JUDGE SULLIVAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
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S.D. OF N.Y.

OMEGA OVERSEAS PARTNERS, LTD., Derivatively on Behalf of TETRAGON FINANCIAL GROUP LIMITED, Plaintiff, vs. READE GRIFFITH, PATRICK DEAR, BYRON KNIEF, GREVILLE V.B. WARD, RUPERT DOREY, DAVID JEFFREYS, JEFF HERLYN, MICHAEL ROSENBERG, DAVID WISHNOW, TETRAGON FINANCIAL MANAGEMENT LP, TETRAGON FINANCIAL MANAGEMENT GP LLC, POLYGON CREDIT HOLDINGS LTD. and POLYGON CREDIT HOLDINGS II LTD., Defendants, – and – TETRAGON FINANCIAL GROUP LIMITED, a Guernsey corporation, Nominal Defendant.	Civil Action No. <u>DERIVATIVE ACTION</u> VERIFIED DERIVATIVE COMPLAINT FOR VIOLATIONS OF THE INVESTMENT ADVISERS ACT OF 1940, BREACH OF FIDUCIARY DUTY AND UNJUST ENRICHMENT <u>DEMAND FOR JURY TRIAL</u>

Plaintiff Omega Overseas Partners, Ltd. ("Omega Partners" or "Plaintiff") brings this action derivatively on behalf of Tetragon Financial Group, Ltd. ("TFG" or the "Company"), and alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of company filings by TFG and media reports about the Company. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

INTRODUCTION

1. This is a shareholder derivative action brought on behalf of TFG against TFG's officers and directors, its investment manager, Tetragon Financial Management LP ("TFG Investment Manager"), and their affiliates ("Defendants").

2. Plaintiff Omega Partners is, and has been since September 2009, a TFG shareholder. Omega Partners owns more than five million TFG shares. Omega Advisors, Inc. ("Omega Advisors"), a New York-based investment advisory company with approximately $8 billion in assets under management, and its clients, including, but not limited to, Omega Partners, is TFG's largest outside shareholder.

3. Omega Partners is compelled to file this action to put an end to an ongoing pattern of misconduct whereby TFG's officers and directors have engaged and continue to engage in self-dealing in contravention of applicable law and the duties owed by them to TFG and its public shareholders. Over the last five years, Defendants have subjected TFG shareholders to a persistent pattern of exploitation, earning TFG management notoriety as the "***poster child for what's wrong***

with the hedge fund industry."[1] Defendants have repeatedly subverted the rights of TFG and its shareholders by, among other things, entering into a host of self-dealing transactions injurious to TFG. As a result of years of abusive management practices, TFG shares trade well below their net asset value ("NAV").

4. On October 29, 2012, Defendants announced a two-part scheme to divert additional TFG assets to TFG's co-founders and directors, Patrick Dear ("Dear") and Reade Griffith ("Griffith") (collectively, the "Principals"), to the detriment of the Company and its shareholders. Defendants' latest misconduct involves the use of 11.7 million shares of non-voting TFG stock to purchase Polygon Management LP ("Polygon"), an investment firm wholly owned and controlled by Dear and Griffith (the "Polygon Transaction"). The value of the Company's stock transferred to Polygon, and thereby the Principals, was $178 million based on the adjusted NAV of the Company's shares prior to the Polygon Transaction, while the value of the assets TFG received in return based on ***Defendants' own estimates*** was less than one third that amount, or $55 million.[2]

5. Concurrent with the Polygon Transaction, Defendants also commenced a repurchase of the Company's non-voting shares (the "Share Repurchase"), using $150 million of TFG's cash, but structured the Share Repurchase to take place ***after*** the Polygon Transaction was agreed to and the 11.7 million shares of TFG stock had been assigned to the Principals. The structure and timing of these transactions underscores the fact that they were designed by Defendants to benefit the Principals to the detriment of TFG and its shareholders. By sequencing the Polygon Transaction to

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[1] Anita Raghavan, *Bad Boy of Hedge Funds*, FORBES, Sept. 1, 2009, http://www.forbes.com/2009/09/01/polygon-reade-griffith-markets-equities-streetwise.html.

