

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<p>Madelyn Haines and Paul Zamrowski, on behalf of themselves and all others similarly situated, Plaintiffs,</p> <p>v.</p> <p>Massachusetts Mutual Life Insurance Company, MassMutual Holding Company, MassMutual Holding Trust I, Oppenheimer Acquisition Corp., OppenheimerFunds, Inc., John V. Murphy, Rupert A. Allan, Robert I. Schulman, Cynthia J. Nicoll, Sandra Manzke, Tremont Partners, Inc., Tremont Group Holdings, Inc., and Does 1-100, Defendants.</p>	<p>Civil Action No:</p> <p><b>JURY TRIAL DEMANDED</b></p>
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**CLASS ACTION COMPLAINT**

Plaintiffs allege the following upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon the investigation made by and through their attorneys which included review of SEC records, various private placement memoranda, investment performance statements and correspondence, press releases and articles, filings in the SEC criminal and civil proceedings and other publicly available documents.

**NATURE OF ACTION**

1. This is a class action in which Plaintiffs assert on behalf of themselves and a class of similarly situated investors (the “Class”) who are limited partners in Tremont Market Neutral Fund, L.P. (“TMNF”) and Tremont Market Neutral Fund II, L.P. (“TMNF II”) claims for violations of Section 10(b) of the Exchange Act and Rule 10b-5, violations of Section 20(a) of

the Exchange Act, common law fraud, negligent misrepresentation, breach of fiduciary duty and aiding and abetting breach of fiduciary duty.

2. TMNF and TMNF II are two virtually identical investment partnerships which employ substantially the same investment strategies and styles both of which were formed in Delaware and which are collectively referred to as the “Funds.”

3. The Funds were marketed as using a “*conservative multi-strategy*.” Communications sent to current and prospective investors included graphics which divided investments into four categories, the Funds were identified as being in the conservative “*More Return, Less Risk*” quadrant. The modest goals of the Funds were to produce net returns of LIBOR (the “London Inter-Bank Offered Rate.”) plus 300-500 basis points, which would currently be a return of about 5-7% while maintaining the volatility of a 5-year US Treasury Note. Plaintiffs and the other investors in these funds were not wild speculators rolling the dice for high returns, but rather safe-conservative investors looking to protect and grow their retirement funds.

4. The Funds seemed particularly safe because the Private Placement Memoranda (collectively the “PPM”) used to sell securities in them contained page after page of detailed representations regarding the extensive due diligence expertise, procedures and analysis that were to be applied (a) before the Funds would invest with a particular investment manager, and (b) on an ongoing basis after the Funds had invested.

5. However, the representations in the PPM regarding both pre-investment and ongoing due diligence were false with respect to investments with the now infamous Bernie Madoff (“Madoff”).

6. With respect to Madoff, Defendant Tremont’s decision makers elected to rely upon affinity induced trust rather than rely upon the extensive due diligence process they touted in the

PPM. As a result, the Funds were not the safe, conservative “*More Return, Less Risk*” investments based on extensive due diligence that Plaintiffs were led by the PPM to expect, but rather were wildly speculative ventures that largely depended upon blind trust on one secretive man.

7. Enabled by the absence of due diligence and emboldened by Defendants’ affinity trust, Madoff took advantage. As set forth in the criminal complaint filed against him (*United States of America v. Bernard L. Madoff*, 08-MAG-2735 (S.D.N.Y.)), Madoff utilized investor money entrusted to him by Defendants and others to facilitate a Ponzi scheme through which new investor monies were not legitimately invested but rather were used by Madoff for personal matters or to pay earlier investors imaginary gains.

8. Almost immediately after Madoff was first led away in handcuffs, Defendant Tremont sent a letter to their “clients” saying that, “We believe Tremont exercised appropriate due diligence in connection with the Madoff investments.”

9. All Defendants know this statement is untrue because they know that, with respect to Madoff, Tremont did not comply with their own well-established due diligence procedures which they extensively touted when selling securities in TMNF and TMNF II.

10. This case results due to Defendant Tremont’s knowing misrepresentations in connection with the sale of securities in the Funds. These misrepresentations were also known or recklessly ignored by those who controlled Tremont, including its parent Oppenheimer Acquisition Corp. and the ultimate controlling party Massachusetts Mutual Life Insurance Company (“Mass Mutual”).

11. Instead of making the full and forthright disclosure that would have laid bare the absence of care, due diligence and common-sense, the PPMs were filled with false statements

about extensive due diligence and rigorous investing criteria and omitted material information about Defendants' own troubling knowledge about the Funds' Madoff related investments. Consequently securities laws were broken, duties were violated and Plaintiffs and the class members were all harmed as is set more fully herein.

### **JURISDICTION AND VENUE**

12. The claims asserted herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act, 15 U.S.C. §§78j and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder by the SEC, 17 C.F.R. §240.10b.5, as well as under state common law. This Court has jurisdiction in this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa and pursuant to the supplemental jurisdiction of this Court. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1337, Section 22 of the Securities Act, 15 U.S.C. §77v, and Section 27 of the Exchange Act, 15 U.S.C. §78aa.

13. Venue is proper in this judicial district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. §77v, Section 27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1391(b).

14. Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District, and the principal place of business of the ultimate controlling party of all entity defendants, Massachusetts Mutual Life Insurance Company, is in this District in Springfield, Massachusetts. On information and belief, many of the other defendants do substantial business in Massachusetts and the Funds raised significant amounts from Massachusetts' investors.

15. In connection with the acts and omissions alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but

not limited to, the mails, interstate telephone communications, the internet and the facilities of the national securities markets.

## **PARTIES**

### **The Plaintiffs**

16. Plaintiff Madelyn Haines is an individual residing in Pennsylvania. She invested \$150,000 in TMNF II on or about August 1, 2008. (See Certification attached as Exhibit “A” hereto.)

17. Plaintiff Paul Zamrowski is an individual residing in Pennsylvania. He invested \$250,000 in TMNF on or about April 1, 2007. (See Certification attached as Exhibit “B” hereto.)

### **The Tremont Defendants**

18. Defendant Tremont Partners, Inc. (the "General Partner" or “TPI”) is a Connecticut corporation which is the general partner of the Funds and is a registered investment adviser under the Investment Advisers Act of 1940, as amended.

19. Defendant Tremont Group Holdings, Inc. (formerly named, Tremont Capital Management, Inc. and prior to that Tremont Advisers, Inc.) (“TGHI”) is a Delaware corporation which wholly owns Defendant Tremont Partners, Inc. TPI and TGHI have their principal place of business at 555 Theodore Fremd Ave., Rye, New York.

### **The Individual Tremont Defendants**

20. The principal decision-makers of the Tremont Defendants were Rupert A. Allan, Robert I. Schulman, Cynthia J. Nicoll and until, April 2005, Sandra Manzke and are sometimes referred to collectively as the “Individual Tremont Defendants.” As a result of their positions and activities these individuals knew of, participated in and/or exercised control over the

wrongdoing by TPI and TGHI alleged herein. (The Individual Tremont Defendants, Tremont Partners, Inc., and Tremont Group Holdings, Inc. are collectively known as the “Tremont Defendants” or “Tremont.”)

21. Defendant Robert I. Schulman was president, Chief Executive Officer, and Chairman of the Board of TGHI until 2006 and at all times has been a director of the General Partner. Schulman resides at 1 Fifth Avenue, Apartment 16-J, New York, NY 10003.

22. Defendant Sandra Manzke was until April 2005 the President of the General Partner and the Co-Chief Executive Officer of TGHI. Manzke established Tremont Partners, Inc. in October 1984. With respect to all counts alleged in this complaint Manzke is only alleged to be liable for her actions occurring prior to her resignation in April, 2005.

23. Defendant Rupert A. Allan is the President and director of the General Partner and the President, Chief Executive Officer and director of TGHI.

24. Defendant Cynthia J. Nicoll was the Chief Investment Officer of TGHI. Nicoll directed Tremont's Investment Management Department, which integrates manager research and risk management activities. She was responsible for the recommendations made to the Tremont Investment Committee on strategy allocation, manager selection, manager monitoring, as well as manager and portfolio risk management.

25. With respect to the description of the background of each of the individual defendants in the PPM, the Individual Tremont Defendants emphasized their background and expertise with respect to “manager selection” and “manager monitoring.”

### **The Controlling Defendants**

26. Defendant Oppenheimer Acquisition Corp. (“Oppenheimer Acquisition”) is a Delaware corporation that wholly owns Defendant TGHI and it is the parent of

OppenheimerFunds, Inc. (“OppenheimerFunds”), a large mutual fund manager. Tremont markets itself as “An OppenheimerFunds Company.” Oppenheimer Acquisition and OppenheimerFunds principal place of business is at 2 World Financial Center, 225 Liberty Street, 11th Floor, New York, New York.

27. Oppenheimer Acquisition is a majority owned subsidiary of Defendant MassMutual Holding Trust I (“MassMutual Trust”), a Massachusetts business trust.

28. MassMutual Trust is a holding company controlled by Defendant MassMutual Holding Company (“MassMutual Holding”), a Delaware corporation which is a holding company.

29. MassMutual Holding is controlled by Defendant Massachusetts Mutual Life Insurance Company, (“MassMutual”) a Massachusetts corporation with its principal place of business is 1295 State Street, Springfield, Massachusetts 01111. MassMutual is a mutually owned financial protection, accumulation and income management company. It and its subsidiaries had more than \$500 Billion in assets under management at year-end 2007.

30. MassMutual markets itself and its financial subsidiaries as one entity, the “MassMutual Financial Group.”

31. MassMutual, as the ultimate parent company of Oppenheimer Acquisition, OppenheimerFunds and the Tremont Defendants, had the power to exercise complete control over Tremont with respect to the use of Madoff as an investment manager and the selling of securities in the Funds through a materially false and misleading PPM.

### **The Individual Controlling Defendant**

32. Defendant John V. Murphy (“Murphy”) is an individual who during most of the Class Period simultaneously served as Executive Vice President of MassMutual; President,

Chairman, Chief Executive Officer, and Director of OppenheimerFunds, President and Director of Oppenheimer Real Asset Management, Inc., President and Director of Oppenheimer Partnership Holdings, Inc., director of OFI Institutional Asset Management, Inc., director of OFI Private Investments, Inc., a manager of Oppenheimer Tremont MNF, an officer and member of the Board of Trustees for OFI Tremont MNF and a director of Tremont Capital Management, Inc. As such Murphy had extensive knowledge and control over all aspects of Tremont's and the other Defendants' day-to-day business decisions and disclosures in securities offering documents relating to market neutral investing, the multi-manager approach, and Tremont Partners, Inc.'s initial and ongoing due diligence procedures and disclosures relating thereto.

33. MassMutual, MassMutual Trust, MassMutual Holding, Oppenheimer Acquisition, OppenheimerFunds and Murphy are collectively referred to herein as the "Controlling Defendants." With respect to all counts alleged in this complaint the Controlling Defendants are only alleged to be in control after MassMutual's acquisition of Tremont in October, 2001.

34. Upon information and belief, John Does 1-100 ("Doe Defendants") are individuals or entities whose names and addresses are presently unknown. Plaintiffs do not know the specific identities of the Doe Defendants at this time, however, Plaintiffs will amend the complaint once their identities are learned.

