the recklessness required to state a claim against him for violating the securities laws. Altman's arguments fail, as the Amended Complaint properly alleges that Altman, like his employer MB, acted recklessly.

(1) Altman, As MB's Portfolio Manager, Recklessly Ignored And Failed To Investigate Obvious "Red Flags"

Altman contends that in order to have liability for his false representations as to North Hills, it must be alleged that he either knew or had notice of Bloom's "covert scheme." Altman Mem. at 14. Altman is incorrect. In language that Altman conveniently omits from his long quotation of *SEC v. Cohmad Securities Corp.*, No. 09 Civ 5680, 2010 WL 363844 (S.D.N.Y. Feb. 2, 2010), the court made clear that the reckless disregard of another's fraud is sufficient to establish liability for violation of the securities laws:

> There is nothing inherently fraudulent about referring customers to an investment adviser for fees, and the complaint does not allege statements or omissions by defendants that are fraudulent absent awareness or notice that Madoff's investment advisory business was a sham. ***Thus, to state its securities fraud claims, the SEC must show that defendants knew of, or recklessly disregarded, Madoff's fraud.***

Cohmad, 2010 WL 363844, at *1 (emphasis on omitted language).[16] As noted above, sufficient recklessness exists in a securities fraud action where the defendant "failed to review or check information that [he] had a duty to monitor, or ignored obvious signs of fraud . . . ." *South Cherry Street, LLC v. Hennessee Group LLC*, 573 F.3d 98, 109 (2d Cir. 2009).

The Amended Complaint is replete with allegations that Altman both failed to check information that he had a duty to monitor and ignored obvious signs of fraud. As the Senior Managing Director and portfolio manager of the enhanced equity strategy at MB, Altman was vested with the responsibility to investigate the "red flags" presented by North Hills' promises of performance, Bloom's conflicts of interest and Bloom's lavish lifestyle. It was Altman's job to choose and monitor appropriate investments for MB's clients and allocate their funds accordingly. Amended Compl. ¶¶ 13, 28, 61.

In this capacity, Altman was obligated to investigate North Hills before recommending it to and including it in the portfolio of Plaintiffs and other MB clients. *In re Suprema Specialties, Inc. Sec. Litig.*, 438 F.3d 256, 282 (3d Cir. 2006) ("'A securities professional has an obligation to investigate the securities he or she offers to customers.'") (quoting *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 857 (9th Cir. 2001)). Altman's apparently blind reliance on Bloom's

[16] Critical to the court's dismissal of the plaintiffs' claims in *Cohmad* was its observation that defendants only referred clients to the Ponzi scheme orchestrated by Bernie Madoff and were "not alleged to have had a role in managing clients' funds." *Cohmad*, 2010 WL 363844, at *2. The same can not be said for Altman, who was the portfolio manager responsible for managing the funds of at least three of the plaintiffs in this case.

representations regarding North Hills "does not excuse [his] own lack of investigation." *Everest Sec., Inc. v. SEC*, 116 F.3d 1235, 1239 (8th Cir. 1997).

> Brokers and salesmen are "under a duty to investigate, and their violation of that duty brings them within the term 'willful' in the Exchange Act." Thus, a salesman cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant. He must analyze sales literature and must not blindly accept recommendations made therein. The fact that his customers may be sophisticated and knowledgeable does not warrant a less stringent standard.

Hanley v. SEC, 415 F.2d 589, 595-96 (2d Cir. 1969) (footnotes omitted). Similarly, "[a] salesman may not rely blindly upon the issuer for information." *Id.* at 597.

Altman's failure to investigate North Hills was further exacerbated by Bloom's (and subsequently Altman's) representations regarding North Hills' performance and the clear conflict of interest generated by MB's sales of a private fund (North Hills) that was managed and controlled by one of its own representatives (Bloom). Altman was (or should have been) familiar with the performance of the market and should have known that North Hills' claim to have experienced consistent 10-15% returns, with little risk, during a time of great market fluctuation was dubious at best. Amended Compl. ¶¶ 26, 65. At a minimum, Bloom's boast -- that Altman readily repeated to others, including plaintiffs Belmont and PFS -- and the clear conflict of interest should have prompted Altman, as a responsible portfolio manager, to review -- as he was obligated to -- North Hills' investment strategies, history and holdings. Amended Compl. ¶¶ 28, 65. Had he done so, he would have discovered North Hills' misguided investments in PAAF and Refco. Amended Compl. ¶¶ 35-39. He surely would have discovered that North Hills was unaudited and without significant assets. *See* Amended Compl. ¶¶ 35, 40, 77, 106. But Altman (and MB) had a duty to investigate even if it would have been futile. *See generally In re WorldCom, Inc. Sec. Litig.,* 346 F. Supp. 2d 628, 683-84 (S.D.N.Y. 2004) (due

diligence defense requires a reasonable investigation even if it appears that such an investigation would have proven futile in uncovering the fraud: "Without a reasonable investigation, of course, it can never be known what would have been uncovered or what additional disclosures would have been demanded").

Under the circumstances presented in this case, Altman's actions constitute the "egregious refusal to see the obvious, or to investigate the doubtful" necessary to constitute recklessness under the securities laws. *Treadway*, 430 F. Supp. 2d at 331-32. For this reason alone, the Amended Complaint adequately alleges that Altman acted with the appropriate level of scienter. *See, e.g.*, *Lautenberg Found. v. Madoff*, No. 09-816, 2009 WL 2928913, at *10 (D.N.J. Sept. 9, 2009) (concluding that "the various indicia of wrongdoing and fraud alleged in the Complaint paired with Peter Madoff's responsibilities and role at BMIS constituted strong circumstantial evidence of recklessness").

(2) Altman Recklessly Made Statements Regarding North Hills Without Investigation Or Reasonable Basis

Altman's recklessness is not, as he suggests, limited to his failure to investigate obvious "red flags." An investment adviser that makes representations without either investigation or regard for whether there was a basis for them is reckless and subject to liability under the securities laws. *SEC. v. Infinity Group Co.*, 212 F.3d 180, 194 (3d Cir. 2000) (stating that "an opinion that has been issued without a genuine belief *or reasonable basis* is an 'untrue' statement which, if made knowingly or recklessly, is culpable conduct actionable under [the securities laws]") (quoting *Eisenberg v. Gagnon*, 766 F.2d 770, 776 (3d Cir. 1985)); *see also Rolf v. Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 48 (2d Cir. 1978) ("A representation certified as true . . . when knowledge there is none, [or] a reckless misstatement," are "sufficient upon which to base liability"); *Hanley*, 415 F.2d at 596 (noting that one who sells securities cannot "recklessly

state facts about matters of which he is ignorant"). This is true even if the investment adviser believed, as Altman claims, that the statements were true when made:

> [W]e reject [defendant's] proffered defense that he was ignorant of the falsity of TIGC's statements, and in all events he acted in good faith in soliciting investor funds and pursuing investments on behalf of TIGC. Even assuming that those statements are true . . . ignorance provides no defense to recklessness where a reasonable investigation would have revealed the truth to the defendant . . . .

Infinity Group, 212 F.3d at 193.

As alleged in the Amended Complaint, Altman made representations to Belmont and Wallace (as a representative of PFS) regarding the safety and performance of North Hills. *See, e.g.*, Amended Compl. ¶¶ 26, 64. None of these representations were true. Regardless whether Altman believed that his representations were true at the time, Altman did not have a reasonable basis to make them. At best, Altman did not know whether North Hills had enjoyed consistent returns, was a low risk investment, was suitable for Plaintiffs or even whether its stated assets existed, because neither he (as MB's portfolio manager) nor anyone else at MB had conducted any due diligence or otherwise investigated North Hills. Amended Compl. ¶¶ 56-59, 61, 65. As discussed above, Altman would have known that those statements were false if he had conducted the required investigation.

By alleging that Altman made the statements without investigation or knowing whether they were true, the Amended Complaint properly alleges that Altman acted recklessly and therefore with scienter. *Infinity Group*, 212 F.3d at 193; *Rolf*, 570 F.2d at 48. Accordingly, Altman's Motion to Dismiss the Amended Complaint for failing to adequately plead that he acted with scienter must be denied.

c. The Amended Complaint Adequately Alleges That Altman Made False Statements That Induced Plaintiffs To Purchase Securities

In addition to claiming that Plaintiffs have not properly pled the element of scienter, Altman also claims that Plaintiffs failed adequately to allege that: (1) he made a misrepresentation; and (2) there is any connection between Altman's actions and Plaintiffs' purchases of securities. Altman Mem. at 17-20. The Court can promptly reject these arguments.