[2] Based on the increase in TFG's NAV per share attributed by Defendants to the Polygon Transaction ($0.48), multiplied by the number of outstanding TFG shares (113.6 million shares).

take place immediately ***before*** the announcement of the Share Repurchase, Defendants ensured that TFG issued (and the Principals received) a much larger number of TFG shares for Polygon, bestowing a substantial personal benefit upon the Principals at the expense of TFG. Moreover, by financing the Polygon Transaction with stock instead of cash (despite TFG's then-existing $353 million cash reserve), Defendants ensured that: (i) the Principals would pocket additional immediate benefits from the increase in TFG's share price as a result of the Share Repurchase; and (ii) the Company would be forced to expend far more than necessary to complete the Polygon Transaction. In this way, Defendants unlawfully diverted tens of millions of dollars worth of TFG assets to the Principals.[3]

6. Defendants have employed and continue to employ a complex web of interrelated Polygon and Tetragon entities to obscure their irremediable conflicts of interest and to funnel TFG assets to Defendants and their associates. Indeed, the TFG Board of Directors (the "Board") has repeatedly failed to live up to its fiduciary obligations and has violated its own independence requirements. The Polygon Transaction and Share Repurchase were approved by a deeply conflicted Board, at least two-thirds of which had extensive ties to Polygon entities, including half of the "committee" purportedly established to provide an "independent" review of the transaction. The remaining two directors also failed to meaningfully discharge their fiduciary obligations, as they

[3] TFG's stock closed at $8.43 per share on the last day of trading before the announcement of the Share Repurchase, or $8.31 when a $0.12 ex-dividend set the previous day is accounted for. That translated into a market value of $97 million for Polygon, based on TFG's purchase price of 11.7 million TFG shares. Soon after the market had digested the impact of the Share Repurchase, TFG's stock traded at as much as $9.62 per share. Thus, had Defendants waited until after the Share Repurchase was announced, TFG would have had to issue only 10.1 million TFG shares to acquire Polygon for equal value, or 1.6 million shares less than Defendants caused TFG to pay. And, at an NAV of $14.29 per share, which more accurately reflects the true value of TFG shares at the time of the Polygon transaction, Defendants would have had to issue only 6.8 million TFG shares to acquire Polygon, or approximately ***half*** the shares actually transferred to the Principals.

function as "paper directors" who receive directorship fees for sitting on the boards of dozens of businesses and rubber-stamp management proposals as a matter of course. For example, David Jeffreys ("Jeffreys") alone concurrently sat on the boards of ***more than three hundred*** businesses. Even if Jeffreys never slept, never ate, and worked every single business day of the year, he had less than one day per year to dedicate to each of the businesses he claimed to direct as a board member. Rupert Dorey ("Dorey"), meanwhile, has been described as someone who "made his living sitting on the boards of investment companies" and served as "little more than [management's] employee."[4] The status of Dorey and Jeffreys as professional directors who make their livings acquiescing to the designs of management helps explain why they failed to provide independent review of the Principals' self-dealing here.

7. Plaintiff seeks to void the Company's contract with the TFG Investment Manager (the "Investment Advisor Agreement") pursuant to the Investment Advisers Act of 1940 and to obtain restitution of the fees and other benefits paid under the Investment Advisor Agreement. Plaintiff also seeks damages, equitable and injunctive relief, and to remedy Defendants' ongoing breaches of fiduciary duties of good faith, loyalty and independence.

8. Plaintiff is forced to file this action because, without Court intervention, it will be impossible for TFG to: (i) stop Defendants' ongoing self-dealing; (ii) rescind the Polygon Transaction; (iii) void the Investment Advisor Agreement between TFG and the TFG Investment Manager; (iv) recoup the ill-gotten gains paid to Defendants; and/or (v) ensure that the Company's assets do not continue to be diverted to the benefit of Defendants to the detriment of TFG and its shareholders.

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[4] Simon Lack, The Hedge Fund Mirage: The Illusion of Big Money and Why It's Too Good to Be True (2012).

JURISDICTION AND VENUE

9. The claims asserted herein arise under the Investment Advisers Act of 1940 (the "Advisers Act"), 15 U.S.C. §80b-1, *et seq*., and common law for breaches of fiduciary duties and unjust enrichment. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331, as well as 15 U.S.C. §80b-14. This Court also has supplemental jurisdiction over the remaining claims asserted herein pursuant to 28 U.S.C. §1367.

10. Defendants purposely availed themselves of the privilege of conducting activities within this District and therefore invoked the benefits and protection of its laws and its courts. TFG conducts business from its New York office at 399 Park Avenue. Each defendant has minimum contacts with the State of New York and this District. Certain of the Defendants are headquartered here, are citizens of New York, reside here or have frequently traveled here on TFG's business and otherwise.

11. This action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

12. Venue is proper pursuant to 28 U.S.C. §§1391 and 1401. Many of the acts and practices complained of herein occurred in substantial part in this District. TFG conducts business in this District. TFG solicited investors in New York, including plaintiff, and other parts of the country from its office in this District.