### **CLASS ACTION ALLEGATIONS**

35. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a proposed class (the "Class") consisting of all persons or entities who invested in limited partnership interests of the Funds (a) from February 6, 2004 through and including December 12, 2008 for claims arising under the Exchange Act (the "Exchange Act Class Period"), and from the date of formation of the respective Funds through

and including December 12, 2008 for claims arising under state law (the “State Law Class Period”). (Sometimes the two class periods are collectively referred to as the “Class Period.”) Excluded from the proposed Class are Defendants, their officers and directors, and members of their immediate families or their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

36. The members of the proposed Class (the “Class Members”) are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are over one hundred members in the proposed Class. The specific identity of members of the proposed Class may be identified from records maintained by the Defendants.

37. Plaintiffs’ claims are typical of the claims of the Class Members and all Class Members are similarly affected by Defendants’ wrongful conduct as alleged herein.

38. Plaintiffs will fairly and adequately protect the interests of the members of the proposed Class and have retained counsel competent and experienced in complex class litigation.

39. Common questions of law and fact exist as to all Class Members and predominate over any questions solely affecting individual Class Members. Among the questions of law and fact common to the proposed Class are:

- (a) whether Defendants’ acts and/or omissions as alleged herein violated the federal securities laws;
- (b) whether the Defendants’ PPM misrepresented and/or omitted material facts;
- (c) whether defendants acted with knowledge or with reckless disregard for the truth in misrepresenting and/or omitting material facts;

- (d) whether Defendants' conduct alleged herein was intentional, reckless, or grossly negligent or in violation of common law;
- (e) whether Defendants owed fiduciary duties to Plaintiffs as alleged herein;
- (f) whether Defendants breached any or all of their fiduciary duties to Plaintiffs;
- (g) whether Defendants fraudulently concealed material information about the lack of initial vetting and ongoing monitoring with respect to Madoff related investments;
- (h) whether any Defendants aided and abetted the General Partner's breaches of fiduciary duty; and
- (i) to what extent the members of the Class have sustained damages, and the proper measure of damages.

40. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joining all members is impracticable, and this action will be manageable as a class action.

## **GENERAL ALLEGATIONS**

### **Background**

41. Tremont Market Neutral Fund, L.P. ("TMNF") is a Delaware limited partnership formed on July 30, 1998. TMNF was originally organized under the name, American Masters Market Neutral Fund, L.P. prior to its change in name effective August 1, 2004.

42. Tremont Market Neutral Fund II, L.P. ("TMNF II") is a Delaware limited partnership formed on July 27, 2001. The Partnership was originally organized under the name, American

Masters Market Neutral Fund II, L.P., prior to its change in name effective August 1, 2004. (TMNF and TMNF II are sometimes referred to as the "Funds.")

43. Both Funds are private investment limited partnerships that are identical in all material respects relevant to this action.

44. Both Funds were and are managed by Tremont Partners, Inc., as the "General Partner."

45. Plaintiffs and other prospective investors in the Funds were offered limited partnership interests through certain marketing materials, including the PPM.

46. The PPM for both TMNF and TMNF II are substantially identical in all material respects relevant to this action. Although the PPM used over the years have been amended or revised from time to time they all are the same in all material respects relevant to this action. Moreover all PPMs are consistent with respect to the material information they concealed or failed to disclose.

47. At the time the Funds' participation in the Madoff Ponzi scheme was exposed, TMNF had raised approximately \$35 million and TMNF II had raised approximately \$225 million from the investing public.

48. The Funds indirectly invested with Madoff through two other Tremont controlled funds, American Masters Broad Market Fund, L.P. and American Masters Broad Market Prime Fund, L.P. which are both Delaware limited partnerships and are collectively known as the "Madoff-Tremont Feeder Funds." The *First Quarter 2005 Performance Review* for TMNF and TMNF II states American Masters Broad Market Fund has been in the Tremont Market Neutral Fund portfolio since October 1, 1998 and American Masters Broad Market Prime Fund was in the portfolio since October 1, 2004.

49. American Masters Broad Market Fund, L.P. (the “Broad Market Fund”) and American Masters Broad Market Prime Fund, L.P. (the “Broad Market Prime Fund”)

50. The Madoff-Tremont Feeder Funds had 100% of their assets invested with Madoff.

51. On or about December 10, 2008, Madoff informed two senior employees that, he was “finished” and that he had “absolutely nothing.” He stated his investment strategy was “all just one big lie” and that the business was “basically, a giant Ponzi-scheme.”

52. TMNF invested and lost approximately \$9 million and TMNF II invested and lost approximately \$38 in the Madoff-Tremont Feeder Funds.

**The PPM Describes The Benefits Of A Multi-Manager,  
“Market-Neutral” Investment Strategy For The Funds**

53. Both Funds shared the identical investment objectives of (a) long term capital appreciation, (b) consistent positive returns irrespective of stock market volatility or direction, and (c) preservation of capital.

54. Both Funds claim to attempt to accomplish these investment objectives by investing with a diverse group of portfolio managers who employ a variety of “market neutral” investment strategies.

55. According to the PPM, the term “market neutral” refers to a broad class of investment strategies that have a low correlation to the performance of equity/debt and other markets. Although market neutral investing encompasses a wide variety of investment styles, unwittingly investing in a Ponzi scheme is not a “market neutral” strategy as such term is used in the PPM.

56. The PPM claimed that the Funds’ used a “multi-manager format” pursuant to which the Funds’ investments are “made through a variety of Managers utilizing different and, if possible, non-correlated investment strategies and trading techniques,” [and] “is designed to

provide investors with a diversified investment portfolio as well as enable them to obtain above-average returns over an extended period of time.”

57. According to the PPM, the use of a multi-manager format, provided important benefits for both investors and the Funds, such as diversification, lower risks and the ability to “[i]nvest with Managers who have consistent past performance records.”

**The General Partner’s Manager Selection And Monitoring Process Described In The PPM Was Vital To The Success Of The Funds**

58. The Funds were very different than the Madoff-Tremont Feeder Funds and the numerous other Tremont controlled funds (such as the “Rye” funds) that invested with Madoff because the Funds were “funds of funds” using the multi-manager format. Most hedge funds, such as the Madoff-Tremont Feeder Funds, invest with just one manager who pursues his own investment strategy. A hedge fund which is a “fund of funds” seeks additional safety through broad diversification by investing with a variety of different hedge fund managers.

59. Accordingly the process and procedures by which the General Partner selected the Funds’ managers was of paramount importance to the success of the Funds.

60. As the PPM states, the Limited Partner investors “cannot take part in the management or control of the Partnership’s business, which is the sole responsibility of the General Partner.” Consequently, the Plaintiffs and other Class Member limited partners were all wholly dependent upon the General Partner to carefully and diligently vet all potential investment managers before retaining them and to carefully and diligently monitor investment managers after they were retained.

61. The PPM acknowledges the “General Partner has overall responsibility for implementing the investment strategy of the Partnership and has the authority to select the Managers that the Partnership invests in.” The PPM places upon the General Partner the

responsibility for the management of the day-to-day operations of the Partnership, including, “managing the assets of the Partnership, selecting Managers, negotiating fee arrangements with Managers, allocating assets among Managers and monitoring their performance and adherence to their stated investment objectives.”

**The PPM Touted The General Partner’s Extraordinary Expertise And Abilities Regarding Conducting Investment Manager Due Diligence And Monitoring**

62. The PPM not only describes the importance of the manager selection process but goes on to make representations that the General Partner has unique abilities and extraordinary expertise in selecting and monitoring managers.

63. The PPM represents that the principal decision-makers of the General Partner, Defendants Allan, Schulman, Nicoll, and Manzke all have significant experience and expertise regarding manager selection and monitoring.

64. The PPM represents Defendant Allan has experience in hedge fund manager selection, claiming that at a previous job at Societé Générale he served as a member of the investment committee in the selection of hedge fund managers. Additionally, the PPM claims that at a subsidiary of Credit Lyonnais he was responsible for manager selection in alternative investments.

65. Similarly, with respect to Defendant Schulman, the Chief Executive Officer of Tremont Capital, the PPM notes prior experience in manager selection, “At Smith Barney, he was also involved in all aspects of investment management and manager selection processes.” The PPM claims “Mr. Schulman is experienced in all aspects of investment management, product development, database management, and the manager selection process.”

66. With respect to Defendant Nicoll, the Chief Investment Officer of Tremont, the PPM touts her experience in risk management: “Previously the Director of Risk Management, Ms.

Nicoll established a positions-based risk analytics capability, in conjunction with RiskMetrics, and managed the market risk and operations/business due diligence process.”

67. The PPM in effect during Defendant Manzke’s tenure touts her expertise in manager selection and monitoring: “At Scudder Stevens & Clark, Ms. Manzke established one of their internal measurement systems during her tenure as an Investment Manager from 1969 to 1974. Ms. Manzke’s extensive experience in designing and implementing multi-manager, multi-asset class investment programs includes the Sentinel Investment Management Company, the Rodney Square Funds, and Minority Equity Trust. \*\*\* She has broad experience in all aspects of ... manager research, performance measurement, and program administration.”

68. The PPM through the attached SEC Form ADV of the General Partner also provides specific information touting the experience of John T. Matwey, who was the Senior Vice President, Director of Risk Management and Portfolio Services of Tremont Partners, Inc. The ADV represents that he was responsible for overseeing and providing a “cohesive framework for portfolio construction and risk management including forecasting, stress testing, risk trend analysis, compliance with client mandates, liquidity analysis, and performance monitoring.”

69. The PPM also claims special expertise due to the fact that: “Tremont uses its own proprietary software programs to monitor the performance of investment managers. Senior officers are responsible for the reporting and monitoring functions,” and “TPI has a license to utilize the information included in the Lipper TASS database, an extensive database of hedge fund investment manager performance formerly owned by TCMI.” In other SEC filings Tremont further hyped its manager selection and manager monitoring abilities due to Tremont’s access to a proprietary database of investment advisors:

Investment Adviser Research Program. The Company maintains a continuing research program evaluating and reviewing both domestic and foreign investment advisors and

advisory firms. The Company's employees meet with and interview over 250 advisors each year. Interviews are conducted with the advisor or the senior investment personnel of an advisory firm to evaluate such factors as investment approach, style, personnel turnover, delegation of investment decision making responsibilities and the number and type of accounts under management. As a result of this research the Company has developed a proprietary computerized database of more than 2,500 investment advisers including, but not limited to, domestic equity, international equity and fixed income advisors, mutual funds, private limited partnerships and offshore funds. This database allows the Company to monitor and evaluate investment management performance and to simulate the match of a fund's objectives with the investment characteristics of different or combined investment advisors.” (Tremont 2001 10-K)

By the end of the Class Period investors were being informed that Tremont’s proprietary manager database included over “over 6,000 management firms.”

**The PPM Touted The Benefits Of Tremont’s Manager Selection Process And Due Diligence Procedures That Defendants Knew Had Not Been Applied To Madoff**

70. In light of the vital importance of the manager selection process, the PPM set forth extensive manager selection criteria which the General Partners claimed to employ with respect to all prospective managers:

The General Partner selects Managers that satisfy one or more criteria including, but not limited to: extensive investment management experience; the historical performance of each Manager, including a history of consistent returns with respect to its investment style; the degree to which a specific Manager compliments and balances the Partnership's portfolio with respect to the strategies employed by other Managers; the quality and stability of the Manager's organization; the ability of the Partnership to make withdrawals or liquidate its investment; and the ability of each Manager to consistently and effectively apply its investment approach.

In selecting Managers, the General Partner collects, analyzes and evaluates information regarding the personnel, history and background, and the investment styles, strategies and performance of professional investment management firms.