As discussed in the previous section, Altman made several statements to Belmont and Wallace that were false. These included representations to Belmont and Wallace that:

- North Hills was a "fund of funds" that was able to generate high returns through investments in hedge funds and other well managed funds and factored purchases for Costco;
- North Hills generated consistently positive returns between 10-15% without significant risk; and
- MB had a conservative investment philosophy with the primary focus of preserving principal.

Amended Compl. ¶ 26.

Contrary to Altman's assertions, Plaintiffs' allegations regarding the written "asset allocation" that Altman provided to Belmont are proper. Indeed, the Amended Complaint identifies: (1) the actionable statements contained in the document (Altman's representation that North Hills was a suitable investment based upon the recommendation that 20% of the funds Belmont entrusted to MB be allocated to North Hills); (2) how those statements were false (North Hills was not a suitable investment); and (3) the role Altman had in preparing those statements (Altman prepared and presented the allocation to Belmont). Amended Compl. ¶ 25.

Altman is further disingenuous when he claims that the Amended Complaint is devoid of any allegation that his misrepresentations induced any of the Plaintiffs to invest in North Hills. To the contrary, for example, the Amended Complaint expressly alleges that:

> Barry Belmont's February 29, 2008 investment [in North Hills] was occasioned by the *recommendation and subsequent directive of defendant Ronald Altman* to sell Belmont's stock position (then placed by MB with Charles Schwab) because of uncertainty in the stock market and to invest the proceeds in the purportedly more secure North Hills.

Amended Compl. ¶ 64 (emphasis added). The Amended Complaint further alleges that Plaintiffs Belmont and Wallace, "at the urging of . . . Altman and in reliance on [his] representations as to North Hills' operations and performance [*i.e.*, those set forth above], . . . made substantial investments in North Hills . . . ." Amended Compl. ¶ 63; *see also id.* ¶ 81 (similar).

Plaintiffs have adequately alleged that Altman made misrepresentations that induced plaintiffs Belmont and PFS to invest in North Hills via MB. For this reason, the Court should deny Altman's Motion to Dismiss.

3. MB Is Responsible For The Fraudulent Statements Made By Bloom And Altman As Officers And Representatives Of MB

Presuming (incorrectly) that the Amended Complaint fails to plead a claim for primary violation of the securities laws, the MB Defendants argue that the "only avenue for maintaining [a] securities fraud claim [against MB in this case] is to argue that MB has derivative liability for Bloom's conduct." MB Defendants Mem. at 15. This is improper, according to the MB Defendants, because: (1) liability based upon *respondeat superior* is "inappropriate in a securities violation case"; and (2) Plaintiffs cannot impute Bloom's fraud to MB because there is no allegation that MB benefited from the fraud. *Id.* at 14-17. The MB Defendants' effort to distance themselves from Bloom fails, as it both mischaracterizes the law and ignores the allegations that: (1) Plaintiffs had investment adviser agreements with MB, not Bloom and (2) Bloom and Altman acted at all times in their capacity as officers and representatives of MB.

The so-called "seminal case" of *Rochez Brothers, Inc. v. Rhoades*, 527 F.2d 880 (3d Cir. 1975), does not support the MB Defendants' argument. In *Rochez*, the Third Circuit did not

conclude, as the MB Defendants claim, that a corporate entity could never be responsible for the actions of its officers in a securities fraud case. To the contrary, in language the MB Defendants initially ignored and now attempt to discredit as mere *dicta*, the court stated that an officer's fraud *can be imputed* to the corporation even if the employee, and not the corporation, benefited from the fraud:

> There is no doubt that the fraud of an officer of a corporation is imputed to the corporation when the officer's fraudulent conduct was (1) in the course of his employment, and (2) for the benefit of the corporation. This is true even if the officer's conduct was unauthorized, **effected for his own benefit but clothed with apparent authority of the corporation**, or contrary to instructions. The underlying reason is that a corporation can speak and act only through its agents and so must be accountable for any acts committed by one of its agents within his actual or apparent scope of authority and while transacting corporate business.

Id. at 884 (footnote omitted) (emphasis added). That was particularly the case, according to the court in *Rochez*, in situations involving broker-dealers and other entities that are under "a stringent duty to supervise [their] employees" because of an "imposed [duty] to protect the investing public" and "the special responsibility they owe to their customers" *Id.* at 886.

The court in *Sharp v. Coopers & Lybrand*, 649 F.2d 175 (3d Cir. 1981), applied *Rochez* to affirm the defendant's Rule 10b-5 liability under the doctrine of *respondeat superior*. In doing so, the *Sharp* court stressed the unacceptable inequities that would result if the corporate entity was shielded from liability for its agent's actions:

> When the firm's public representations are designed to influence the investing public, the firm should not be shielded from compensating persons who suffered from reckless or knowing acts by its employees. Otherwise, it could immunize itself from liability by constructing a "Chinese wall" between its employees and partners, allowing only the former to draft opinion letters. Partners, with their greater experience and knowledge, would have a strong incentive to avoid using their expertise to benefit the investors to whom opinion letters are directed. . . . This incentive can be reversed only by recognizing an absolute duty on the part of

> the firm, which acts through its partners, to supervise employees closely whenever its representations are designed to influence the investing public. Protection of investors is, after all, the primary purpose of the securities laws.

Sharp, 649 F.2d at 184 (citations omitted).

The MB Defendants' desperate attempts to question the "ongoing validity" of the fatal-to-their-position *Sharp* (as well as the apparently now not so "seminal" *Rochez*) are unavailing. For instance, the Court of Appeals in *McCarter v. Mitcham*, 883 F.2d 196, 202 (3d Cir. 1989), noted that *In re Data Access Systems Securities Litigation*, 843 F.2d 1537 (3d Cir. 1988), overruled *Sharp* and two other cases only to the extent they discussed the proper statute of limitations for § 10(b) and Rule 10b-5 claims. *Data Access* did not, as the MB Defendants imply, concern the viability of *respondeat superior* liability under the securities laws.

Similarly, while the court in *Jairett v. First Montauk Securities Corp.*, 153 F. Supp. 2d 562 (E.D. Pa. 2001), noted the *dissent's* view in *Central Bank v. First Interstate Bank*, 511 U.S. 164 (1994), that the majority opinion had "cast[] serious doubt" on certain forms of secondary liability, the *Jairett* court followed *Sharp*, inasmuch as it was (and still is) the law in this circuit. *Jairett*, 153 F. Supp.2d at 572. In doing so, the *Jairett* court held that the defendant broker-dealer *could be liable* under the doctrine of *respondeat superior* based upon its failure to strictly supervise its agents and employees. *Id.* at 574.

Any question about the ongoing validity of *Sharp* and *Rochez* was answered by the Third Circuit's recent opinion in *Institutional Investors Group v. Avaya, Inc.*, which expressly reaffirmed the viability of the imputation principles embodied by those cases:

> To state a claim for securities fraud under Rule 10b-5, plaintiffs must "allege defendants made a misstatement or an omission of material fact with scienter in connection with the purchase or the sale of a security upon which plaintiffs reasonably relied and plaintiff's [sic] reliance was the proximate cause of their injury." . . . Although Shareholders' Complaint focuses on the statements

> of McGuire [Avaya's CFO and Senior V.P. of Corporate Development] and Peterson [Avaya's Chairman and CEO], liability for these statements, if they were fraudulent, can also be imputed to Avaya because "[a] corporation is liable for statements by employees who have apparent authority to make them."

Avaya, 564 F.3d at 251-52 (3d Cir. 2009) (quoting *Makor Issues & Rights, Ltd. v. Tellabs Inc. (Tellabs II)*, 513 F.3d 702, 708 (7th Cir. 2008)).

Finally, the court in *Marion v. TDI*, 591 F.3d 137, 151 (3d Cir. 2010), did not, as the MB Defendants' suggest, limit *Rochez* to § 20(a) claims. Rather, *Marion* noted only that *Rochez* involved § 20(a) claims. Other cases cited with approval by Altman, including *Jairett*, make clear that the principles of *Rochez* apply equally to § 10(b) and § 20(a) claims. *Jairett*, 153 F. Supp.2d at 572 ("It is clear from the above review of the law that a broker-dealer may be held liable for failing to strictly supervise the acts of a registered agent . . . under both sections 20(a) and 10(b) of the Exchange Act"); *see also Sharp*, 649 F.2d at 184-85.