PARTIES AND OTHER ENTITIES

13. Plaintiff Omega Partners is and has been a shareholder of TFG since September 2009, and, as of the date of filing, holds more than 12 million TFG shares.

14. Nominal party TFG is a Guernsey closed-end investment company headquartered in New York City. TFG invests primarily through long-term funding vehicles in selected securities asset classes. Its main investments are in equity tranches of collateralized loan obligations ("CLOs")

– a structured credit vehicle that uses pools of leveraged loans as collateral to issue debt securities with varying degrees of risk. TFG invests through a "master-feeder" structure whereby TFG's only direct investment is in shares of Tetragon Financial Group Master Fund Limited ("TFG Master Fund"), also incorporated in Guernsey.[5]

15. Defendant Griffith is a director of TFG and the TFG Master Fund. Griffith co-founded the TFG Investment Manager in 2005 and serves as a principal thereof. Griffith is on the investment committee of the TFG Investment Manager responsible for making investment decisions for TFG. In these roles, Griffith both designed and approved the Polygon Transaction and Share Repurchase, and served as its primary beneficiary. Thus, Griffith is personally responsible for the manipulative conduct alleged herein and the decision to enter into the Polygon Transaction and Share Repurchase. Along with defendant Dear and former TFG director and Company co-founder Alexander Jackson ("Jackson"), Griffith owns the voting shares of TFG through the holding company Polygon Credit Holdings II Limited. Additionally, in 2002 Griffith was involved in co-founding Polygon and its affiliates. Up until the Polygon Transaction, Griffith, together with defendant Dear, owned and controlled Polygon and affiliated investment managers and received a share of the proceeds generated by these entities. As a principal of the TFG Investment Manager and a member of its Board, Griffith breached his fiduciary duties to TFG and violated the Advisers Act by failing to safeguard TFG's assets and engaging in a scheme to wrongfully divert TFG assets to entities controlled by himself and other Company insiders.

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[5] TFG has an authorized share capital of $1,000,000 divided into 10 voting shares and 999,999,990 non-voting shares, at par value of $0.001 each. The 10 voting shares are owned by Polygon Credit Holdings II Limited, which in turn is owned and controlled by Dear, Griffith and Alexander Jackson.

16. Defendant Dear is a director of TFG and the TFG Master Fund. Dear co-founded the TFG Investment Manager in 2005 and serves as a principal thereof. Dear is on the investment committee of the TFG Investment Manager responsible for making investment decisions for TFG. In these roles, Dear both designed and approved the Polygon Transaction and Share Repurchase, and served as its primary beneficiary. Thus, Dear is personally responsible for the manipulative conduct alleged herein and the decision to enter into the Polygon Transaction and Share Repurchase. Along with defendant Griffith and Jackson, Dear owns the voting shares of TFG through the holding company Polygon Credit Holdings II Limited. Dear was also involved in co-founding Polygon and its affiliates. Up until the Polygon Transaction, Dear, together with defendant Griffith, owned and controlled Polygon and its affiliated investment managers and received a share of the proceeds generated by these entities. As a principal of the TFG Investment Manager and a member of the Board, Dear breached his fiduciary duties to TFG and violated the Advisers Act by failing to safeguard TFG's assets and engaging in a scheme to wrongfully divert TFG assets to entities controlled by himself and other Company insiders.

17. Defendant Greville V.B. Ward ("Ward") has served as an "Independent" Non-Executive Director of TFG and the TFG Master Fund since April 2010. Ward is a resident of New York and resides in this District. As a director, Ward regularly participates in the review and performance of TFG's investments and generally supervises the conduct of TFG's affairs. Ward personally approved the decision to enter into the Polygon Transaction and Share Repurchase. Ward has longstanding personal and financial entanglements with defendant Dear, which preclude his independence. Although Ward purported to serve as an "Independent Director" of TFG, Ward and his wife, Christine Ward, are long-time business partners with Dear and Dear's wife, Janie Dear. For example, Dear, Ward and their spouses co-owned the Soup Opera, a London-based restaurant,

and co-founded Ward Dear Ltd., a U.K. private limited company. Furthermore, until at least mid-2011, Ward served on the boards of numerous Polygon entities controlled by defendants Dear and Griffith, including at various times Polygon Credit Holdings Limited, Polygon Global Opportunities Fund, Polygon Global Opportunities Fund LP, Polygon Global Opportunities Master Fund, Polygon General Partners Limited (the general partner of Polygon Global Opportunities Fund LP) and Polygon Debt Holdings Limited and Kings Road Investments Limited (both portfolio holding companies of the Polygon Master Fund), for which Ward received hundreds of thousands of dollars in compensation. These entities are directly affiliated with Polygon, TFG, the TFG Master Fund, and the TFG Investment Manager, as each are ultimately owned and controlled by the Principals. Ward has compromised his so-called "independence" by serving as an outside business partner with the Company's Principals and on the boards of companies affiliated with various Polygon and TFG entities. As a member of the Board, Ward breached his fiduciary duties to TFG by failing to safeguard TFG's assets and participating in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated.