The Partnership makes investments based on actual historical performance....

71. The General Partner’s Form ADV attached to the PPM informs investors that in making recommendations regarding the selection of investment managers, “TPI's research staff evaluates investment management organizations. \*\*\* The staff analyzes, in detail, the

philosophy, styles, strategies, investment professionals, decision-making processes and performance of the organization and the investment products offered. \*\*\* TPI's research staff conducts on-site interviews at and examination of such organizations to evaluate back office operations and internal staff, among other things. \*\*\* TPI relies on underlying investment advisor reports and its examination of advisor operations as primary sources of information. \*\*\* In addition, TPI utilizes databases, wire services, performance measurement publications and other surveys of investment results, such as newspapers, and other business journals as information sources. \*\*\*\* Additionally, TPI sources data on new investment organizations through referrals to TPI by other investment managers, its clients and contacts in the financial services industry.”

72. The most recent 2008 PPM contains extensive representations regarding the General Partner's alleged manager selection process: “The manager research team is focused on developing a thorough understanding of the drivers of a manager's returns as well as a thorough understanding of the operational/business conditions of the manager to ensure soundness and longevity of the firm. \*\*\* In doing so, TPI's manager research staff evaluates investment management organizations as part of its manager selection process. \*\*\* The research staff analyzes, in detail, the philosophy, styles, strategies, investment professionals, decision making processes and performance of the organization and the investment products offered. \*\*\* TPI's research staff also conducts on-site interviews at and examination of such organization to evaluate back office operations and internal staff, among other things. \*\*\* The final step in the manager selection process is the independent operational due diligence conducted by TPI's operational due diligence team, which includes an in-depth review of all aspects of the managers business. \*\*\* The independent in depth review of the operational due diligence team will

include reviewing the following items: compliance, trade execution, reconciliations, valuation, NAV calculation, review of offering memorandum, subscription and redemption documentation and audited financial statements, cash movements as well as correspondence and discussions with each of the manager's third party service providers, among others.”

**The PPM Touted The Benefits Of An Ongoing Due Diligence Process And Procedure That The Securities Defendants Knew Was Not Applied To Madoff**

73. The PPM also represented that after the Funds' managers were selected, the General Partner would carefully monitor their actions. For example, the PPM represents that: “Investment supervisory accounts are reviewed at least monthly, although Tremont Partners, Inc. (“Tremont”) is engaged on a daily basis with custodians and/or trustees to monitor cash flow and fund compliance. \*\*\*\* Fund accounts are monitored in terms of securities holdings, asset mix and adherence to investment guidelines. \*\*\* Tremont uses its own proprietary software programs to monitor the performance of investment managers. Senior officers are responsible for the reporting and monitoring functions. \*\*\* Clients receive monthly and/or quarterly reports showing investment results. \*\*\* Each quarter, Tremont's clients receive a detailed review which profiles the investments' results relative to performance objectives market indices and other relevant manager universes and benchmarks. \*\*\* Tremont maintains a database of over 6,000 management firms to evaluate investment process, approach and investment results.”

74. The most recent 2008 PPM contains extensive representations regarding the General Partner's alleged ongoing due diligence: “The Fund Administration Team consisting of Product Management, Fund Operations and Fund Accounting of eight professionals review investment supervisory accounts at least monthly in coordination with the Investment Team. \*\*\* In addition, the Product Administration Team is engaged on a daily basis with custodians and/or trustees to monitor cash flow and fund compliance. \*\*\* Fund accounts are monitored in terms

of securities holdings, asset mix and adherence to investment guidelines. \*\*\* TPI uses its own proprietary software programs to monitor the performance of investment managers. \*\*\* Clients receive monthly and/or quarterly reports showing investment results. \*\*\* Each quarter, TPI's clients receive a detailed review which profiles investments results relative to performance objectives, market indices and other relevant manager universes and benchmarks. \*\*\* TPI maintains a database of over 6,000 management firms to evaluate investment process, approach and investment results.”

**With Respect To Investments With Madoff The Representations In The PPM Regarding The Manager Section Process And Ongoing Due Diligence Were False**

75. The representations in the PPM regarding the General Partner's due diligence expertise, the manager selection process and ongoing due diligence were all false because at the time they were made the General Partner had never applied them to Madoff related investments and had no intentions of doing so in the future.

76. The General Partner did not utilize its due diligence expertise with respect to Madoff.

77. The General Partner did not follow its own due diligence processes or procedures with respect to selecting or retaining Madoff.

78. The General Partner did not follow its own ongoing due diligence procedures with respect to monitoring Madoff.

79. Instead the General Partner substituted affinity based trust for the protections set forth in the PPM. This undisclosed practice occurred throughout the entire Class Period and was a direct contradiction of what was represented to prospective investors in the PPM. In the PPM investors were assured that the General Partner didn't just passively rely on what it was told by the managers but also conducted its own independent examination. “TPI relies on underlying

investment advisor reports and its examination of advisor operations as primary sources of information.” (emphasis added)

80. This representation was false at all times during the Class Period with respect to Madoff related investments.

81. Proof that the representations in the PPM concerning due diligence and analysis with respect to manager selection and monitoring were false lies in the fact that had the General Partner actually used such procedures it would have uncovered numerous red flags that would have resulted in either (a) further due diligence uncovering the Ponzi scheme or (b) declining to invest with Madoff. These red flags included:

- Madoff’s investment returns were improbably smooth and steady regardless of market turmoil or direction;
- Investment professionals could not reverse engineer Madoff’s stated strategy;
- Madoff’s multi-billion dollar business was audited by a tiny accounting firm with only one active accountant;
- Related parties held all of the key management positions in Madoff Securities;
- There was no third-party custodian to hold investments and distribute financial reports directly to investors;
- Madoff used an off-shore comptroller based in Bermuda;
- Instead of a reputable bank, Madoff acted as his own prime broker; and
- There was a lack of transparency due to Madoff’s insistence on secrecy.

#### **Other Investment Professionals Who Did Conduct Due Diligence Discovered Numerous Red Flags And Avoided Investing With Madoff**

82. Those who did conduct reasonable due diligence avoided Madoff. For example, according to a December 13, 2008 article in *The New York Times*, Robert Rosenkranz, principal of hedge fund adviser Acorn Patters, was quoted as being concerned about the following red flag: “Our due diligence, which got into both account statements of [Madoff s] customers, and the audited statements of Madoff Securities, which he filed with the S.E.C., made it seem highly likely that the account statements themselves were just pieces of paper that were generated in connection with some sort of fraudulent activity.”

83. According to a December 13, 2008 article in *The Wall Street Journal*, Chris Addy, founder of Castle Hall Alternatives, which vets hedge funds for clients, noted the following red flag: “There was no independent custodian involved who could prove the existence of assets. There’s a clear and blatant conflict of interest with a manager using a related-party broker-dealer. Madoff is enormously unusual in that this is not a structure I’ve seen.”

84. According to a “Dear Client” letter from hedge fund investment adviser, Aksia LLC, sent after the Madoff Ponzi scheme became public: “Our decision to not recommend [“feeder funds” which invested with Madoff] was never based on the existence or discovery of a smoking gun; however, there were a host of red flags, which taken together made us concerned about the safety of client assets... Our judgment was swift given the extensive list of red flags.” (*Aksia Client Letter*) Among the many red flags cited by Aksia as reasons not to invest with Madoff were several relating to the impossibility of Madoff’s claimed investment strategy: “The Madoff feeder funds marketed a purported “Split-strike Conversion” strategy that is remarkably simple; however, its returns could not be nearly replicated by our quant analyst.” “It seemed implausible that the S&P 100 options market that Madoff purported to trade could handle the size of the combined feeder funds’ assets which we estimated to be \$13 billion.” “There was at least \$13 billion in all the feeder funds, but our standard 13F review showed scatterings of small positions in small (non-S&P100) equities.”

85. On November 7, 2005, investment manager Harry Markopolos submitted a letter to the SEC, titled “*The World’s Largest Hedge Fund is a Fraud*,” in which he set forth in detail, over 17 single-spaced pages and a two-page attachment, 29 separate red flags about Madoff which included detailed explanations of why Madoff’s claimed strategy could not work and was just a camouflage for a Ponzi scheme. For example, “*It is mathematically impossible for a*

*strategy using index call options and index put options to have such a low correlation to the market where its returns are supposedly being generated from,” and “Madoff’s returns are not consistent with the one publicly traded option income fund with a history as long as Madoff’s.”*

**Defendants Ignored Numerous Red Flags Of Which They Were Aware And Failed To Discover Obvious Problems With Madoff Demonstrating That The PPM’s Due Diligence Representations Were False With Respect To Madoff Investments**

86. The due diligence procedures and systems so described in the PPM are exactly the types of procedures and systems that, if used, would uncover a Ponzi scheme. As set forth below, the fact that Tremont invested with Madoff during the entire Class Period demonstrates that the expertise, procedures and systems touted in the PPM were never applied to Madoff.

**I. Defendants Had Actual Notice Of Many Red Flags Through Published Reports And Industry Contacts Prior To Selling Securities To The Investing Public**

87. The PPM represents that “TPI utilizes databases, wire services, performance measurement publications and other surveys of investment results, such as newspapers, and other business journals as information sources.” Accordingly the General Partner had actual knowledge of or was recklessly indifferent to numerous red flags regarding Madoff that were known throughout the investment community.

88. In May 2001, the article “*Madoff Tops Charts; Skeptics Ask How*” (herein, “*Skeptics Ask How*”) appeared in MAR/Hedge, a semi-monthly newsletter reporting on the hedge fund industry. In the article, author Michael Ocrant wrote about numerous red flags relating to Madoff’s surprisingly consistent returns and the inability of others to replicate Madoff’s claimed success.

89. On May 7, 2001, *Barron’s* published an article titled “*Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum.*” (herein, “*Don’t Ask, Don’t*

*Tell*”) In that article, author Erin E. Arvedlund wrote about numerous red flags relating to: lack of transparency, secrecy, dubious investment strategy, and curious compensation structure.