Based upon the principles set forth in *Rochez*, *Sharp* and *Avaya*, Plaintiffs have properly alleged facts from which MB could be held liable for the actions of its agents, Bloom and Altman. As alleged in the Amended Complaint, both Bloom and Altman acted in the course of their employment and for the (successful) benefit of MB. They both touted MB and its services to the Plaintiffs. Amended Compl. ¶¶ 21-26. They also successfully solicited Plaintiffs to become clients of MB, as all five had Advisory Agreements with MB and made their investments in North Hills through MB. Amended Compl. ¶¶ 8, 21, 25-28, 64.

Bloom and Altman also acted with the actual or apparent authority of MB. Amended Compl. ¶ 67. Both were officers of MB (Bloom was MB's President or Vice-President, co-managing partner and Chief Marketing Officer, and Altman was MB's Senior Managing Director and portfolio manager). Amended Compl. ¶¶ 12, 13. Bloom and Altman met with Plaintiffs at MB's offices. Amended Compl. ¶¶ 29, 30. They also communicated with Plaintiffs using MB's

letterhead and stationery. Amended Compl. ¶¶ 25, 50, 51. Based upon these actions and representations, Plaintiffs believed the MB had either sponsored North Hills or was intimately familiar with and recommended investment in North Hills. Amended Compl. ¶ 67.

As discussed in detail above, MB had a stringent duty under common law, the federal securities laws and the Pennsylvania Securities Act to supervise Bloom, Altman and the rest of its representatives. MB failed in its duty. As a result, Plaintiffs suffered the very harm that the securities laws were designed to prevent. Under these circumstances, MB can be held responsible for Bloom and Altman's actions. The MB Defendants' Motion to Dismiss the Amended Complaint due to the unavailability of imputation and/or *respondeat superior* liability in securities fraud cases, therefore, is without merit and should be denied.

C. Plaintiffs Properly Pled Violations of the UTPCPL

Defendant Altman (but not the MB Defendants) contends that Plaintiffs' claim for violation of the Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 Pa. Stat. § 201-2(4)(xxi), fails because it does not allege any false representation or deceptive conduct by Altman on which Plaintiffs relied and suffered a loss as a consequence. Altman Mem. at 20. An examination of Plaintiffs' Amended Complaint shows that these conclusory statements are without merit.

The purpose of the UTPCPL is to protect the public from fraud and unfair deceptive business practices. *Wilson v. Parisi*, 549 F. Supp. 2d 637, 666 (M.D. Pa. 2008). The UTPCPL is construed liberally to achieve this purpose. *Id.*; *Birchall v. Countrywide Home Loans, Inc.*, No. 08-2447, 2009 WL 382201, at *10 (E.D. Pa. Nov. 12, 2009). A plaintiff alleging a violation of the "catch-all" provision of the UTPCPL, 73 P.S. § 201-2(4)(xxi), applicable here, "need only allege deceptive conduct and an ascertainable loss." *Birchall*, 2009 WL 382201, at *10. Deceptive conduct is "conduct that is likely to deceive a consumer acting reasonably under

similar circumstances." *Seldon v. Home Loan Servs., Inc.*, 647 F. Supp. 2d 451, 470 (E.D. Pa. 2009). Deceptive conduct has a "less onerous pleading standard" than that set forth in Fed. R. Civ. P. 9(b) because it is not a fraud claim. *Birchall*, 2009 WL 382201, at *10; *see also Seldon*, 647 F. Supp. 2d at 469 ("[T]o the extent plaintiffs allege deceptive conduct, plaintiffs do not need to allege the elements of common law fraud or, as a result, meet Rule 9(b)'s particularity requirement.").

Plaintiffs' claim more than satisfies the less onerous standard of pleading deceptive conduct under the UTPCPL. Altman's deceptive conduct toward Plaintiffs is described at length in the Amended Complaint. Altman deceptively represented to Belmont that the conservative mix of investments at North Hills enabled it to generate consistently positive returns of 10%-15% that was both conservative and without significant risk although he had no reasoned basis for those representations. Amended Compl. ¶¶ 26, 65. He also deceived Belmont into selling his stock in Charles Schwab and transferring it to North Hills on the false representation that it was more secure. Amended Compl. ¶ 64. Like with Belmont, Altman had responsibility for oversight and management of Thomas and Frances Kelly's investment portfolio, yet he did not look into whether any of Bloom's statements about North Hills were true. Amended Compl. ¶¶ 28, 61, 65, 112-113. In this way, Altman deceived Belmont and the Kellys into thinking that their investments were being handled in a reasonably prudent manner, in accordance with Altman's fiduciary duties, when in fact Altman did the opposite. Amended Compl. ¶¶ 79-80, 87-89, 114-116. Plaintiffs relied on Altman's deceptive conduct and made substantial investments in North Hills. Amended Compl. ¶¶ 63, 81. Their reliance was reasonable because it is reasonable for an investor to rely on the representations and recommendations of his or her investment adviser and portfolio manager. Amended Compl. ¶ 67. Furthermore, this reliance

caused Plaintiffs substantial loss because Altman's representations were false and all of their investments in North Hills were lost. Amended Compl. ¶ 77, 83, 90-91, 118.

The UTPCPL has been applied to claims arising out of deceptive investment advice. *See Perry v. Markman Capital Mgmt., Inc.*, No. 02-744, 2002 WL 31248038, at *6 (E.D. Pa. Oct. 4, 2002) (denying a motion to dismiss where plaintiff alleged that the defendant made securities investments that contradicted plaintiff's goals and failed to inform plaintiff of the risks involved; *Gilmour v. Bohmueller,* No. Civ. A. 04-2535, 2005 WL 241181 (E.D. Pa. Jan. 27, 2005) (denying a motion to dismiss where plaintiff alleged that defendants made false and misleading statements to persuade plaintiff to use the investment services of other defendants and turn over their assets to them). Plaintiffs have therefore more than satisfied their pleading burden at this stage of the litigation, especially in light of the "broad remedial aim" of the UTPCPL. *Perry*, 2002 WL 31248038, at *6 n.13; s*ee also Semerenko v. Cendant Corp.*, 223 F.3d 165, 173 (3d Cir. 2000) (stating the question is whether the claimant can prove any set of facts consistent with his or her allegations that will entitle him or her to relief, not whether that person will ultimately prevail). Accordingly, Altman's motion to dismiss Plaintiffs' UTPCPL claim against him should be denied.

D. Plaintiffs Properly Plead Violations of Section 20(a) of the Exchange Act

Plaintiffs' Amended Complaint sufficiently alleges that both the Centre Defendants and the MB Defendants have violated Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

1. The Pleading Standard For Section 20(a) Claims

The courts in the Eastern District of Pennsylvania have consistently ruled that Section 20(a) claims are not subject to the heightened pleading requirements of either Federal Rule of Civil Procedure 9(b) or the PSLRA. *See In re Am. Bus. Fin. Servs., Inc. Sec. Litig.*, No. 05-232, 2007 WL 81937, at *5, *12 (E.D. Pa. Jan. 9, 2007); *In re Rent-Way Sec. Litig.*, 209 F. Supp. 2d

at 523; *In re Vicuron Pharms., Inc. Sec. Litig.*, No. 04-2627, 2005 WL 2989674, at *11 (E.D. Pa. July 1, 2005); *In re Stonepath Group Sec. Litig.*, 397 F. Supp. 2d at 585; *Freed v. Universal Health Servs., Inc.*, No. 04-1233, 2005 WL 1030195, at *11 (E.D. Pa. May 3, 2005); *Argent Classic Convertible Arbitrage Fund L.P. v. Rite Aid Corp.*, 315 F. Supp. 2d 666, 673 n.9 (E.D. Pa. 2004) ; *In re U.S. Interactive, Inc. Class Action Sec. Litig.*, No. 01-CV-522, 2002 WL 1971252, at *20 (E.D. Pa. Aug. 23, 2002). The rationale for applying notice pleading standards to the pleading of control is that "[a]llegations of control are not averments of fraud and therefore need not be pleaded with particularity." *Hall v. The Children's Place Retail Stores, Inc.*, 580 F. Supp. 2d 212, 228 (S.D.N.Y. 2008). Because control allegations are governed by the "short and plain" pleading requirements of Rule 8(a), courts will not grant a motion to dismiss "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *In re Am. Bus. Fin. Servs., Inc. Sec. Litig.*, 2007 WL 81937, at *4 (citing *Graves v. Lowery*, 117 F.3d 723, 726 (3d Cir. 1997)). Whether a defendant "is a control person is a fact question rarely appropriate for motion practice," because the issue of control is "an intensely factual question." *In re Countrywide Fin. Corp. Derivative Litig.*, 588 F. Supp. 2d 1132, 1183, 1201 (C.D. Cal. 2008) (quoting in part *Employer-Teamster-Joint Council Pension Trust Fund v. Am. West*, 320 F.3d 920, 945 (9th Cir. 2003)).