18. Defendant Byron Knief ("Knief") has served as an "Independent" Non-Executive Director of TFG and the TFG Master Fund since July 2005. Knief is a resident of New York and resides in this District. As a director, Knief regularly participates in the review and performance of TFG's investments and generally supervises the conduct of TFG's affairs. Knief personally approved the decision to enter into the Polygon Transaction and Share Repurchase. Although Knief purported to serve as an "Independent Director" of TFG, until at least mid-2011, Knief served on the boards of numerous Polygon entities controlled by Dear and Griffith, including at various times Polygon Global Opportunities Fund, Polygon Global Opportunities Fund LP, Polygon Global Opportunities Master Fund, Polygon General Partners Limited, Polygon Debt Holdings Limited and

Kings Road Investments Limited, for which Knief received hundreds of thousands of dollars in compensation. These entities are directly affiliated with Polygon, TFG, the TFG Master Fund, and the TFG Investment Manager, as each are ultimately owned and controlled by the Principals. Knief has compromised his so-called "independence" by serving on the boards of companies affiliated with various Polygon and TFG entities. As a member of the Board, Knief breached his fiduciary duties to TFG by failing to safeguard TFG's assets and participating in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated.

19. Defendant Jeffreys has served as an "Independent" Non-Executive Director of TFG and TFG Master Fund since July 2005. As a director, Jeffreys regularly participates in the review and performance of TFG's investments and generally supervises the conduct of TFG's affairs. Jeffreys personally approved the decision to enter into the Polygon Transaction and Share Repurchase. Jeffreys is a professional director who received substantial fees for concurrently serving on the boards of hundreds of entities, which has prevented him from providing meaningful management oversight and compromised his ability to discharge his fiduciary responsibilities. As a member of the Board, Jeffreys breached his fiduciary duties to TFG by failing to safeguard TFG's assets and participating in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated.

20. Defendant Dorey has served as an "Independent" Non-Executive Director of TFG and TFG Master Fund since July 2005. As a director, Dorey regularly participates in the review and performance of TFG's investments and generally supervises the conduct of TFG's affairs. Dorey personally approved the decision to enter into the Polygon Transaction and Share Repurchase. Dorey is a professional director who received substantial fees for concurrently serving on the boards of dozens of entities, which has prevented him from providing meaningful management oversight

and compromised his ability to discharge his fiduciary responsibilities. Dorey has been described as someone who "made his living sitting on the boards of investment companies" and served as "little more than [management's] employee."[6] As a member of the Board, Dorey breached his fiduciary duties to TFG by failing to safeguard TFG's assets and participating in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated.

21. Defendant Jeff Herlyn ("Herlyn") joined the TFG Investment Manager as a principal upon its formation in May 2005. Herlyn is a resident of Connecticut. Herlyn is on the investment committee of the TFG Investment Manager, which is responsible for making investment decisions for TFG. Thus, Herlyn is personally responsible for the manipulative design and implementation of the Polygon Transaction and Share Repurchase. As a principal of the TFG Investment Manager, Herlyn breached his fiduciary duties to TFG and violated the Advisers Act by participating in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated.

22. Defendant Michael Rosenberg ("Rosenberg") joined the TFG Investment Manager as a principal upon its formation in May 2005. Rosenberg is a resident of New Jersey. Rosenberg is on the investment committee of the TFG Investment Manager, which is responsible for making investment decisions for TFG. Thus, Rosenberg is personally responsible for the manipulative design and implementation of the Polygon Transaction and Share Repurchase. As a principal of the TFG Investment Manager, Rosenberg breached his fiduciary duties to TFG and violated the Advisers Act by participating in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated.

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[6] Simon Lack, The Hedge Fund Mirage: The Illusion of Big Money and Why It's Too Good to Be True (2012).

23. Defendant David Wishnow ("Wishnow") served as a director of TFG until December 2008 and joined the TFG Investment Manager as a principal upon its formation in May 2005. Wishnow is a resident of New Jersey. Wishnow is on the investment committee of the TFG Investment Manager, which is responsible for making investment decisions for TFG. Thus, Wishnow is personally responsible for the manipulative design and implementation of the Polygon Transaction and Share Repurchase. As a principal of the TFG Investment Manager, Wishnow breached his fiduciary duties to TFG and violated the Advisers Act by participating in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated.