90. The PPM bragged about and claimed to use the General Partner’s “contacts in the financial services industry.” However, most investment professionals were not invested with Madoff and many who actually had conducted due diligence developed grave concerns about Madoff. Consequently if the General Partner had utilized its contacts in the “financial services industry” to conduct due diligence on Madoff, then it would have discovered the numerous problems and concerns of the type which are currently being reported in the public press, for example:

- “Red Flag # 20: *Madoff is suspected of being a fraud by some of the world’s largest and most sophisticated Financial services firms. Without naming names, here ‘s an abbreviated tally: A. A managing director at Goldman, Sachs prime brokerage operation told me that his firm doubts Bernie Madoff is legitimate so they don’t deal with him. \*\*\* C. An official from a Top 5 money center bank’s FOF told me that his firm wouldn’t touch Bernie Madoff with a ten foot pole and that there’s no way he’s for real.*” (*The World’s Largest Hedge Fund is a Fraud*)
- “My observations were collected first-hand by listening to fund of fund investors talk about their investments in a hedge fund run by Madoff Investment Securities, LLC, a SEC registered firm. I have also spoken to the heads of various Wall Street equity derivative trading desks and every single one of the senior managers I spoke with told me that Bernie Madoff was a fraud.” (*The World’s Largest Hedge Fund is a Fraud*)
- “Those who question the consistency of the returns, though not necessarily the ability to generate the gross and net returns reported, include current and former traders, other money managers, consultants, quantitative analysts and fund-of-funds executives, many of whom are familiar with the so-called split- strike conversion strategy used to manage the assets.” (*Skeptics Ask How*)
- “Large Wall Street firms privately harbored suspicions about Bernard Madoff’s investment business, in some cases steering clients away from dealing with him.... Banks were skeptical that Mr. Madoff could deliver the consistently high returns that he reported, and they were also put off by a lack of transparency at his investment firm. For these reasons, big Wall Street firms are notably absent from the long list of victims of Mr. Madoff’s alleged Ponzi scheme.” (*Red Light on Madoff*)
- “Adds a former Madoff investor: ‘Anybody who’s a seasoned hedge- fund investor knows the split-strike conversion is not the whole story. To take it at face value is a bit naive.’” (*Don’t Ask, Don’t Tell*)

- “Red Flag # 27: Several equity derivatives professionals will all tell you that the split-strike conversion strategy that BM runs is an outright fraud and cannot possibly achieve 12% average annual returns with only 7 down months during a 14 year time period.” (*The World’s Largest Hedge Fund is a Fraud*)
- “Two years ago, an internal Merrill report drawn up in connection with Merrill’s European fund of funds group, concluded the group should not deal with Mr. Madoff, the financial adviser said. “We had a red light on doing business with him. There was no transparency.” (*Red Light on Madoff*)

## **II. Red Flags Regarding Investment Strategy And Lack Of Transparency.**

91. The PPM states that one of the criteria for manager selection is “the degree to which a specific Manager compliments and balances the Partnership's portfolio with respect to the strategies employed by other Managers....” In order to apply this criteria the General Partner would have to thoroughly understand the strategies of all managers, including Madoff. However, as set forth in published reports, Madoff was well-known for his secrecy and for refusing to disclose the details of his investment strategy (for good reason as it was just camouflage for a Ponzi scheme). Because the General Partner could not obtain sufficient information regarding Madoff’s strategy, the General Partner could not know whether it “compliments and balances the Partnership's portfolio with respect to the strategies employed by other Managers.” Because the General Partner could not apply this key manager selection criteria to Madoff related investments, this representation in the PPM was false.

92. Contrary to the representations in the PPM, the General Partner never understood Madoff’s strategy, but instead relied on blind trust. Had the General Partner performed due diligence regarding the strategy Madoff claimed to have used it would have been aware of Madoff’s suspicious desire for secrecy as well as numerous other red flags of the type reported by others who actually did conduct due diligence, such as:

- “What Madoff told us was, ‘If you invest with me, you must never tell anyone that you’re invested with me. It’s no one’s business what goes on here,’” says an investment manager who took over a pool of assets that included an investment in a

- Madoff fund. “When he couldn’t explain how they were up or down in a particular month,” he added, “I pulled the money out.” (*Don’t Ask, Don’t Tell*)
- “Conversations with former employees indicated a high degree of secrecy surrounding the trading of these feeder fund accounts.” (*Aksia Client Letter*)
  - “They noted that others who use or have used the strategy— described as buying a basket of stocks closely correlated to an index, while concurrently selling out-of- the-money call options on the index and buying out-of-the-money put options on the index—are known to have had nowhere near the same degree of success.” (*Skeptics Ask How*)
  - “[T]hree option strategists at major investment banks told Barron’s they couldn’t understand how Madoff churns out such numbers.” (*Don’t Ask, Don’t Tell*)
  - “What is striking to most observers is not so much the annual returns—which, though considered somewhat high for the strategy, could be attributed to the firm’s market making and trade execution capabilities—but the ability to provide such smooth returns with so little volatility. The best known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period.” (*Skeptics Ask How*)
  - “The Madoff feeder funds marketed a purported “Split-strike Conversion” strategy that is remarkably simple; however, its returns could not be nearly replicated by our quant analyst.” (*Aksia Client Letter*)
  - “That Madoff is managing the money is purposely kept secret from the investors. \*\*\*The third party hedge funds and fund of funds that market this hedge fund strategy that invests in BM don’t name and aren’t allowed to name Bernie Madoff as the actual manager in their performance summaries or marketing literature.” (*The World’s Largest Hedge Fund is a Fraud*)

### **III. Red Flags Regarding Lack Of Verified Historical Performance.**

93. The PPM represented that, “The Partnership makes investments based on actual historical performance....” With respect to Madoff this was false. The positions, profits and investment returns that induced the General Partners to invest with Madoff and to continue using him as a manger year after year were all simply made up by Madoff to disguise his Ponzi scheme.

94. The PPM set forth extensive due diligence procedures which if followed would have uncovered Madoff’s Ponzi scheme. The PPM represented that due diligence would include trade execution, reconciliations, valuation, NAV calculation, cash flow, fund compliance and securities holdings. For example, the PPM states:

- “The independent in depth review of the operational due diligence team will include reviewing the following items: compliance, trade execution, reconciliations, valuation, NAV calculation, review of ... audited financial statements, [and] cash movements...”
- “Investment supervisory accounts are reviewed at least monthly, although Tremont Partners, Inc. (“Tremont”) is engaged on a daily basis with custodians and/or trustees to monitor cash flow and fund compliance.
- “Fund accounts are monitored in terms of securities holdings....”

None of those representations were true with respect to Madoff related investments. If these procedures had been applied to Madoff, then investment losses, missing funds and phantom securities holdings would have been discovered.

95. Investment professionals who did in fact conduct some of the due diligence that the PPM talks about did uncover problems precluding investments with Madoff, for example, the *Aksia Client Letter* noted two huge red flags indicating that the assets Madoff claimed weren’t there:

- “There was at least \$13 billion in all the feeder funds, but our standard 13F review showed scatterings of small positions in small (non-S&P100) equities.”
- “It seemed implausible that the S&P100 options market that Madoff purported to trade could handle the size of the combined feeder funds’ assets which we estimated to be \$13 billion.”

96. Contrary to the representations in the PPM, the General Partner never verified that there were actual assets in existence, that actual investment strategies were being pursued or that actual profits were being made. This verification was even more important in light of the Madoff’s use of an affiliated custodian, an affiliated broker, and a sham accounting firm. All of these red flags were readily discoverable and were discovered by investment professionals who actually conducted due diligence, for example:

- Madoff Securities, through discretionary brokerage agreements, initiated trades in the accounts, executed the trades, and custodied and administered the assets. This seemed to be a clear conflict of interest and a lack of segregation of duties is high on our list of red flags. (*Aksia Client Letter*)

- [Feeder fund] managers had no demonstrated electronic access to their funds accounts at Madoff. Paper copies provide a hedge fund manager with the end of the day ability to manufacture trade tickets that confirm the investment results. (*Aksia Client Letter*)

97. Similarly, if the due diligence procedures represented in the PPM actually existed and were used the General Partner would have discovered the sham accounting firm used by Madoff. The PPM represented that as part of their “independent in depth review” their “operational due diligence team” engaged in “discussions with each of the managers’ third party service providers....”

98. If the General Partner followed its own procedure set forth in the PPM and looked into Madoff’s “third party service provider” accounting firm of Friehling & Horowitz, then it would have discovered the same obvious problems that others did: “[S]ubstantially all of the assets were custodied with Madoff Securities. This necessitated Aksia checking the auditor of Madoff Securities, Friehling & Horowitz... [W]e concluded that Friehling & Horowitz had three employees, of which one was 78 years old and living in Florida, one was a secretary, and one was an active 47 year old accountant (and the office in Rockland County, NY was only 13ft x 18ft large). This operation appeared small given the scale and scope of Madoff’s activities.” (*Aksia Client Letter*)

99. Nor could verification of assets, strategy or investment returns be based on Madoff’s internal representations because key personnel were all related to Bernie Madoff. This too is a red flag that the due diligence procedures in the PPM would have uncovered because the PPM states, “In selecting Managers, the General Partner collects, analyzes and evaluates information regarding....the personnel...” The representation that this due diligence step was taken was clearly false because the related nature of the key personnel was a huge red flag that alerted others: “Key Madoff family members (brother, daughter, two sons) seemed to control all the key

positions at the firm. Aksia is consistently negative on firms where key and control positions are held by family members.” (*Aksia Client Letter*) “Red Flag # 24: Only Madoff family members are privy-to the investment strategy. Name one other prominent multi-billion dollar hedge fund that doesn’t have outside, non-family professionals involved in the investment process. You can’t because there aren’t any.” (*The World’s Largest Hedge Fund is a Fraud*)

100. Each Defendant knew of the Madoff-Tremont relationship, knew that Tremont was not performing its standard due diligence regarding Madoff and knew or were recklessly indifferent that the PPM contained false statements and omitted material information regarding due diligence. Each Defendant had the power to prevent the PPM from containing false statements and material omissions, but at no time did any Defendant modify the PPM used to sell securities in the Funds to reflect that one investment manager, Madoff, was not subjected to the rigorous due diligence procedures set forth in the PPM.

101. Defendants failed to take this step because they knew that such a disclosure would have resulted in Plaintiffs and other Class Members not purchasing securities in the Funds.

**Not Only Did Defendants Fail To Vet And Monitor Madoff Related Investments But Their Concentration Of The Funds’ Capital With Madoff Rendered The Benefits Of Investment Manager Diversity Promised In The PPM False And Misleading**

102. The PPM represented that the General Partner would actively manage the selection of managers in order to maximize investment returns and to minimize risks through investing with diverse managers.

103. These representations all falsely implied that the General Partner was actively pursuing the Partnership’s strategy in a prudent manner by using numerous and diverse investments and third-party managers with varying investment strategies, thereby avoiding the risk of concentrating capital in too few investments or managers.

104. However the General Partner had secretly abandoned diversity by concentrating 27% of TMNF's and 17% of TMNF II's investment funds in a single third-party manager, Madoff.

105. This concentration with Madoff was not disclosed in the PPM, or other investment materials available to prospective investors.

106. This concentration was concealed by secretly effecting such investments indirectly through the Madoff-Tremont Feeder Funds, which themselves did not disclose that they were mere conduits for Tremont to funnel money to Madoff.

107. This concentration was further concealed by using two different feeder funds neither of which ever mentioned Madoff.

108. Consequently, the PPM's representations about the benefits of diversity were false and misleading.

**The PPM "Risk Factors" Section Was Inadequate And Encouraged Prospective Investors To Discuss Risks Concerns With Investment Advisers Who Had Also Been Misled By False And Misleading Information Defendants Disseminated**

109. Although the PPM disclosed certain risk factors, it never disclosed the risk that the Funds would become involved in a "Ponzi Scheme" due to the failure of the General Partners to apply the extensive due diligence procedures that the PPM represented were being used to vet and monitor all managers.

110. In addition, the stated purpose for the PPM's identification of certain risk factors was that "the General Partner wishes to encourage prospective investors to discuss [the risks] in detail with their professional advisors." Thus, the PPM itself directs prospective investors to discuss risk concerns with their investment advisors. However, Tremont had already provided the investment advisors with false information regarding the manager selection and due diligence

processes which false information Tremont expected investment advisors to pass through to any potential investors who had concerns regarding the selection of managers or ongoing monitoring of the Funds' investments.

111. With respect to the specific risks involved in the selection and monitoring of managers, investment advisors were provided with information regarding the General Partner's alleged expertise at manager selection and due diligence. For example, in a publication entitled *Hedge Fund of Funds For Wealth Mangers* produced by Christopher Cichella of Tremont Capital Management in January 2007, Tremont touted its experience and "thorough, risk-conscious approach that combines 1) active strategy allocation, 2) manager selection, and 3) innovative risk management."