The Centre Defendants and MB Defendants joust with the liberal pleading concepts behind notice pleading by arguing that "mere allegations of control based on board membership or stock ownership are insufficient for the purposes of alleging control person liability," Centre Defendants Mem. at 10; *see also* MB Defendants Mem. at 21. As support for this proposition, these defendants point to only a single case in this District, *In re Ravisent Technologies, Inc.*, No. 00-CV-1014, 2004 WL 1563024, at *15 (E.D. Pa. July 13, 2004), in which the Court stated that

"[s]tatus or stock ownership is not necessarily sufficient by itself to establish control person liability" without explaining what else would be required. *Id.* at *15. This abbreviated passage neither requires particularized control allegations nor highlights any insufficiency in the Amended Complaint. In fact, the Court went on to hold that allegations that the defendants were CFO and CEO "satisfied their burden [to plead control] in light of the 12(b)(6) motion" under consideration.

Contrary to the contention of the Centre Defendants and the MB Defendants, allegations that a director was in a position to exercise control over the primary violator are sufficient to withstand a motion to dismiss. *See In re Am. Bus. Fin. Servs., Inc. Sec. Litig.*, 2007 WL 81937, at *12 (finding it sufficient that Plaintiffs pled that "defendants, by virtue of their positions as officers and/or directors . . . , had the power, which they exercised, to control the representations and actions of [the company] and of one another"). Plaintiffs need only make allegations that support a reasonable inference that defendants had the potential to influence and direct the activities of the primary violator, such as alleging that the individual defendants had direct and supervisory involvement in the day-to-day operations of the company by virtue of their positions, ownership rights and contractual rights. *In re Rent-Way Sec. Litig.*, 209 F. Supp. 2d at 524; *In re U.S. Interactive, Inc. Class Action Sec. Litig.*, 2002 WL 1971252, at *20.

2. Plaintiffs Sufficiently Stated A Claim Under Section 20(a)

Section 20(a) of the Exchange Act imposes liability on not only persons who violate the securities laws, but also on the entities and persons who control the violator. *Laperriere v. Vesta Ins. Group, Inc.*, 526 F.3d 715, 721 (11th Cir. 2008). Section 20(a) provides:

> Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is

> liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. § 78t(a). Under Section 20(a), a controlling person is liable to the plaintiff jointly and severally with and to the same extent as a controlled person for the controlled person's acts, unless the controlling person can establish the affirmative defense of good faith and non-inducement. *Laperriere*, 526 F.3d at 721.

A claim under Section 20(a) is stated if a party pleads "(1) a primary violation by a controlled person or entity; and (2) circumstances establishing control of a primary violator."[17] *In re Rent-Way Sec. Litig.*, 209 F. Supp. 2d at 523 (quoting *In re Campbell Soup Co. Sec. Litig.*, 145 F. Supp. 2d 574, 599 (D.N.J. 2001)). Both criteria are well-pleaded.

a. Plaintiffs Pled A Primary Violation By A Controlled Person

Plaintiffs sufficiently pled the first element of a Section 20(a) claim by alleging that MB, Bloom and Altman all violated Section 10(b) and were controlled by the MB Defendants and the Centre Defendants. *E.g.*, Amended Compl. ¶¶ 72, 93-102. As set forth in Section B. of this Memorandum, above, Plaintiffs' 10(b) claim in relation to MB and Altman is well-pleaded. Furthermore, because the parties all concede that Defendant Bloom has violated Section 10(b), Plaintiffs have sufficiently pled the first element of a Section 20(a) violation in relation to Bloom, as well. *See, e.g.*, Amended Compl. ¶ 47; Centre Defendants Mem. at 4-5; MB

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[17] The Centre Defendants and the MB Defendants list culpable participation as an element of a 20(a) claim, but "culpable participation" need not be pled. *In re Am. Bus. Fin. Servs., Inc. Sec. Litig.*, 2007 WL 81937, at *11; *In re Rent-Way Sec. Litig.*, 209 F. Supp. 2d at 523-24. Courts in this Circuit do not require plaintiffs to plead culpable participation because "(1) the facts establishing culpable participation can only be expected to emerge after discovery; and (2) virtually all of the remaining evidence, should it exist, is usually within the defendants' control." *In re Am. Bus. Fin. Servs., Inc. Sec. Litig.*, 2007 WL 81937, at *11 (quoting *Derensis v. Coopers & Lybrand Chartered Accountants*, 930 F. Supp. 1003, 1013 (D.N.J. 1996)). *See also In re Able Labs. Sec. Litig.*, No. 05-2681, 2008 WL 1967509, at *29 (D.N.J. Mar. 24, 2008) ("the Third Circuit does not require that culpable participation be pled"). The Centre Defendants and the MB Defendants appear to agree. Neither addresses the issue in substance. *See* Centre Defendants Mem. at 6; MB Defendants Mem. at 20.

Defendants Mem. at 1-2, 4, 7-8; Altman Mem. at 3 (incorporating the Criminal Information filed against Bloom). Plaintiffs therefore satisfy this element of a Section 20(a) control person claim. *See Katz v. Image Innovations Holdings, Inc.,* 542 F. Supp. 2d 269, 276 (S.D.N.Y. 2008) ("Because the plaintiffs have stated a claim pursuant to § 10(b) and Rule 10b-5, the 'primary violation' element is sufficiently pleaded.").

b. Plaintiffs Sufficiently Pled The Circumstances Establishing Control Of The Primary Violators

Contrary to conclusory contentions of the Centre Defendants and the MB Defendants, Plaintiffs' control person allegations are based on much more than their ownership of MB and their positions as officers and directors. A host of additional circumstances are pled in support of the Control Person claims in the Amended Complaint:

- CMB, Pollack and Tomai were designated as Control Persons of MB on its Form ADV filed with the Securities and Exchange Commission. Amended Compl. ¶¶ 9, 14-15, 93. *See* MB's Form ADV (Exhibit "A"). For purposes of Form ADV, "Control" is defined as "the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract or otherwise." Form ADV, Glossary. The definition further provides that "each of your firm's officers, partners, or directors exercising executive responsibility . . . is presumed to control your firm."

- CMB was not just a majority shareholder of MB, but also controlled its day to day operations through a written contractual operating agreement. Amended Compl. ¶¶ 9, 84.

- CPM was not just the controlling shareholder of CMB, but was comprised of many of the same directors as MB and controlled the day to day operations of MB as a subsidiary corporation. Amended Compl. ¶¶ 10, 14-17; *see also In re Indep. Energy Holdings, PLC Sec. Litig.*, 154 F. Supp. 2d 741, 770 (S.D.N.Y. 2001) (alleging that a business was conducted through wholly-owned subsidiaries with common management was sufficient to plead control).

- Defendants Pollack, Tomai and Bébéar are senior executives of CMB and its affiliates and were inserted into MB's board of directors in order to effect control over the affairs of MB and thereby protect CPM's portfolio investment in MB. Amended Compl. ¶¶ 94, 97.

- The individual Centre Defendants and MB Defendants were not only board members, they were also part of an interlocking directorate between MB and CPM/CMB and were the officers, managers and shareholders of MB directly involved in MB's day to day operations. Amended Compl. ¶¶ 9-10, 14-16, 94; *see also City of Painesville v. First Montauk Fin. Corp.*, 178 F.R.D. 80, 192 (N.D. Ohio 1998) (interlocking directors a means of exercising control); *Strougo ex rel Brazil Fund, Inc. v. Scudder, Stevens & Clark, Inc.*, 964 F. Supp. 783, 806 (S.D.N.Y. 1997) (similar).

- In addition to being Chairman, COO and co-managing partner of MB, a member of its board of directors and owner of 14% of the capital stock of the majority shareholder of MB, defendant Robert Machinist, together with Bloom, led MB's management team that was responsible for the day-to-day operations of MB and was so presented in public statements of the Center and MB defendants. Amended Compl. ¶¶ 11, 95. The MB Defendants nowhere address these allegations.

- Defendants Grosscup, Barr, Munn and Bernhard were also partners and managing directors of MB who exercised executive responsibility for the operations of MB and occupied positions the same or similar to defendants Pollack and Tomai whom MB identifies as control persons on its Form ADV. Amended Compl. ¶ 96.