24. Defendants Dear, Dorey, Griffith, Herlyn, Jeffreys, Knief, Rosenberg, Ward and Wishnow are referred to herein as the "Individual Defendants."

25. Defendant TFG Investment Manager was appointed the investment manager of TFG and TFG Master Fund by defendants Knief, Dorey, Jeffreys and former TFG director Lee Olesky ("Olesky") pursuant to the 2007 Investment Advisor Agreement. The TFG Investment Manager is headquartered in New York and is registered as an investment adviser with the SEC. The TFG Investment Manager engaged in the manipulative design and implementation of the Polygon Transaction and Share Repurchase in violation of the Advisers Act. In addition, the TFG Investment Manager participated in the violations of law alleged herein.

26. Defendant Tetragon Financial Management GP LLC, a Delaware limited liability company with offices in New York, is the general partner of the TFG Investment Manager. As such, Tetragon Financial Management GP LLC engaged in the manipulative design and implementation of the Polygon Transaction and Share Repurchase in violation of the Advisers Act. In addition, Tetragon Financial Management GP LLC participated in the violations of law alleged herein.

27. Defendant Polygon Credit Holdings Ltd., a Cayman Islands holding company with offices in New York, owns and controls Tetragon Financial Management GP LLC, the general partner of the TFG Investment Manager. As such, Polygon Credit Holdings Ltd. engaged in the manipulative design and implementation of the Polygon Transaction and Share Repurchase in violation of the Advisers Act. In addition, Polygon Credit Holdings Ltd. participated the violations of law alleged herein.

28. Defendant Polygon Credit Holdings II Ltd., a Cayman Islands holding company, holds the voting shares of TFG and the TFG Master Fund. The shareholders of Polygon Credit Holdings II Ltd. are Dear, Griffith and Jackson. As the Company's sole voting shareholder, Polygon Credit Holdings II Ltd. controls TFG, the TFG Master Fund and the Board. Polygon Credit Holdings II Ltd. breached its fiduciary duties to TFG by failing to safeguard TFG's assets and engaging in a scheme to wrongfully divert TFG assets to Company insiders and entities with which they are affiliated. In addition, Polygon Credit Holdings II Ltd. participated in the violations of law alleged herein.

29. Polygon Management LP, or "Polygon," is an SEC-registered investment adviser that shares the New York offices of TFG and the TFG Investment Manager.[7] It consists of three main asset management businesses: (i) hedge fund management; (ii) a 13% stake in GreenOak Real Estate ("GORE"), a real-estate-focused investment advisory firm; and (iii) a 25% stake in LCM Asset Management LLC ("LCM"), a CLO-focused investment advisory firm. Polygon has delegated many of its responsibilities to two entities owned and controlled by the Principals: Polygon Global Partners LP and Polygon Global Partners LLP (collectively with Polygon, "Polygon Investment

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[7] Polygon Management LP was previously named Polygon Investment Limited.

Management").[8] Through these entities, Polygon also provides TFG with various infrastructure and operational services pursuant to a services contract which was most recently renewed on or about April 13, 2012. Polygon was acquired by the Company via the Polygon Transaction on or about October 29, 2012. The principals of Polygon are Dear and Griffith. Polygon participated in the violations of law alleged herein.

30. Polygon Global Partners LP, a Delaware limited partnership, acted as the investment manager for Polygon and its affiliates and as a service provider for TFG and the TFG Master Fund, together with Polygon Global Partners LLP. Polygon Global Partners LP is headquartered in New York and shares the New York offices of TFG and the TFG Investment Manager. Dear and Griffith served as principals for Polygon Global Partners LP. Polygon Global Partners LP participated in the violations of law alleged herein.

31. Polygon Global Partners LLP, a U.K. limited liability partnership with offices in New York, acted as the investment manager for Polygon and its affiliates and as a service provider for TFG and the TFG Master Fund, together with Polygon Global Partners LP. Dear and Griffith served as principals for Polygon Global Partners LLP. Polygon Global Partners LLP participated in the violations of law alleged herein.

32. Perella Weinberg Partners LP, a Delaware limited partnership, and Perella Weinberg Partners UK LLP, a U.K. limited liability partnership (collectively, "Perella Weinberg"), issued the so-called "fairness" opinion used by the Principals and the TFG Board to approve the Polygon Transaction. Perella Weinberg is headquartered in New York. As demonstrated herein, the Polygon Transaction was not "fair" to nor was it in the best interests of TFG and, in fact, has harmed, and

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[8] Previously, Polygon Global Partners LP was named Polygon Investment Partners LP, and Polygon Global Partners LLP was named Polygon Investment Partners LLP.

continues to harm, the Company. Perella Weinberg participated in the violations of law alleged herein via the formulation and endorsement of the Polygon Transaction.