112. This publication goes on to tout "**Tremont's Unique And Sustainable Strengths.**" These were claimed to be "**An Experienced and Trustworthy Organization**" with "Resources, knowledge and relationships developed over 22 years," and "**Seasoned Process, Philosophy and Team.**" (emphasis in original) This "Seasoned Team" was described as a "deep team of talented professionals recruited from different areas of the capital markets" with a "global contact network and enormous manager database." Tremont also touted its "[p]ioneering risk management and portfolio construction techniques" which was to deliver, "[a] consistent and repeatable investment process for delivering the best set of future returns for a given level of downside risk." (emphasis added)

113. The publication the *Tremont Investment Process*, produced in or about 2006 contained page after page of charts and diagrams showing Tremont's allegedly sophisticated and thorough due diligence process. For example, it describes a multi-step multi-layered Manger

Research Process” which has five different steps (Sourcing, Investment Analysis, Detailed Due Diligence, Allocation, On-Going Due Diligence) each with numerous steps.

114. All of Tremont’s representations to the investment community regarding due diligence were false as they related to Madoff investments, which they made without adhering to their own claimed due diligence procedures.

115. All of Tremont’s false and misleading representations to the investment community were intended to and did cause investment advisors to (a) present the Funds to prospective investors, and (b) repeat Tremont’s false and misleading representations to prospective investors.

116. All of Tremont’s false and misleading representations to the investment community were intended to and did cause investors to be misled and to invest in the Funds which they would have avoided had they known all material facts regarding Madoff related investments and the lack of due diligence relating thereto.

#### **Defendants Issued Periodic Performance Updates And Other Communications That Contained False Statements And Material Omissions**

117. Plaintiffs and other Class Members as limited partners reasonably, justifiably, and materially relied upon the expectation created by the PPM’s representations that the General Partner would vet, monitor, and oversee the Funds’ managers and thereby safeguard the Funds’ investments throughout the life of the Funds.

118. Throughout the Class Period the fact that the due diligence set forth in the PPM was not being performed was concealed through Tremont’s dissemination of “Performance Updates” and other documents discussing both Tremont and the Funds. Such documents were sent to current limited partners in the Funds and were also intended to be and were provided to prospective investors in the Funds. For example, the *Tremont Market Neutral Funds Performance Review: Third Quarter 2004* stated: “The American Masters Broad Market Fund

LP gained 2.23% for the three months. Earlier in the quarter, the fund started flat, as the manager struggled to gain enough conviction to enter the markets and remained invested in Treasury bills. The manager was more successful by the remainder of the quarter due primarily to significant exposures in the financial sector. Insurance positions, along with selected healthcare and energy allocations also contributed to the strong performance in the period.”

119. As the world knows now, and Tremont should have known at the time and could have known at the time had they actually utilized the due diligence procedures they claimed to have been using, the “manager,” Madoff, had not invested in “Treasury bills,” “healthcare” or “energy.” Rather Madoff used the Funds money as part of a Ponzi scheme.

120. At no time was the information regarding the performance of the Funds in any communication sent by any Defendant during the Class Period correct because the value of the Funds’ assets and performance of the Funds were overstated as the result of the Funds’ participation in Madoff’s Ponzi scheme. Therefore these ongoing communications were all materially false and misleading.

121. Other of these ongoing communications repeated the same misrepresentations in the PPM regarding Tremont’s mythical (at least as it related to Madoff) due diligence process, systems and activities, for example:

- *American Masters Market Neutral Funds Second Quarter 2003*: “At Tremont, we construct and monitor our portfolios with an underlying risk based, contrarian view. Our overriding goal is to provide superior risk-adjusted returns over all market cycles.”
- *Tremont Market Neutral Fund, L.P. Performance Update: February 2005*: “The Tremont Market Neutral Fund, L.P. employs a multi-manager investment approach that seeks to achieve long-term capital growth irrespective of stock market volatility or direction.”

122. Other communications sought to emphasize the conservative “*More Return Less Risk*” nature of investments in the Funds. For example, the *March 2005 Performance Update* for

both TMNF and TMNF II contains two graphics both entitled “Risk Reward Analysis.” Both TMNF and TMNF II were in the box listed as “More Return Less Risk”. Similarly, the TMNF II Performance Update September 2006 also contains the same graphic entitled “Risk Reward Analysis,” which puts TMNF II in the box listed as “More Return Less Risk.” These representations were false in that due to the lack of due diligence investments in the Fund were high risk and unsuitable for the Plaintiffs and other Class Members.

123. All of the ongoing communications from Tremont discussing the Funds were materially false and misleading because they falsely implied that the Funds were pursuing their investment objectives in the prudent manner described in the PPM.

124. The truth about the Funds and their lack of due diligence with respect to Madoff related investments was also concealed by the General Partner’s silence when it had a fiduciary duty to disclose this and all other material information to the limited partners.

125. Still more representations were made about Tremont and its claimed expertise. For example, *American Masters Market Neutral Funds Performance Update: November 2003* stated: “Tremont Capital Management, Inc., an OppenheimerFunds Company, is a leader in the global alternative investments market. \*\*\* Founded in 1984, Tremont has been at the forefront of alternative investment research, and currently advises on over \$9 billion in hedge fund assets worldwide.” Similarly, the “*Introduction To Tremont Capital and Absolute Return Investing*” from the second quarter, 2005 hypes Tremont as follows:

**EXPERIENCE** 21 years of research and managing diversified hedge fund of fund portfolios for institutions. Oversee \$9 billion in advisory and fully discretionary fund of hedge fund assets.

**PEOPLE** Our greatest strength: 116 employees in four offices worldwide. Research is conducted by specialist in Rye, NY and London.

**PROCESS** A risk-sensitive approach that combines active strategy allocation, manager selection, and innovative risk management.

RESOURCES Information advantages and a robust infrastructure provide an unique depth of expertise and scalability.

126. Another marketing piece distributed to investors entitled “*The Tremont Series of Funds*” sought to reassure both current and prospective investors that Tremont had extraordinary due diligence skills as it related to selecting and monitoring managers. It stated:

- The assets in the [Tremont Series of Funds] are allocated among some of the world’s most talented alternative investment advisors chosen by Tremont’s globally recognized Investment Management team;
- Tremont Capital Management, Inc., an OppenheimerFunds Company, is a leader in the global alternative investments market;
- Professional portfolio strategist at Tremont evaluate and monitor the global capital markets and individual hedge fund manger strategies to develop a fund of funds designed to achieve return objectives.”

(emphasis added)

127. Tremont knew and intended that their concealment of such facts through the General Partners silence and ongoing communications would create a false impression in Plaintiffs and other Class Members that the PPM was accurate in all material respects and that the Funds’ managers were being professionally vetted, monitored, and overseen by the General Partners as set forth in the PPM.

128. Plaintiffs and other Class Members could have withdrawn their capital entrusted to Defendants, commenced legal action against the Defendants and/or taken other necessary and appropriate measures to protect themselves and their investments in the Funds if they known that the General Partner was not conducting due diligence and was not monitoring and overseeing all of the Funds’ managers as set forth in the PPM.

129. Due to both (a) the success of the Defendants in affirmatively misrepresenting facts concerning the Funds’ initial and ongoing due diligence and in concealing material information about the Funds’ Madoff related investments which they knew of and were obligated to disclose

but failed to do so as set forth in the allegations above, and (b) the Plaintiffs' and Class Members' foreseeable and reasonable reliance upon their General Partner to honor its fiduciary duty of candor in communications to limited partners, the Plaintiffs and Class Members did not and could not have reasonably discovered the wrongdoing alleged in any of the Counts set forth below, nor did they have sufficient true information to put them on reasonable notice of the wrongdoing alleged in any of the Counts set forth below until the exposure of the Tremont-Madoff relationship and Madoff Ponzi scheme in December, 2008.

130. Ironically, in a June 15, 2004 "Dear Investor" Letter, which addressed a Forbes' article regarding hedge funds, Tremont acknowledged the possibility of hedge fund fraud stating, "Over the years there have been instances of fraud involving hedge funds." However, the letter went on to reassure investors that Tremont performed "thorough due diligence" and touted their own experience: "As professional investors, we are aware of the need to perform thorough due diligence and we advise all investors to exercise the same caution." Yet at the same time Tremont was patting itself on the back, the world's largest investment fraud, Madoff's \$50 billion Ponzi scheme, was occurring right under its nose.

**Defendants Abdicated Their Post-Investment Fiduciary Duties While "Double-Dipping" With Respect To Management Fees**

131. The General Partners were fiduciaries with fiduciary duties running to their limited partners.

132. TGHI, the Tremont Individual Defendants, and the Controlling Parties due to their control of and relationship with the General Partner also have fiduciary responsibilities.

133. These duties included the fiduciary duties of due care, candor and full disclosure.

134. Defendants violated their duty of due care by failing to utilize the due diligence procedures established by the PPM.

135. Defendants violated their duty of candor and full disclosure by failing to disclose that the extensive due diligence procedures in the PPM were not being followed or inform investors of the numerous red flags regarding the Madoff related investments. Instead, throughout the entire Class Period, Tremont provided performance updates and/or other communications to Plaintiffs and Class Members that created the false impression that the General Partners were carefully and diligently monitoring the Funds' managers and investments.

136. Tremont sent these communications to the limited partners with the intent that Plaintiffs and the Class Members rely upon them.

137. Tremont sent these communications with the intent to lull Plaintiffs and the Class Members into believing that the Funds' investments were being carefully monitored.

138. At no time were the Plaintiffs or the Class Members aware of the General Partner's lack of vetting, monitoring, supervision, and safeguards with respect to the Funds investments.

139. Notwithstanding their lack of candor and care, the Tremont Defendants nevertheless gorged on fees. The Funds' investments in the Madoff-Tremont Feeder Funds were particularly lucrative because Tremont took two sets of fees. This "double dip" also benefited the Tremont Defendants' ultimate owner, MassMutual.

140. The first set of fees was taken from the Madoff-Tremont Feeder Funds. This first set of fees was based on the imaginary asset values and investment returns reported by Madoff and trustingly accepted by Tremont. Had their fees been calculated based on actual values, Tremont would have been entitled to zero from the Madoff-Tremont Feeder Funds.

141. The second set of fees was taken directly from the Funds. As related to Madoff, this second set of fees was again based on the imaginary asset values and investment returns that the Madoff-Tremont Feeder Funds were reported by Madoff and trustingly passed along by

Defendants. Had the General Partner's fees been calculated based on actual values, it would have been entitled to nothing on account of investments in the Madoff-Tremont Feeder Funds.

142. The General Partner's actions, and failures to act, enabled Madoff to continue his Ponzi-scheme until December, 2008.

143. It was not until the exposure of the Madoff Ponzi scheme in December, 2008 that the value of the Plaintiffs' and Class Members' investments in the Funds was reduced by the General Partner to reflect millions of dollars in losses due to investing in the Madoff Ponzi scheme.

### **ALLEGATIONS REGARDING THE CONTROLLING DEFENDANTS**

#### **MassMutual Acquired Control Of Oppenheimer In 1990 And Markets Oppenheimer As Part Of The MassMutual Financial Group**

144. In 1990 Massachusetts Mutual Life Insurance Company acquired the Oppenheimer Management Corporation for about \$150 million.