The Amended Complaint therefore more than adequately pleads the circumstances establishing control of the primary violator by the control persons.

The Centre Defendants try to avoid the inevitable conclusion that the Amended Complaint sufficiently pleads control person liability as to them by arguing that that the control person admissions in the Form ADV, the powers conferred in the operating agreement and other factual circumstances evidencing control somehow do not show *actual* control. For the undefined notion of "actual control," Centre Defendants cite *Antinoph v. Laverell Reynolds Sec. Inc.,* No. 88-3664, 1989 WL 102585, at *5 (E.D. Pa. Sept. 5, 1989), *aff'd*, 911 F.2d 719 (3d Cir. 1990) (TABLE), which nowhere explains those words except to attribute them to a footnote in *O'Keefe v. Courtney*, 655 F. Supp. 16, 16, n.3 (N.D. Ill. 1985), which never uses those words but, consistent with notice pleading, denied a motion to dismiss control person claims in that case despite the absence of any control allegations other than "the bare allegation" that the control

person acted as a broker. *See also In re Ravisent Techs., Inc.*, No. 00-CV-1014, 2004 WL 1563024, at *15 (E.D. Pa. July 13, 2004) ("The fact that Wilde and Liu are alleged to be the CEO and CFO is sufficient to demonstrate 'actual power' or 'influence' over the company") cited by Center Defendants.

It bears mentioning that the position of the Centre and MB Defendants that none of the alleged control persons in fact occupy that status is at war with their repeated insistence on plausibility. If the corporate owners of MB (CPM/CMB) and the officers, directors and partners of MB, armed with an interlocking directorate and operating agreement, and many of whom were expressly held out as control persons, don't possess at least the potential to influence the activities of MB and its personnel, as the Centre Defendants and the MB Defendants contend, no one does. Nothing in the case law or Section 20(a) sanctions this absurd result.

E. Plaintiffs' Negligent Supervision Claim Is Sufficiently Pled

1. The MB Defendants' And The Centre Defendants' Complete Failure To Supervise Rendered The Fraud Foreseeable

The MB Defendants and the Centre Defendants contend that a claim for negligent supervision was not pleaded because the North Hills fraud was not reasonably foreseeable. These defendants ignore the layers of strict supervisory responsibility placed on investment advisers precisely for the purpose of preventing frauds such as this. Persons occupying the roles of investment advisers cannot abrogate their anti-fraud duties, on the one hand, and then contend they didn't anticipate that a fraud would occur, on the other hand. Indeed, the complete absence of supervision over defendants Bloom and Altman would expose MB and the Centre Defendants to liability even absent investment adviser considerations. *See Heller v. Patwil Homes, Inc.*, 713 A.2d 105, 109 (Pa. Super. Ct. 1998) ("[W]e find the total absence of supervision once on the job

exposes the employer/defendants to 'constructive notice' that [the employee] was engaging in activity mushrooming into criminal behavior leading to his incarceration.").

2. Directors And Officers Have Liability For Negligent Supervision

Both the Centre Defendants and the MB Defendants argue that there is no precise precedent for holding directors liable for negligent supervision. The MB Defendants also argue there is no precedent for holding officers liable. Neither defendant group disputes that the policies behind the tort support the imposition of supervisory liability on officers and directors; and these defendants are wrong in any event. As demonstrated in detail in the preceding section of this Memorandum, these defendants were much more than just directors, they were the senior executives in control of the investment adviser. As such they owed duties of care to their advisory clients. The starting point is thus whether the Centre Defendants and the MB Defendants owed a duty of care to the Plaintiffs:

> Generally, to establish a cause of action in negligence, the plaintiff must demonstrate that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach resulted in injury to the plaintiff and the plaintiff suffered an actual loss or damage. Under common law there is no duty to control the conduct of a third party to protect another from harm, except where a defendant stands in some special relationship with either the person whose conduct needs to be controlled or in a relationship with the intended victim of the conduct, which gives the intended victim a right to protection.

Brezenski v. World Truck Transfer, Inc., 755 A.2d 36, 40 (Pa. Super. Ct. 2000). Because negligent supervision is a *subset* of general negligence, Pennsylvania courts look to general tort principles of negligence in considering such claims. *Singleton v. Medearis*, No. 09-cv-1423, 2009 WL 3497773, at *6 (E.D. Pa. Oct. 28, 2009).

The officers and directors of MB, a registered investment adviser, clearly owed a duty of supervision over their advisory personnel to their investment advisory clients. Implicit in the

power of the board defendants to appoint and remove officers with fiduciary duties such as Bloom is the duty to monitor them. *See In re RCN Litig.*, No. 04-5068, 2006 WL 753149, at *9 (D.N.J. Mar. 21, 2006) (finding cognizable claim against board members for failure to supervise); *see also Baltimore & O.R. Co. v. Foar*, 84 F.2d 67, 71 (7th Cir. 1936) (stating the general rule is that a director of a corporation is held chargeable with knowledge of such corporate affairs as it is his duty to know and which he might have known had he diligently discharged his duties); *In re Western World Funding, Inc.*, 52 B.R. 743, 762-64 (Bankr. D. Nev. 1985) (similar). Likewise, the Pennsylvania Securities Act brings within the definition of Investment Adviser Representative officers and directors who supervise advisory personnel and provides sanctions for failure to supervise agents and employees. 70 Pa. Stat. §§ 1-102(j), 1-305. The SEC as well routinely finds officers and directors liable for the supervisory lapses of their firms where internal controls have not been established. *See, e.g., In re Roundhill Sec., Inc.,* 77 SEC Docket 809, 2002 WL 522686 (2002); *In re David D. Grayson, 5*5 SEC Docket 1631, 1993 WL 518406 (1993).

It follows that courts in Pennsylvania have indeed recognized that officers and directors may be liable for failure to discharge their duties to supervise fiduciary personnel. *See, e.g., O'Mara Enters., Inc. v. Mellon Bank*, 101 F.R.D. 668, 671 (W.D. Pa. 1983) (failure of officers and directors to establish internal controls over accounting personnel); *Lazarski v. Archdiocese of Phila.*, No. 1074, 2006 WL 4959566 (Pa. Ct. Com. Pl. Oct. 10, 2006) (suggesting that supervisors are appropriate defendants in negligent supervision claim). There is thus more than ample authority for finding officers and directors similarly situated to the Centre Defendants and the MB Defendants liable for negligent supervision.

F. Plaintiffs' Breach of Fiduciary Duty Claim against Defendant Altman Is Sufficiently Pled

Defendant Altman (but not the MB Defendants) contends that Plaintiffs' claim for breach of fiduciary duty is not properly pled against him because he did not occupy a fiduciary capacity with respect to Plaintiffs, that he breached no duties and that any losses suffered by Plaintiffs were attributable to Bloom, not Altman. These perfunctory contentions cannot stand scrutiny. Altman was a senior managing director, partner and portfolio manager of an investment adviser. Amended Compl. ¶ 13. Altman assisted Bloom in sales presentations and repeated Bloom's lies to various Plaintiffs, Amended Compl. ¶¶ 25-26, although Altman knew he had no basis for the statements made and that the investments he recommended were not being sold in conformity with industry and firm practices. Amended Compl. ¶¶ 61, 113. Altman also had oversight responsibility for Plaintiffs' investments, Amended Compl. ¶ 61, and instigated and directed the movement of Belmont's investment from Charles Schwab to North Hills. Amended Compl. ¶ 64.

By virtue of his advisory and management responsibilities at an investment adviser, Altman undisputedly owed fiduciary duties to MB's customers with whom he dealt. *See United States v. Lay*, No. 1:07 CR 339, 2007 WL 2816208, at *4, *7, *9 (N.D. Ohio Sept. 27, 2007) (affirming correctness of charge that investment advisers and their officers and directors have fiduciary obligations of good faith, loyalty and fair dealing to the clients who entrust their money to the investment advisers); *Slotsky v. Roffman Miller Assocs., Inc.,* No. 94-1696, 1995 WL 612592, at *9 (E.D. Pa. Oct. 10, 1995) ("An investment advisor has a fiduciary duty to the person he or she advises in financial matters").[18] And by giving investment advice, Altman

[18] It is now well accepted that investment advisers occupy a fiduciary position to their clients. *See, e.g.*, *Monetta Fin. Servs., Inc. v. SEC*, 390 F.3d 952, 955 (7th Cir. 2004); *Laird v. Integrated Res., Inc.*, 897 F.2d 826, 832-33 (5th Cir. 1990); *Am. Tissue, Inc. v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 351 F. Supp. 2d 79, 102 (S.D.N.Y. 2004) (collecting cases); *Official Comm. of Unsecured Creditors v. Donaldson, Lufkin & Jenrette Sec. Corp.,* No. 00 Civ. 8688, 2002 WL 362794, at *9 (S.D.N.Y. Mar. 6, 2002) (collecting cases).

became an investment adviser in his own right. 15 U.S.C. § 80b-2(11) (Definition of Investment Adviser); *U.S. v. Elliott*, 62 F.3d 1304, 1310-11 (11th Cir. 1995); *see SEC v. Capital Gains Res. Bureau, Inc.*, 375 U.S. at 194 (investment advisers are fiduciaries).