THE FIDUCIARY DUTIES OF THE TFG INVESTMENT MANAGER AND ITS OFFICERS UNDER THE ADVISERS ACT

33. By reason of their positions as investment advisers to the Company, the TFG Investment Manager and its principals stood in a fiduciary relationship with TFG and owe the Company a duty of highest loyalty, good faith and fair dealing.

34. The Advisers Act requires every investment adviser to act in good faith, in the best interests of clients, to fully and fairly disclose all material facts to clients, to eliminate or expose any conflicts of interest which may cause the investment adviser to render advice which was not disinterested, and to affirmatively employ reasonable care to avoid misleading clients. In accordance with the Advisers Act, the TFG Investment Manager and its officers (Dear, Griffith, Herlyn, Rosenberg and Wishnow) are obligated to refrain from:

- employing any device, scheme, or artifice to defraud any client or prospective client;
- engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client; and/or
- engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

35. The TFG Investment Manager and its officers, separately and together, in connection with the Polygon Transaction and Share Repurchase, violated the duties owed to TFG and its shareholders under the Advisers Act in that they designed and implemented the purchase of Polygon on terms injurious to TFG and engaged in an exploitative share repurchase program to the detriment of the Company – all for the primary purpose of enriching the Principals and securing personal benefits for themselves and their associates.

THE FIDUCIARY DUTIES OF TFG'S DIRECTORS AND OFFICERS

36. By reason of their positions with the Company as officers and/or directors, the Individual Defendants are in a fiduciary relationship with TFG and owe the Company a duty of highest loyalty, good faith and fair dealing.

37. The claims are brought under applicable law which requires every corporate director and officer to act in good faith and in the best interests of the corporation and its shareholders. In all dealings with a company and with its assets, the officers and the directors owe the company a duty to:

- act in good faith, exercise their powers for proper purpose and keep their company's confidence;
- ensure that their own personal interests or duties to another principal do not conflict with the interests of the company and not to use for personal benefit property or opportunities belonging to the company;
- exercise their powers within the authority conferred by the company's constitution and to ensure it is operated lawfully; and
- act honestly, truthfully and in good faith in the best interests of the company as a whole.

38. In accordance with their duties of loyalty and good faith, the Individual Defendants, as directors and/or officers of TFG, are obligated to refrain from:

- participating in any transaction where the directors' or officers' loyalties are divided;
- participating in any transaction where the directors or officers receive or are entitled to receive a personal financial benefit not equally shared by the shareholders of the Company; and/or
- unjustly enriching themselves at the expense or to the detriment of the Company.

39. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Polygon Transaction and Share Repurchase, violated their fiduciary duties owed to TFG and its shareholders, as they failed to negotiate the acquisition of Polygon on fair and

reasonable commercial terms or in a manner reflective of an arm's-length transaction, and furthermore have engaged in an exploitative share repurchase program to the detriment of the Company – all for the primary purpose of enriching the Principals and/or securing personal benefits for themselves and their associates.

DEFENDANTS' MISCONDUCT

Defendants Have Utilized and Continue to Utilize a Complex Web of Interrelated Entities to Mask Insider Conflicts and Improprieties

40. TFG invests substantially all of its capital through the TFG Master Fund, an investment vehicle registered in Guernsey and 100% owned by TFG. TFG and the TFG Master Fund share identical boards of directors, which currently consist of defendants Dear, Griffith, Dorey, Jeffreys, Knief and Ward.[9] Defendants Dear, Griffith, Herlyn, Rosenberg and Wishnow serve as the managers of TFG. Polygon Credit Holdings II Ltd., a Cayman Islands holding company, currently holds the voting shares of TFG and the TFG Master Fund, the sole shareholders of which are Dear, Griffith and Jackson.