145. Almost immediately after acquiring Oppenheimer, MassMutual began to tout its ownership of Oppenheimer. For example, MassMutual's 2002 annual report stated: "With 68 funds, OppenheimerFunds, Inc., is one of the world's most respected mutual fund companies."

146. The MassMutual annual reports also highlighted Oppenheimer's connection with Tremont. For example, the 2002 annual report stated: "OppenheimerFunds also launched its first retail hedge 'fund of funds'—the Oppenheimer Tremont Opportunity Fund, LLC and Oppenheimer Tremont Market Neutral Fund, LLC. This move makes the unique benefits of hedge funds—a potentially attractive alternative to direct investments in stocks and bonds---available to the affluent investor."

147. MassMutual markets itself and its subsidiaries, such as OppenheimerFunds and Tremont, together as being part of the "MassMutual Financial Group." For example, the 2005

MassMutual annual report states: “The MassMutual Financial Group companies have the experience and disciplined financial expertise required by today’s sophisticated individual, corporate and institutional investors. From \$325.8 billion in 2004 to \$395.9 billion as of year-end 2005, assets under management at our companies, including OppenheimerFunds, Inc...increased more than 22 percent. This reflects the confidence investors have in our asset management capabilities.” (emphasis added)

148. On its web site MassMutual also sells itself and its subsidiaries to the investing public under the group name “MassMutual Financial Group.” OppenheimerFunds is a member of this “group” and is prominently featured on MassMutual’s web site. For example, under “Mutual Funds,” prospective investors are informed, “Whether you favor an aggressive approach or a conservative one, OppenheimerFunds, Inc. offers a breadth of mutual funds designed to match your investment goals. OppenheimerFunds, Inc., part of the MassMutual Financial Group family of companies owned by MassMutual, manages over 60 funds and is one of the nation’s largest and most respected mutual fund companies.”

149. There is a web link on MassMutual’s own web site directly to the web site for OppenheimerFunds.

150. MassMutual’s 2005 annual report makes representations about Tremont Capital Management, Inc. and Oppenheimer Funds, Inc. by repeating the names of these and other MassMutual subsidiaries and overwriting them with various superlatives such as: “discipline,” “expertise,” “consistency,” and “innovative.”

151. MassMutual’s 2005 annual report goes on to discuss the business of “OppenheimerFunds and its subsidiaries” including the company’s business serving affluent investors continued to grow, expanding offerings and gaining traction in key products such as

hedge funds of funds....” “In late 2005, OppenheimerFunds, along with its subsidiaries and controlled affiliates, reached a significant milestone, surpassing \$200 billion in assets under management...”

152. MassMutual’s 2007 annual report speaks of OppenheimerFunds as being one of MassMutual’s “family of companies.”

153. The section of the 2005, 2006, and 2007 annual reports entitled “General Agencies and Other Offices,” states “Massachusetts Mutual Life Insurance Company and its subsidiaries have offices around the globe,” included are:

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OppenheimerFunds, Inc.  
Tel: (212) 323-0200  
[www.oppenheimerfunds.com](http://www.oppenheimerfunds.com)  
New York, New York

OppenheimerFunds, Inc is also listed under “Major Subsidiaries and Affiliates.”

154. OppenheimerFunds, Inc. is promoted in MassMutual’s 2007 annual report as “One of the nation’s largest and most respected investment management companies, OppenheimerFunds has been helping investors realize their financial goals for nearly a half century. OppenheimerFunds and its controlled affiliates offer a broad range of products and services...”

155. MassMutual also provides services directly to its subsidiaries. For example, according to its 2007 annual report, MassMutual has agreements with its affiliates, such as

OppenheimerFunds, Inc. to provide record keeping and other services. As of December 31, 2007 these affiliates owed MassMutual \$17 million.

156. In a 2008 MassMutual publication entitled “*The Keys to Investment Management*,” MassMutual states: “Our investment management expertise, which is integral to the success of our company and products, is drawn from our investment subsidiaries...” Though statements like this MassMutual acknowledges and publicizes that MassMutual’s expertise and success is tied to and based upon its subsidiaries such as OppenheimerFunds and Tremont.

157. The 2007 MassMutual annual report also emphasizes the interconnected relationships among MassMutual and its investment subsidiaries and that such relationships enhance MassMutual’s overall financial strength and stability: “The MassMutual Financial Group of companies includes a number of respected investment management companies. If you have an insurance policy or retirement plan with us, your money is often managed by these industry leaders. Or, they can serve you and other investors independently. Their presence in the MassMutual Financial Group enhances our overall financial strength and stability.”

158. During the period of time after which Tremont was acquired, MassMutual has operated and marketed itself and its investment subsidiaries such as OppenheimerFunds and Tremont as one entity known as the MassMutual Financial Group. As such MassMutual controls all aspects of its subsidiaries material to this case such that MassMutual could have and should have prevented the false statements and material omissions in the Funds’ PPM as well as the ongoing false statements and material omissions in Performance Updates and other periodic communications.

## **The 2001 Tremont Acquisition**

159. Oppenheimer first discussed its interest in acquiring Tremont with representatives of an investment banking firm in the fourth quarter of 2000.

160. Oppenheimer first communicated its interest directly to Tremont in March, 2001.

161. By March 14, 2001 Oppenheimer and Tremont entered into a confidentiality agreement. Shortly thereafter Oppenheimer was provided with a compilation of Tremont information that included “ a description of Tremont's various business lines, an overview of its investments and distribution platform, its strategic relationships, its distribution needs and its financial projections.”

162. From May 11, 2001 through May 25, 2001, Oppenheimer met with Tremont personnel and conducted due diligence in Tremont's data room. The due diligence meetings focused on, among other things, “manager research.” Oppenheimer’s due diligence continued into early June with the assistance of Tremont's senior management and representatives of Tremont’s investment bank advisor.

163. As part of its due diligence, Oppenheimer was given full access to Tremont’s information, assets and personnel, copies of each material document filed, furnished or received by Tremont pursuant to the requirements of domestic or foreign laws and all other information reasonably requested by Oppenheimer concerning Tremont’s business, properties and personnel.

164. As part of its due diligence Oppenheimer was furnished with access to information pertaining to all of Tremont’s proprietary funds, including but not limited to TMNF and the two Madoff-Tremont Feeder Funds, which information included, “[t]rue, correct and complete copies of the offering documents, subscription agreements, administrative services agreements,

distribution or placement agency agreements, solicitation agreements and custody agreements, as applicable, or any similar agreements.”

165. As a result of its due diligence, Oppenheimer was familiar with the operations of Tremont, the Madoff-Tremont Feeder Funds and TMNF, including but not limited to Tremont’s actual due diligence procedures applied to Madoff related investments and the false and materially misleading representations in the PPM for TMNF regarding due diligence.

**Oppenheimer And MassMutual Knew That With Tremont They Were Acquiring Revenue Streams Generated Primarily From Tremont’s Relationship With Madoff**

166. At the time of the acquisition, Oppenheimer and MassMutual knew exactly what they were getting with Tremont—a close and growing relationship with Madoff.

167. As Tremont’s then current SEC 10-K filing explained, “The Company’s proprietary investment funds were originally created to provide clients with vehicles for investment with “hard-to-access” managers. Today, the Company has more than \$1 billion in its proprietary domestic and offshore investment funds.”

168. Madoff was Tremont’s “hard-to-access” manager. By the time Oppenheimer and MassMutual took over in 2001 Tremont had invested over \$1 billion with Madoff. For example, just the two Madoff-Tremont Feeder Funds involved in this case represented an aggregate Madoff investment of over \$930 million as of June 30, 2001.

169. Consequently, the revenue streams that Oppenheimer and MassMutual were purchasing as part of the Tremont acquisition had as their primary component fees from investment funds that were primarily invested with Madoff. As disclosed in the same Tremont 10-K:

Certain proprietary investment funds accounted for significant percentages of the Company’s consolidated revenues, as follows:

<u>2000</u>	<u>1999</u>
-------------	-------------

American Masters Broad Market Prime Fund, L.P.	17.8%	16.9%
Kingate Global Fund Class B Shares	13.3%	14.7%
American Masters Broad Market Fund, L.P.	12.2%	13.3%

Each of the three funds mentioned in the 10-K as constituting a “significant percentage of [Tremont’s] consolidated revenues” were funds set up to invest exclusively with Madoff.

Additional fees relating to the Madoff-Tremont relationship were paid by TMNF who indirectly invested with Madoff through the Madoff-Tremont Feeder Funds.

170. The Madoff-Tremont relationship was so significant that it merited specific analysis in connection with the acquisition by Putnam Lovell Securities, Inc. Putnam Lovell served as Tremont’s financial advisor in the Acquisition and Putnam Lovell was also the party Oppenheimer first contacted to express an interest in Tremont in 2000. As part of its work on the Acquisition, Putnam Lovell performed “[a]n analysis of the significant contribution to Tremont's revenues from a single relationship it has with an investment manager to its proprietary investment products.” This “single relationship” could only have been with Madoff, with whom Tremont had already invested approximately \$1 billion.

171. At the time Oppenheimer and MassMutual took over, it was the fees from Tremont’s proprietary investment funds that constituted the fastest growing revenue stream. As stated in Tremont’s June 30, 2001 10-Q (the last 10-Q filed before Oppenheimer and MassMutual took over Tremont):

Fees from the Company's proprietary investment funds increased 45.6% during the first six months of 2001 to \$8,008,200, up \$2,509,500 over the first six months of 2000, and 46.6% in the second quarter of 2001 to \$4,215,700, up \$1,339,400 over the second quarter of 2000 due to the growth of the funds' net assets arising from additional investor capital contributions and overall positive investment performance.

Much, if not most, of this 45.6% increase in fees was directly attributable to fees taken from investors and funds based on the phantom assets and imaginary investment returns from Tremont's Madoff investments.

**The Controlling Defendants Ignore Madoff Red Flags And Decide To Acquire Tremont And MassMutual Agrees To Provide Any Funding Necessary To Pay The \$145.3 Million Purchase Price**

172. In October, 2001 the Controlling Defendants decided to proceed with the acquisition of Tremont and Tremont's shareholders were paid approximately \$145.3 million.

173. The funds to pay the \$145.3 million purchase price were provided by Oppenheimer Acquisition's cash on hand, if any, and if needed, capital contributions from its ultimate parent, MassMutual.

174. At the time MassMutual and Oppenheimer decided to proceed with the Tremont Acquisition, there were already public red flags regarding Madoff. For example, see *Skeptics Ask How* and *Don't Ask, Don't Tell*, both of which were published in May, 2001—during the heart of MassMutual's and Oppenheimer's due diligence period.

175. Nevertheless MassMutual decided to pay richly for Tremont's "don't ask, don't tell" revenue streams attributable to Madoff investments and paid Tremont shareholders a 58% premium over market prices for Tremont shares prevailing before news of the acquisition leaked out.

176. The \$145.3 million price was a rich ten times the tangible net worth shown on Tremont's pro forma balance sheet and approximately thirty-five times Tremont's 2000 net income as reported to the SEC.

177. After the acquisition, Tremont began to market itself as "An OppenheimerFunds Company." The phrase "An OppenheimerFunds Company" appears on Tremont stationary and

publications. As an OppenheimerFunds Company, Tremont was part of the heavily-promoted “MassMutual Financial Group.”