Altman does not deny that investment advisers are fiduciaries nor that he was an investment adviser. Altman argues instead that a fiduciary relationship did not exit because he never agreed to it. Altman Mem. at 22.[19] But that argument has no application to this case. Altman took on sales and portfolio management responsibilities to the Plaintiffs (other than Perez), and no case requires further evidence of assent in such circumstances. The cases cited in Altman's own Memorandum make clear that the so-called assent requirement is only that circumstances "indicate a just foundation for a belief that in giving advice one is acting not in his own behalf, but in the interests of the other party." *City of Harrisburg v. Bradford Trust Co.,* 621 F. Supp. 463, 473 (M.D. Pa. 1985). That requirement is clearly satisfied.

Altman's contention that there are no allegations of any breaches of fiduciary duty by him in the Amended Complaint ignores the allegations in paragraphs 61 (failing to use due diligence as to representations, to alert compliance personnel or otherwise to invoke compliance procedures); 65 (ignoring red flags in making recommendations); 112-113 (failing to inquire into investment despite red flags, to inform compliance personnel of sales in face of conflicts of interest or to include the investments on internal reports), and 116 (failing to use due diligence as to representations made). Altman's one-sentence argument (unchanged from his motion to dismiss the original Complaint) puts forward no reason why these allegations are not sufficient; contending only erroneously that no such allegations were made. Altman Mem. at 23.

[19] It is unclear whether Altman takes this position as to Belmont's claim.

Likewise, Altman's attempt to shift blame for Plaintiffs' loss entirely to Bloom affords him no defense in light of the allegations in the Amended Complaint as to Altman's many derelictions of duty. to the Plaintiffs. *See SEC v. Blavin*, 760 F.2d 706, 712 (6th Cir. 1985) (failure of investment adviser to satisfy his professional duty to investigate the information upon which his recommendations were based deemed reckless); *Gabriel Capital, L.P. v. Natwest Fin., Inc*, 137 F. Supp. 2d 251, 261 (S.D.N.Y. 2000) (citing *Rolf v. Blyth, Eastman Dillon Co., Inc.*, 570 F.2d 38, 47-48 (2d Cir. 1978)) (duty to determine whether statements made to client have basis in fact). Bloom could not have defrauded the Plaintiffs but for Altman's (and MB's) breaches of duty which were antecedent causes of Plaintiff's loss. *See Antonis v. Liberati*, 821 A.2d 666, 670 (Pa. Commw. Ct. 2003).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the motions of the Moving Defendants to dismiss the Amended Complaint be denied.

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Dated: April 27, 2010

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' Consolidated Memorandum of Law in Opposition to Defendants' Motions to Dismiss the Complaint was served on this date via Electronic Filing (with the exception of Defendant Mark Bloom) and United States Mail, First Class Delivery, to the following persons:

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Dated: April 27, 2010

EXHIBIT A

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: MB INVESTMENT PARTNERS, INC.	IARD/CRD Number: 105167
	Rev. 02/2005

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
MB INVESTMENT PARTNERS, INC.

B. Name under which you primarily conduct your advisory business, if different from Item 1.A.
MB INVESTMENT PARTNERS, INC.
List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of
☐ your legal name or ☐ your primary business name:

D. If you are registered with the SEC as an investment adviser, your SEC file number:
801- 18284

E. If you have a number ("*CRD* Number") assigned by *FINRA's CRD* system or by the IARD system, your *CRD* number: 105167
If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

Number and Street 1:		Number and Street 2:	
825 THIRD AVENUE		31ST FLOOR	
City:	State:	Country:	ZIP+4/Postal Code:
NEW YORK	NY	UNITED STATES	10022

If this address is a private residence, check this box: ☐
List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your *principal office and place of business*:
◉ Monday-Friday ○ Other:
Normal business hours at this location:
9:00AM-5:00PM

(3) Telephone number at this location:

212-370-7300

(4) Facsimile number at this location:
212-220-5320

G. Mailing address, if different from your *principal office and place of business* address:
Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

If this address is a private residence, check this box: ☐

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:
Number and Street 1: Number and Street 2:
City: State: Country: ZIP+4/Postal Code:

YES NO

I. Do you have World Wide Web site addresses? ◉ ○

If "yes," list these addresses on Section 1.I. of Schedule D. If a web address serves as a portal through which to access other information you have published on the World Wide Web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. Do not provide individual electronic mail addresses in response to this Item.

J. Contact *Employee*:
Name: Title:
Telephone Number: Facsimile Number:
Number and Street 1: Number and Street 2:
City: State: Country: ZIP+4/Postal Code:
Electronic mail (e-mail) address, if contact *employee* has one:
The contact employee should be an employee whom you have authorized to receive information and respond to questions about this Form ADV.

YES NO

K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*? ○ ◉
If "yes," complete Section 1.K. of Schedule D.

YES NO

L. Are you registered with a *foreign financial regulatory authority*? ○ ◉

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes", complete Section 1.L. of Schedule D.

⚠ This investment adviser is no longer registered with the SEC and is not required to complete Item 2 of Form ADV. The information shown in Item 2 is for historical purposes and you should not presume it is current.

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UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: MB INVESTMENT PARTNERS, INC.	**IARD/CRD Number: 105167**
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Item 2 SEC Registration

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration.

A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A (1) through 2.A(11), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(12). You:

☑ (1) have *assets under management* of $25 million (in U.S. dollars) or more;

See Part 1A Instruction 2.a. to determine whether you should check this box.

☐ (2) have your *principal office and place of business* in Wyoming;

☐ (3) have your *principal office and place of business* outside the United States;

☑ (4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;

See Part 1A Instruction 2.b. to determine whether you should check this box.

☐ (5) have been designated as a nationally recognized statistical rating organization;

See Part 1A Instruction 2.c. to determine whether you should check this box.

☐ (6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

See Part 1A Instruction 2.d. to determine whether you should check this box.

☐ (7) are relying on rule 203A-2(c) because you are an investment adviser that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D.

☐ (8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.

☐ (9) are a multi-state adviser relying on rule 203A-2(e);

See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.

☐ (10) are an Internet investment adviser relying on rule 203A-2(f);

See Part 1A Instructions 2.h. to determine whether you should check this box.

☐ (11) have received an SEC *order* exempting you from the prohibition against registration with the SEC;

If you checked this box, complete Section 2.A(11) of Schedule D.

☐ (12)are no longer eligible to remain registered with the SEC.

See Part 1A Instructions 2.i. to determine whether you should check this box.

B. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

☐ AL	☐ ID	☐ MO	☑ PA
☐ AK	☐ IL	☐ MT	☐ PR
☐ AZ	☐ IN	☐ NE	☐ RI
☐ AR	☐ IA	☐ NV	☐ SC
☑ CA	☐ KS	☑ NH	☐ SD
☐ CO	☐ KY	☐ NJ	☐ TN
☑ CT	☐ LA	☐ NM	☑ TX
☐ DE	☐ ME	☑ NY	☐ UT
☑ DC	☐ MD	☐ NC	☐ VT
☑ FL	☑ MA	☐ ND	☐ VI
☐ GA	☐ MI	☐ OH	☐ VA
☐ GU	☐ MN	☐ OK	☐ WA
☐ HI	☐ MS	☐ OR	☐ WV
			☐ WI

If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must filed before the end of the year (December 31).

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Item 3 Form Of Organization

A. How are you organized?

◉ Corporation ○ Sole Proprietorship ○ Limited Liability Partnership (LLP)

○ Partnership ○ Limited Liability Company (LLC) ○ Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

B. In what month does your fiscal year end each year?
December

C. Under the laws of what state or country are you organized?
NEW YORK
If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

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Item 4 Successions

	YES	**NO**
A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser?	○	◉

If "yes," complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

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Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

Employees

A. Approximately how many *employees* do you have? Include full and part-time *employees* but do not include any clerical workers.