**As Part Of The Acquisition The Controlling Defendants Obtained Control Of Tremont Through Stock Ownership, Employment Agreements And Economic Inducements, Which Provided Incentives To Tremont To Expand Its Relationship With Madoff**

178. Since October 2001, the General Partner of the Funds, Tremont Partners, Inc., has been wholly-owned by Tremont Group Holdings, Inc. which is owned by Oppenheimer Acquisition. Consequently through stock ownership the Controlling Defendants control the Tremont Defendants, including the General Partner, and through the General Partner control the Funds and the Madoff-Tremont Feeder Funds.

179. In addition as part of the acquisition, Tremont’s Co-Chief Executive Officers, Schulman and Manzke, became employees of OppenheimerFunds, Inc. (“OFI”) and Manzke and Schulman entered into employment agreements with OFI. Under these agreements Manzke and Schulman were required to serve as the Co-Chief Executive Officers of Tremont or “in other positions to which they may be appointed from time to time by OFI.” Manzke and Schulman received “employee benefits on the same basis as other similarly situated OFI executives.”

180. As part of the acquisition OFI also exercised control by requiring Tremont to continue to employ Barry Colvin as Chief Operating Officer and Stephen T. Clayton as Chief Financial and Administrative Officer.

181. In addition to controlling Tremont through stock ownership and employment contracts, the Controlling Defendants also exercised control by providing economic incentives to further control the day to day conduct of Tremont’s employees.

182. For example, as part of the acquisition the Controlling Defendants established a “retention pool payable to senior management if financial targets were met over the five year

period following the closing...” The retention payments were payable after 2006 and depended on the total amount of Tremont's EBIT (earnings before interest and taxes) for the calendar years ending 2002, 2003, 2004, 2005, and 2006.

183. In addition a bonus pool for Tremont employees was established the size of which pool was based on the annual EBIDTA (earnings before interest, depreciation, taxes and amortization) of Tremont.

184. These economic inducements were designed to induce the Tremont employees to make sure that Tremont's EBIT and EBIDTA increased. This was necessary due to the high price that MassMutual paid for Tremont, through MassMutual's subsidiaries.

185. Given Tremont's heavy and increasing reliance on Madoff investments, these economic inducements imposed by the Controlling Defendants could only motivate Tremont employees to sell more and more securities in Madoff related investments without regard to the increasing number of red flags or the fact that the PPM used to sell such securities falsely represented the initial or ongoing due diligence relating to Tremont's Madoff investments.

186. Through all of the actions set forth above, since October, 2001 the Controlling Defendants have controlled the Tremont Defendants, and during that time have had sufficient control and knowledge to prevent false statements and misrepresentations from being made in the Funds PPM.

**MassMutual Controlled Other Defendants Through Majority Stock Ownership And By Placing MassMutual's Officers In Controlling Officer And Director Positions Of MassMutual Subsidiaries**

187. Although Tremont Advisors, Inc. became a wholly owned direct subsidiary of Oppenheimer Acquisition, Tremont Advisors, Inc. was ultimately controlled by MassMutual through MassMutual's control of a string of subsidiaries including Oppenheimer Acquisition.

188. Oppenheimer Acquisition is a majority owned subsidiary of MassMutual Holding Trust I, a Massachusetts business trust ("MassMutual Trust").

189. MassMutual Trust is a holding company controlled by MassMutual Holding Company, a Delaware corporation ("MassMutual Holding") which is also a holding company.

190. MassMutual Holding is controlled by MassMutual.

191. In addition to control through stock ownership, MassMutual exercised control by inserting MassMutual officers into controlling officer and director positions at Oppenheimer Acquisition and MassMutual Trust.

192. At the time of the Tremont Acquisition, the Chairman of both Oppenheimer Acquisition and MassMutual Trust was Robert J. O'Connell, who was Chairman, President and CEO of MassMutual.

193. At the time of the Tremont Acquisition, the boards of directors of both Oppenheimer Acquisition and MassMutual Trust were dominated by Mass Mutual employees:

- Director John V. Murphy was an Executive Vice President of MassMutual,
- Director Ann F. Lomeli was Senior Vice President, Secretary and Deputy General Counsel of MassMutual;
- Director Stuart H. Reese was Executive Vice President and Chief Investment Officer of MassMutual,
- Director Lawrence V. Burkett, Jr. was Executive Vice President and General Counsel of MassMutual and
- Howard E. Gunton was Executive Vice President and Chief Financial Officer of MassMutual.

Oppenheimer Acquisition's Assistant Secretary, Stephen L. Kuhn was also Senior Vice President, Deputy General Counsel and Assistant Secretary of MassMutual.

194. In addition to control through stock ownership, MassMutual exercised control over MassMutual Holding by inserting MassMutual officers into controlling officer and director positions at MassMutual Holding.

195. For example, the Chairman, President and CEO of MassMutual Holding was the same Robert J. O'Connell who was Chairman, President and CEO of MassMutual.

196. The Executive Vice President and Director of MassMutual Holding was Lawrence V. Burkett, Jr. who at the same time was Executive Vice President and General Counsel of MassMutual.

197. The Vice President, Chief Financial Officer and Director of MassMutual Holding was Howard E. Gunton who was also Executive Vice President and Chief Financial Officer of MassMutual.

198. Ann F Lomeli was Senior Vice President, Secretary and Director of MassMutual Holding at the same time she was Senior Vice President, Secretary and Deputy General Counsel of MassMutual.

199. MassMutual Holding's Director Margaret Sperry was also Senior Vice President and Chief Compliance Officer of MassMutual.

200. MassMutual's majority stock ownership and the insertion of its own officers in leadership positions of Oppenheimer Acquisition, MassMutual Trust and MassMutual Holding gave MassMutual control over all aspects of these three controlled companies, as well as their subsidiaries including OppenheimerFunds and the Tremont Defendants.

201. Throughout the Class Period, Oppenheimer's SEC filings represent that Oppenheimer Acquisition is a wholly-owned subsidiary of and ultimately controlled by MassMutual. For all the reasons set forth above, during the Class Period MassMutual controlled Oppenheimer Acquisition and its subsidiaries including OppenheimerFunds and Tremont.

**Since 2001 The Controlling Defendant Were Very Familiar With Market Neutral Investing And Tremont's Due Diligence Procedures Through The Establishment And Operation Of OppenheimerFunds' Own Highly Similar Market Neutral Hedge Funds**

202. Shortly after the Controlling Defendants acquired Tremont, they caused the creation of Oppenheimer Tremont Market Neutral Fund, LLC ("Oppenheimer Tremont MNF") and OFI Tremont Market Neutral Hedge Fund ("OFI Tremont MNF"). These were both investment vehicles established by the Controlling Defendants to mimic TMNF and TMNF II.

203. Like the Funds, Oppenheimer Tremont MNF and OFI Tremont MNF both sought "long-term capital appreciation consistent with preservation of capital while attempting to generate positive returns over various market cycles."

204. Like the Funds, Oppenheimer Tremont MNF and OFI Tremont MNF sought to achieve their investment goals by investing with a select group of alternative asset managers employing various "market neutral" investment strategies that have historically demonstrated a low correlation to the general performance of equity, debt and other markets.

205. Like the Funds, Oppenheimer Tremont MNF and OFI Tremont MNF were described as using a multi-manager or "hedge fund of funds" approach.

206. OppenheimerFunds, Inc. was the "Adviser" of both Oppenheimer Tremont MNF and OFI Tremont MNF.

207. MassMutual Executive Vice-President John V. Murphy was also a manager of Oppenheimer Tremont MNF and was an officer and member of the Board of Trustees for OFI Tremont MNF.

208. Tremont Partners, Inc. was the "Sub-adviser" to both funds, and like its position as General Partner of the Funds, as Sub-Adviser it was primarily responsible for selecting the underlying investment managers for Oppenheimer Tremont MNF and OFI Tremont MNF.

209. Oppenheimer Funds, as advisor, was to provide general supervision of Tremont Partners, Inc.'s activities.

210. Just as with the Funds, the offering documents for Oppenheimer Tremont MNF and OFI Tremont MNF contained numerous representations regarding the level of initial and ongoing due diligence that Tremont Partners, Inc. was to perform. For example, "The Sub-Adviser takes a three-tiered approach to asset allocation and Underlying Fund Manager selection. Its methodology is premised on the belief that consistent, superior long-term performance necessitates first, a rigorous, top-down, or macro, view of the various alternative investment fund strategies; second, an in-depth analysis of the types of strategy attributes that best complement the Fund's investment objective; and third, identification of Underlying Fund Managers whose investment styles and historical investment returns and risk characteristics best embody those attributes."

211. In answering the question of how fund managers were selected the offering documents for Oppenheimer Tremont MNF and OFI Tremont MNF contained representations regarding Tremont Partners, Inc.'s due diligence that are similar to those in the PPM. For example, "Underlying Fund Managers will be selected on the basis of various criteria, generally including, among other things, an analysis of: the Underlying Fund Manager's performance during various time periods and market cycles; the Underlying Fund Manager's reputation, experience and training; its articulation of and adherence to its investment philosophy; the presence and deemed effectiveness of risk management discipline; on-site interviews of the management team; the quality and stability of the Underlying Fund Manager's organization, including internal and external professional staff; and whether key personnel of the Underlying

Fund Manager have substantial personal investments in the Underlying Fund Manager's investment program.”

212. Unlike the Funds, neither Oppenheimer Tremont MNF nor OFI Tremont MNF invested with Madoff.

213. Through the establishment and daily hands-on work with Oppenheimer Tremont MNF and OFI Tremont MNF, Murphy, OppenheimerFunds and through them MassMutual developed an expertise regarding the proper operation of market neutral investing, the multi-manager approach and proper disclosures in offering documents for market neutral hedge funds in general and specific knowledge and expertise of Tremont’s own due diligence processes and how to properly disclose information regarding such due diligence.

214. During the entire period of time OppenheimerFunds was working on Oppenheimer Tremont MNF and OFI Tremont MNF, OppenheimerFunds was controlled by a MassMutual Executive Vice President, John V. Murphy.

215. Murphy joined OppenheimerFunds as President in 2000 and became Chairman and CEO of OFI in July 2001.

216. Since 2001, Murphy simultaneously served three masters:

(1) MassMutual as an Executive Vice President at Massachusetts Mutual Life Insurance Co. and an Executive Vice President at Massachusetts Mutual Life Insurance Co., Asset Management Arm;

(2) Oppenheimer, as the President, Chairman, Chief Executive Officer, and Director of OppenheimerFunds, Inc., President and Director of Oppenheimer Real Asset Management, Inc. and Oppenheimer Partnership Holdings, Inc., a director of OFI Institutional Asset Management, Inc. and OFI Private Investments, Inc., manager of

Oppenheimer Tremont MNF and was an officer and member of the Board of Trustees for OFI Tremont MNF; and

(3) Tremont as a director of Tremont Capital Management, Inc.

As such Murphy had extensive knowledge and control over all aspects of Tremont's and the Controlling Defendants' day to day business decisions and disclosures in securities offering documents relating to market neutral investing, the multi-manager approach, and the General Partner's initial and ongoing due diligence procedures and disclosures relating thereto.

**During The Class Period MassMutual Had The Power To And Did Closely Investigate And Control The Activities Of Its Controlled Subsidiaries**

217. Tremont and OppenheimerFunds are both MassMutual subsidiaries that are directly owned by Oppenheimer Acquisition and thus Tremont and OppenheimerFunds have the same level of corporate relationship to MassMutual.

218. During the Class Period, MassMutual demonstrated that it has hands-on control of the day-to-day business activities of its subsidiaries. For example, in late 2004 or early 2005 MassMutual Chief Executive Officer, Robert J. O'Connell commenced an active investigation of OppenheimerFunds' business practices which included causing MassMutual to retain a law firm to look into various concerns regarding OppenheimerFunds.

219. O'Connell also used his power and authority at MassMutual to insert his own man, Andrew Ruotolo, as an Executive Vice President of OppenheimerFunds to investigate.

220. At the same time he served as an Executive Vice President of OppenheimerFunds, Ruotolo was also a MassMutual employee identified as a senior advisor to O'Connell.

221. According to published reports, as part of this investigation O'Connell involved himself in the day-to-day business activities of OppenheimerFunds. This was confirmed by

MassMutual Chairman of the Board, James R. Birle, who was quoted as saying, "Did Bob O'Connell poke his nose in Oppenheimer activities? Yes."

222. Birle also was quoted as admitting the existence of an investigation: "There was a so-called investigation that was initiated by the parent company in Oppenheimer..."

223. In addition to O'Connell's activities, according to an OppenheimerFunds' spokeswoman, Jeaneen Pizarra, after O'Connell raised concerns regarding OppenheimerFunds at the April MassMutual board of directors meeting, the "board engaged their own independent legal counsel [who conducted] "a thorough investigation..."

224. As the above actions demonstrate, during the Class Period, MassMutual had the power to and did actively investigate misconduct at its subsidiaries.

225. With this degree of power and supervisory control, MassMutual could have, and should have, easily prevented or corrected the material misrepresentations and omissions in the Funds' PPM.

**At All Times During The Class Period The Controlling Defendants Had Sufficient Knowledge, Expertise And Authority To Discover And Correct The False Representations In The PPM And Prevent Securities Fraud.**

226. Since the Tremont acquisition in 2001, the Controlling Defendants were aware from their own pre-acquisition due diligence that there were red flags concerning Tremont's investments with Madoff and that Tremont did not perform its typical due diligence procedures on Madoff.

227. Since establishing Oppenheimer Tremont MNF and OFI Tremont MNF in 2002, the Controlling Defendants obtained first hand experience in market neutral investing and proper due diligence procedures by Tremont Partners, Inc. This knowledge regarding proper due diligence procedures combined with their existing knowledge obtained during their own Tremont

acquisition due diligence (i.e., knowledge of the Madoff-Tremont relationship and that Tremont did not conduct due diligence regarding Madoff) gave the Controlling Defendants sufficient knowledge to know that Tremont did not follow its own due diligence procedures with respect to Madoff and that the due diligence representations in the Funds' PPM were false and materially misleading.

228. The Controlling Defendants had further actual notice of red flags regarding Madoff which were not disclosed in the Funds' PPM, in 2004 when Phillip S. Gillespie, joined OppenheimerFunds as Senior Vice President in September 2004. He joined OppenheimerFunds from a position as First Vice President and a Director of Merrill Lynch Investment Management. On information and belief, Gillespie had actual knowledge of Madoff red flags because while he was at Merrill Lynch, according to published reports "Fabio Savoldelli, chief investment officer of Merrill Lynch... the warning [about Madoff] internally years ago. One of Merrill's financial advisers, who deals with clients worth tens of millions of dollars, recalled Mr. Savoldelli's suspicions of Mr. Madoff's returns eight years ago." (*Red Light on Madoff*) As an executive officer of Merrill Lynch at the time, Gillespie should have had actual knowledge of Mr. Savoldelli's Madoff warnings.

229. In addition, the Controlling Defendants and each of them had access to the same Madoff red flags that other investment professionals discovered with reasonable due diligence which red flags are discussed in detail above.

230. The Controlling Defendants knew or were recklessly indifferent that the Funds' PPM did not disclose material information regarding the Funds' Madoff related investments.

231. The Controlling Defendants knew or were recklessly indifferent to the fact that the PPM for the Funds made false representations regarding the General Partner's initial and

ongoing due diligence and that it further was materially misleading in that the PPM failed to state that the General Partner relied on trust with respect to Madoff rather than its own due diligence procedures and that no reasonable due diligence was ever applied to Madoff related investments.

**COUNT I**  
**Violation of Section 10(b) of the Exchange Act and**  
**Rule 10b-5 of the Securities and Exchange Commission**  
**(Against The Tremont Defendants)**

232. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

233. This Count is asserted against the Tremont Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder.

234. During the Class Period, such Defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, practices, and courses of business which operated as a fraud and deceit upon plaintiff and the other members of the Class, and made various deceptive and untrue statements of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to plaintiffs and the other members of the Class. The purpose and effect of said scheme, plan and unlawful course of conduct was, among other things, to induce plaintiffs and the other members of the Class to purchase limited partnership investment interests in the Funds.

235. During the Class Period, such Defendants, pursuant to said scheme, plan and unlawful course of conduct, knowingly and recklessly issued, caused to be issued, participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to Plaintiffs and the other Class Members as particularized above.

236. In ignorance of the false and misleading nature of the statements described above, and the deceptive and manipulative devices and contrivances employed by said defendants, Plaintiffs and the other Class Members relied, to their detriment, on such misleading statements and omissions in purchasing limited partnerships in the Funds. Plaintiffs and the other Class Members have suffered substantial damages as a result of the wrongs herein alleged in an amount to be provided at trial.

237. By reason of the foregoing, such Defendants directly violated Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder in that Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiffs and the other Class Members in connection with their acquisitions of limited partnership interests in the Funds.

**COUNT II**  
**For Violation of Section 20(a) of the Exchange Act**  
**(Against the Individual Tremont Defendants and Controlling Defendants)**

238. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

239. The Individual Tremont Defendants and Controlling Defendants and each of them acted as a controlling person of TPI and TGHI within the meaning of Section 20(a) of the Exchange Act as alleged herein.

240. By virtue of their stock ownership, common officers and directors and/or high level positions, as well as their participation in and/or awareness of the TPI's and TGHI's operations, and/or intimate knowledge of TPI's and TGHI's investment strategies, market-neutral investing,

involvement with Madoff, due diligence procedures and implementation thereof, such Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Funds, including the content and dissemination of the various representations in the PPM and other documents that Plaintiffs contend are false and misleading. Such Defendants and each of them had the ability to prevent the issuance of the statements or cause the statements to be corrected.

241. By virtue of their position as a controlling person, such Defendants and each of them are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of their wrongful conduct, Plaintiffs and the other Class Members suffered damages in connection with their acquisitions of limited partnership interests in the Funds.

**COUNT III**  
**For Common Law Fraud**  
**(Against All Defendants)**

242. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

243. Plaintiffs and the other Class Members in reasonable and justifiable reliance upon the statements and representations made in the PPM, as previously alleged, purchased limited partnership investment interests in the Funds.

244. Plaintiffs and the other Class Members would not have purchased their limited partnership interests in the Funds except for their reliance upon the representations in the PPM and other communications by Tremont, and would never have purchased them had they been aware of the material omissions and concealments by Defendants as previously alleged.

245. At the time the such statements and representations were made, Defendants knew them to be false and misleading, and intended to deceive Plaintiffs and other Class Members by making such statements and representations.

246. At the time of the false statements, misrepresentations and omissions, set forth above, each of the Defendants intended that Plaintiffs and other Class Members would act on the basis of the misrepresentations and omissions contained in the PPM and other communications by Tremont in determining whether to purchase limited partnership interests in the Funds.

247. Plaintiffs and other Class Members reasonably and justifiably relied such statements and representations to their detriment, because Tremont touted themselves as experts in manager selection and ongoing due diligence. In addition, only Defendants knew the extent of Tremont's due diligence and only Defendants had access to the industry contacts, databases and insider information so as to be able to determine the truth.

248. If Plaintiffs and other Class Members had known of the material facts that the Defendants wrongfully omitted and misrepresented in the PPM and other communications by Tremont, then Plaintiffs and the other Class Members would not have purchased their limited partnership interests in the Funds.

249. Plaintiffs and other Class Members, as a result of their being fraudulently induced to purchase limited partnership securities in the Funds, have sustained damages in an amount to be determined and proven at trial.

250. By reason of the foregoing, all Defendants subject to this claim are jointly and severally liable to plaintiffs and other class members.

251. Defendants' fraudulent acts were willful and wanton and plaintiffs and other class members are entitled to punitive damages.

**COUNT IV**  
**Negligent Misrepresentation**  
**(Against All Defendants)**

252. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

253. Defendants were in the business of soliciting and raising funds from investors and providing investors and prospective investors with investment information. Accordingly, Defendants owed to Plaintiff and other Class Members a duty to use reasonable care when creating a PPM and other communications and disseminating the same to current and prospective investors.

254. Defendants also had a duty to disclose that the General Partner was not vetting, monitoring, overseeing, and safeguarding the Funds' managers as represented in the PPM.

255. Defendants breached their duties to Plaintiffs and other Class Members by failing to investigate, verify, prepare and review with reasonable care the representations contained in the PPM and other communications by Tremont.

256. As a direct, foreseeable and proximate result of Defendants' negligence in performing their duties, Plaintiffs and other Class Members have sustained damages in an amount to be determined and proven at trial

257. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiffs and other Class members.

**COUNT V**  
**Breach of Fiduciary Duty**  
**(Against All Defendants)**

258. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

259. The General Partner and those who controlled the General Partner (TGHI, the Individual Tremont Defendants and the Controlling Defendants) owed fiduciary duties to the limited partners. The PPM admits that, “The General Partner is accountable to the Partnership as a fiduciary and consequently must exercise good faith and integrity in handling the Partnership's affairs.”

260. In addition to the violations the duties of full disclosure and candor set forth above, Defendants violated the duties of due care by failing to initially vet or monitor Madoff related investments resulting in the Funds becoming involved in Madoff's Ponzi scheme.

261. As a result of exposure to Madoff related investments, the General Partner announced in a December 26, 2008 letter to limited partners that all withdrawals and payments of withdrawal proceeds were suspended “until such time as the General Partner determines...”

262. As a proximate result of Defendants' violations of their fiduciary duties the limited partners have been directly harmed by this restriction of their rights to make full and partial withdrawals of their capital thus entrapping the Plaintiffs and Class Members in the Funds.

263. As a proximate result of Defendants' violations of their fiduciary duties the limited partners who have submitted withdrawals or whose Fund dissolves as a result of harm caused by Madoff related investments have been additionally directly harmed by having their withdrawal payouts diminished as a result of a Madoff induced liquidation of assets during one of the worst financial markets in history.

264. As a proximate result of Defendants' violations of their fiduciary duties the limited partners have suffered emotional distress and suffered damages in an amount to be proven at trial.

**COUNT VI**  
**Aiding And Abetting Breach of Fiduciary Duty**  
**(Against TGHI, The Individual Tremont Defendants And**  
**The Controlling Defendants)**

265. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

266. TGHI, the Individual Tremont Defendants and the Controlling Defendants had actual knowledge of the General Partner's actions with respect to the Funds and with such knowledge each of them knew or were recklessly indifferent or willfully blind to the fiduciary breaches by the General Partner and those who controlled the General Partner.

267. Such Defendants and each of them substantially assisted in the fiduciary breaches by the General Partner.

268. Plaintiffs and Class Members have suffered damages proximately caused by such Defendants' aiding and abetting of the breaches of fiduciary duties by the General Partner in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating Plaintiffs as Lead Plaintiffs and certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs' counsel as Lead Counsel;

B. Awarding compensatory and punitive damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest and any enhanced damages thereon;

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

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38(a), Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

/s/ David Pastor

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