○ 1- 5 ○ 6-10 ◉ 11-50 ○ 51-250 ○ 251-500
○ 501-1,000 ○ More than 1,000
If more than 1,000, how many? (round to the nearest 1,000)

B.

(1) Approximately how many of these *employees* perform investment advisory functions (including research)?

○ 0 ○ 1-5 ○ 6-10 ◉ 11-50 ○ 51-250
○ 251-500 ○ 501-1,000 ○ More than 1,000
If more than 1,000, how many? (round to the nearest 1,000)

(2) Approximately how many of these *employees* are registered representatives of a broker-dealer?

◉ 0 ○ 1-5 ○ 6-10 ○ 11-50 ○ 51-250
○ 251-500 ○ 501-1,000 ○ More than 1,000
If more than 1,000, how many? (round to the nearest 1,000)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A(1) and 5.B(2). If an employee performs more than one function, you should count that employee in each of your responses to Item 5.B(1) and 5.B(2).

(3) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?

○ 0 ◉ 1-5 ○ 6-10 ○ 11-50 ○ 51-250
○ 251-500 ○ 501-1,000 ○ More than 1,000
If more than 1,000, how many? (round to the nearest 1,000)

In your response to Item 5.B(3), do not count any of your employees and count a firm only once -- do not count each of the firm's employees that solicit on your behalf.

Clients

C. To approximately how many *clients* did you provide investment advisory services during your most-recently completed fiscal year?

○ 0 ○ 1-10 ○ 11-25 ○ 26-100 ○ 101-250
◉ 251-500 ○ More than 500
If more than 500, how many? (round to the nearest 500)

D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

		None	Up to 10%	11-25%	26-50%	51-75%	More Than 75%
(1)	Individuals (other than *high net worth individuals*)	○	◉	○	○	○	○
(2)	*High net worth individuals*	○	○	○	○	○	◉
(3)	Banking or thrift institutions	◉	○	○	○	○	○
(4)	Investment companies (including mutual funds)	○	◉	○	○	○	○
(5)	Pension and profit sharing plans (other than						

	plan participants)	○	◉	○	○	○	○
(6)	Other pooled investment vehicles (e.g., hedge funds)	○	◉	○	○	○	○
(7)	Charitable organizations	○	◉	○	○	○	○
(8)	Corporations or other businesses not listed above	○	◉	○	○	○	○
(9)	State or municipal *government entities*	◉	○	○	○	○	○
(10)	Other:	◉	○	○	○	○	○

The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, check "None" in response to Item 5.D(4).

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☑ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☑ (4) Fixed fees (other than subscription fees)
- ☐ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify):

Assets Under Management

	YES	NO
F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios?	◉	○

(2) If yes, what is the amount of your assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) $ 265602051.00	(d) 217
Non-Discretionary:	(b) $ 4726802.00	(e) 4
Total:	(c) $ 270328853.00	(f) 221

Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☑ (2) Portfolio management for individuals and/or small businesses
- ☑ (3) Portfolio management for investment companies
- ☑ (4) Portfolio management for businesses or institutional *clients* (other than investment companies)

- ☐ (5) Pension consulting services
- ☐ (6) Selection of other advisers
- ☐ (7) Publication of periodicals or newsletters
- ☐ (8) Security ratings or pricing services
- ☐ (9) Market timing services
- ☐ (10) Other (specify):

Do not check Item 5.G(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940.

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

○ 0 ○ 1-10 ○ 11-25 ○ 26-50 ○ 51-100
○ 101-250 ○ 251-500 ○ More than 500 If more than 500, how many? (round to the nearest 500)

I. If you participate in a *wrap fee program*, do you (check all that apply):

- ☐ (1) *sponsor* the *wrap fee program* ?
- ☐ (2) act as a portfolio manager for the *wrap fee program*?

If you are a portfolio manager for a wrap fee program, list the names of the programs and their sponsors in Section 5.I(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients , or you advise a mutual fund that is offered through a wrap fee program, do not check either Item 5.I(1) or 5.I(2).

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Item 6 Other Business Activities

In this Item, we request information about your other business activities.

A. You are actively engaged in business as a (check all that apply):

- ☐ (1) Broker-dealer
- ☐ (2) Registered representative of a broker-dealer
- ☐ (3) Futures commission merchant, commodity pool operator, or commodity trading advisor
- ☐ (4) Real estate broker, dealer, or agent
- ☐ (5) Insurance broker or agent
- ☐ (6) Bank (including a separately identifiable department or division of a bank)
- ☐ (7) Other financial product salesperson (specify):

		YES	NO
B.	(1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)?	○	◉
	(2) If yes, is this other business your primary business?	○	○
	If "yes," describe this other business on Section 6.B. of Schedule D.		
	(3) Do you sell products or provide services other than investment advice to your advisory *clients*?	○	◉

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Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

Item 7 requires you to provide information about you and your *related persons*. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

A. You have a *related person* that is a (check all that apply):

- ☐ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
- ☐ (2) investment company (including mutual funds)
- ☑ (3) other investment adviser (including financial planners)
- ☐ (4) futures commission merchant, commodity pool operator, or commodity trading advisor
- ☐ (5) banking or thrift institution
- (6) accountant or accounting firm

☐
☐ (7) lawyer or law firm
☐ (8) insurance company or agency
☐ (9) pension consultant
☐ (10) real estate broker or dealer
☐ (11) sponsor or syndicator of limited partnerships

If you checked Item 7.A(3), you must list on Section 7.A. of Schedule D all your related persons that are investment advisers. If you checked Item 7.A(1), you may elect to list on Section 7.A. of Schedule D all your related persons that are broker-dealers. If you choose to list a related broker-dealer, the IARD will accept a single Form U-4 to register an investment adviser representative who also is a broker-dealer agent ("registered rep") of that related broker-dealer.

YES NO

B. Are you or any *related person* a general partner in an *investment-related* limited partnership or manager of an *investment-related* limited liability company, or do you advise any other "private fund" as defined under SEC rule 203(b)(3)-1? ◉ ○

If "yes," for each limited partnership or limited liability company, or (if applicable) private fund, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser and you have related persons that are SEC-registered advisers who are the general partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D: (1) that you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D; (2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and (3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

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Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients*' transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your *clients*.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*.

Proprietary Interest in *Client* Transactions

A. Do you or any *related person*: **Yes No**

(1) buy securities for yourself from advisory *clients,* or sell securities you own to advisory *clients* (principal transactions)?	○	●
(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?	●	○
(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))?	○	●

Sales Interest in *Client* Transactions

B. Do you or any *related person*:	Yes	No
(1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?	○	●
(2) recommend purchase of securities to advisory *clients* for which you or any *related person* serves as underwriter, general or managing partner, or purchaser representative?	○	●
(3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)?	○	●

Investment or Brokerage Discretion

C. Do you or any *related person* have *discretionary authority* to determine the:	Yes	No
(1) securities to be bought or sold for a *client's* account?	●	○
(2) amount of securities to be bought or sold for a *client's* account?	●	○
(3) broker or dealer to be used for a purchase or sale of securities for a *client's* account?	●	○
(4) commission rates to be paid to a broker or dealer for a *client's* securities transactions?	●	○
D. Do you or any *related person* recommend brokers or dealers to *clients*?	●	○
E. Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party in connection with *client* securities transactions?	●	○
F. Do you or any *related person*, directly or indirectly, compensate any *person* for *client* referrals?	●	○

In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

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Item 9 *Custody*

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets. If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have *custody* of your *clients'* funds or securities, you may

answer "no" to Item 9A.(1) and 9A.(2).

	Yes	No
A. Do you have *custody* of any advisory *clients':*		
(1) cash or bank accounts?	○	◉
(2) securities?	○	◉
B. Do any of your *related persons* have *custody* of any of your advisory *clients'*:		
(1) cash or bank accounts?	○	◉
(2) securities?	○	◉
C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that *related person* a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934?	○	○

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Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you.

If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B

asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

	YES	NO
Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies? *If yes, complete Section 10 of Schedule D.*	○	◉

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Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations

on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

For "yes" answers to the following questions, complete a Criminal Action DRP:

	YES	NO
A. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?	○	◉
(2) been *charged* with any *felony*?	○	◉

If you are registered or registering with the SEC, you may limit your response to Item 11.A(2) to charges that are currently pending.

B. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	○	◉
(2) been *charged* with a *misdemeanor* listed in 11.B(1)?	○	◉

If you are registered or registering with the SEC, you may limit your response to Item 11.B(2) to charges that are currently pending.

For "yes" answers to the following questions, complete a Regulatory Action DRP:

	YES	NO
C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	○	◉
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?	○	◉
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉

(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity? ○ ◉

(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity? ○ ◉

D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:

(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical? ○ ◉

(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes? ○ ◉

(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted? ○ ◉

(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity? ○ ◉

(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity? ○ ◉

E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* you or any *advisory affiliate* to have made a false statement or omission? ○ ◉

(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a *"minor rule violation"* under a plan approved by the SEC)? ○ ◉

(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted? ○ ◉

(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities? ○ ◉

F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended? ○ ◉

G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.? ○ ◉

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

H. (1) Has any domestic or foreign court: **YES** **NO**

(a) in the past ten years, *enjoined* you or any *advisory affiliate* in connection with any *investment-related* activity? ○ ◉

(b) ever *found* that you or any *advisory affiliate* were *involved* in a violation of *investment-related* statutes or regulations? ○ ◉

(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you or any *advisory affiliate* by a state or *foreign financial regulatory authority*? ○ ◉

(2) Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could

result in a "yes" answer to any part of Item 11.H(1)? ○ ◉

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: MB INVESTMENT PARTNERS, INC.	**IARD/CRD Number: 105167**
	Rev. 02/2005

Item 12 Small Business

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than $25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person.*

	YES	NO
A. Did you have total assets of $5 million or more on the last day of your most recent fiscal year?	○	○
If "yes," you do not need to answer Items 12.B. and 12.C.		
B. Do you:		
(1) *control* another investment adviser that had assets under management of $25 million or more on the last day of its most recent fiscal year?	○	○
(2) *control* another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	○	○
C. Are you:		
(1) *controlled* by or under common *control* with another investment adviser that had assets under management of $25 million or more on the last day of its most recent fiscal year?	○	○
(2) *controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	○	○

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: MB INVESTMENT PARTNERS, INC.	IARD/CRD Number: 105167
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Part 2 Brochures

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: MB INVESTMENT PARTNERS, INC.	IARD/CRD Number: 105167
	Rev. 02/2005

Form ADV, Schedule A

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer(Chief Compliance Officer is required and cannot be more than one individual), director, and any other individuals with similar status or functions;
   (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
   (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
   (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
   (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.
3. Do you have any indirect owners to be reported on Schedule B? (•) Yes ( ) No
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.
5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are:

NA - less than 5%	B - 10% but less than 25%	D - 50% but less than 75%
A - 5% but less than 10%	C - 25% but less than 50%	E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note

that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
MB INVESTMENT PARTNERS & ASSOCIATES, LLC	DE	SHAREHOLDER	08/2004	E	Y	N	81-0655036
POLLACK, LESTER	I	DIRECTOR	08/2004	NA	Y	N	365207
TOMAI, WILLIAM, M	I	DIRECTOR	08/2004	NA	Y	N	2379261
JAMISON, MICHAEL, DAVID	I	CHIEF EXECUTIVE OFFICER/ CHIEF COMPLIANCE OFFICER	07/2008	NA	Y	N	1204463

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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Form ADV, Schedule B

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.
2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

   (c) in the case of an owner that is a trust, the trust and each trustee; and

   (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are:
   C - 25% but less than 50%
   D - 50% but less than 75%
   E - 75% or more
   F - Other (general partner, trustee, or elected manager)
7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
CENTREMB HOLDINGS LLC	DE	MB INVESTMENT PARTNERS & ASSOCIATES LLC	MEMBER	08/2004	D	Y	N	20-1297702
CENTRE PACIFIC HOLDING LLC	DE	CENTREMB HOLDINGS LLC	MEMBER	08/2004	D	Y	N	95-4775904
CENTRE CAPITAL INVESTORS III LLC	DE	CENTRE PACIFIC HOLDING LLC	MEMBER	08/2004	E	Y	N	06-1567769

FORM ADV

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UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: MB INVESTMENT PARTNERS, INC.	**IARD/CRD Number: 105167**
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Form ADV, Schedule D

Section 1.B. Other Business Names

List your other business names and the jurisdictions in which you use them. You must complete a separate Schedule D for each business name.

No Information Filed

Section 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of *employees*).

No Information Filed

Section 1.I. World Wide Web Site Addresses

List your World Wide Web site addresses. You must complete a separate Schedule D for each World Wide Web site address.

World Wide Web Site Address: WWW.MBIPINC.COM

Section 1.K. Locations of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D Page 1 for each location.

No Information Filed

Section 1.L. Registration with *Foreign Financial Regulatory Authorities*

List the name, in English, of each *foreign financial regulatory authority* and country with which you are registered. You must complete a separate Schedule D Page 2 for each *foreign financial regulatory authority* with whom you are registered.

No Information Filed

Section 2.A(7) Affiliated Adviser

No Information Filed

Section 2.A(8) Newly Formed Adviser

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

- ☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.
- ☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

Section 2.A(9) Multi-State Adviser

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

- ☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.
- ☐ I undertake to withdraw from SEC registration if I file an amendment to this registration

indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

Section 2.A(11) SEC Exemptive *Order*

No Information Filed

Section 4 Successions

Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.

No Information Filed

Section 5.I(2) *Wrap Fee Programs*

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Page 3 for each *wrap fee program* for which you are a portfolio manager.

No Information Filed

Section 6.B. Description of Primary Business

No Information Filed

Section 7.A. Affiliated Investment Advisers and Broker-Dealers

You MUST complete the following information for each investment adviser with whom you are affiliated. You MAY complete the following information for each broker-dealer with whom you are affiliated. You must complete a separate Schedule D Page 3 for each listed affiliate.

Legal Name of Affiliate:
IRONWOOD INVESTMENT MANAGEMENT, LLC

Primary Business Name of Affiliate:
IRONWOOD INVESTMENT MANAGEMENT, LLC

Affiliate is (check only one box):

◉ Investment Adviser

○ Broker - Dealer

○ Dual (Investment Adviser and Broker-Dealer)

Affiliated Investment Adviser's SEC File Number (if any)
801- 55081

Affiliate's CRD Number (if any):
108467

Legal Name of Affiliate:

JAMISON PRINCE ASSET MANAGEMENT, INC.

Primary Business Name of Affiliate:
JAMISON PRINCE ASSET MANAGEMENT, INC.

Affiliate is (check only one box):

(●) Investment Adviser

( ) Broker - Dealer

( ) Dual (Investment Adviser and Broker-Dealer)

Affiliated Investment Adviser's SEC File Number (if any)
801- 27418

Affiliate's CRD Number (if any):
110763

Section 7.B. Limited Partnership Participation or Other Private Fund Participation

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner, each limited liability company for which you or a *related person* is a manager, and each other private fund that you advise.

Name of Limited Partnership, Limited Liability Company, or other Private Fund:
MB ABOLUTE RETURN FUND LLC

Name of General Partner or Manager:
MB INVESTMENT PARTNERS, INC.

If you are registered or registering with the SEC, is this a "private fund" as defined under SEC rule 203(b)(3)-1? (●) Yes ( ) No

Are your *clients* solicited to invest in the limited partnership, limited liability company, or other private fund? ( ) Yes (●) No

Approximately what percentage of your *clients* have invested in this limited partnership, limited liability company, or other private fund?
3%

Minimum investment commitment required of a limited partner, member, or other investor:
$ 250000

Current value of the total assets of the limited partnership, limited liability company, or other private fund:
$ 14973818

Section 10 *Control Persons*

You must complete a separate Schedule D Page 4 for each *control person* not named in Item 1.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

No Information Filed

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

IN SEPTEMBER 2005 MB ABSOLUTE RETURN FUND LLC CEASED SOLICITING NEW INVESTORS AND INITIATED REDEMPTIONS WITH ALL ALTERNATIVE FUNDS IN WHICH IT WAS INVESTED.

FORM ADV

OMB: 3235-0049

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Form ADV, DRPs

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
No Information Filed

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
No Information Filed

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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Form ADV, Signature Page

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: MICHAEL D. JAMISON	Date: MM/DD/YYYY 03/31/2009
Printed Name: MICHAEL D. JAMISON	Title: CHIEF EXECUTIVE OFFICER
Adviser *CRD* Number: 105167	

***NON-RESIDENT* INVESTMENT ADVISER EXECUTION PAGE**

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. *Non-Resident* Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:	Date: MM/DD/YYYY
Printed Name:	Title:
Adviser *CRD* Number: 105167	

State Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain your *principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration or amending your registration.

2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your principal place of business and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature	Date MM/DD/YYYY
CRD Number 105167	
Printed Name	Title