41. Investments in the TFG Master Fund are overseen by the TFG Investment Manager. The TFG Investment Manager is a limited liability partnership formed under the laws of Delaware and registered as an investment adviser under the Advisers Act. The TFG Investment Manager is controlled by Tetragon Financial Management GP LLC, a Delaware limited liability company, which in turn is owned by Polygon Credit Holdings Ltd., a holding company formed for the benefit of Dear, Griffith and Jackson under the laws of the Cayman Islands. The Investment Committee of the TFG Investment Manager consists of defendants Dear, Griffith, Herlyn, Rosenberg and

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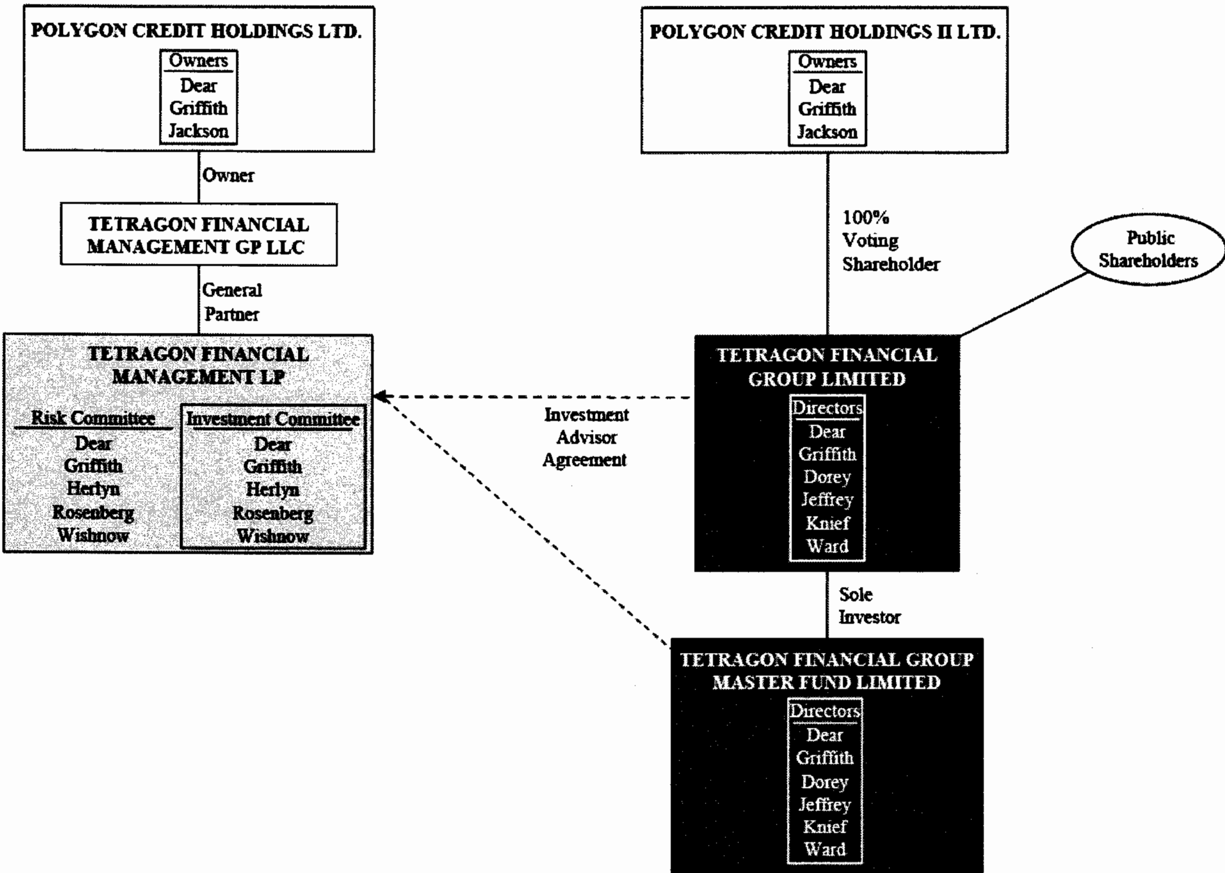
[9] Jackson served on the Board until his ouster in January 2011. Likewise, Olesky served as a director from July 2005 to April 2010.

Wishnow, and is responsible for the investment management of TFG's portfolio and its business. The Investment Committee currently sets forth the investment strategy and approves each significant investment by the TFG Master Fund. The Risk Committee of the TFG Investment Manager is currently composed of the same members as the Investment Committee. The Risk Committee is responsible for the risk management of the portfolio and the business and performs oversight and risk monitoring. The organizational structure of TFG and the TFG Investment Manager is set forth in the chart below:

Tetragon Financial Group Ltd. Organizational Chart

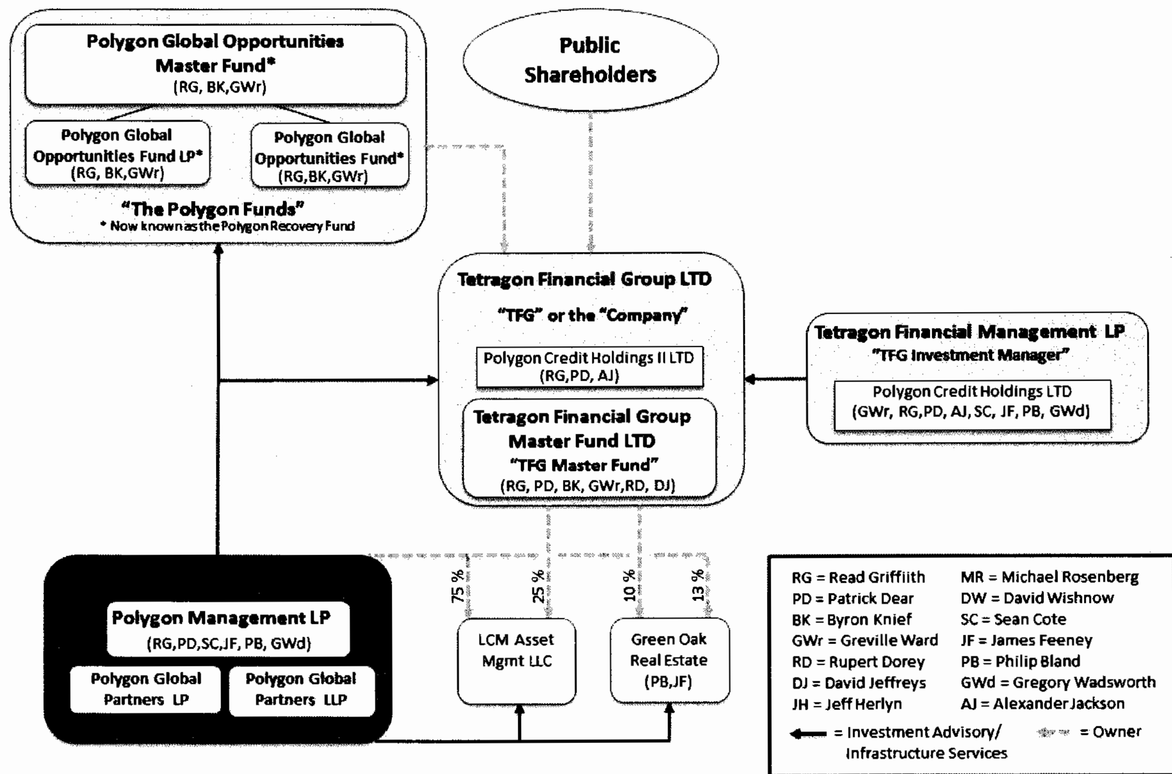


42. In 2002, prior to establishing the various Tetragon fund and management entities, Dear, Griffith and Jackson established Polygon, an investment advisory firm registered with the SEC

as a limited liability partnership under the laws of the Cayman Islands with offices in New York and London. Polygon was owned, operated and controlled by Dear, Griffith and Jackson. In May 2003, Polygon launched its flagship hedge fund, the Polygon Global Opportunities Master Fund, which was supplied by two feeder funds, the Polygon Global Opportunities Fund LP and the Polygon Global Opportunities Fund (collectively, the "Polygon Funds"). The boards of directors for all of the Polygon Funds were identical, and consisted of Griffith, Knief, Ward, Andrew Farquar and Luke Pontifell, with Jackson, Griffith and Dear serving as the funds' principals. Approximately half of the Polygon Funds' assets were invested in debt, which were principally managed by Jackson, and the other half in equities, which were principally managed by Griffith. Dear primarily ran the operational aspects of the Polygon Funds. The Polygon Master Fund held, until its conversion into the Polygon Recovery Fund as described below, the single largest interest in TFG shares. Dear, Griffith and Jackson, meanwhile, spun the CLO business off from Polygon to create TFG. Polygon Investment Management served as the investment advisor to the Polygon Funds. Dear and Griffith were the ultimate owners of Polygon Investment Management, and thus entitled to all, or nearly all, of the profits generated therefrom.

43. The web of interrelated entities with overlapping boards, ownership and management was designed by defendants Dear and Griffith to obscure the full extent of the manipulative and self-interested transactions involving TFG, Polygon and related affiliates, as detailed in the chart below:

The Web of Polygon/Tetragon Entities
Prior to the Polygon Transaction



This byzantine web is being used by Defendants to divert Company assets towards their own ends, which indeed has occurred and continues to occur as alleged herein. At the time of the Polygon Transaction, TFG and Polygon ***shared***: (i) the ***same*** principals (Dear and Griffith); (ii) the ***same*** general counsel (Sean Cote); (iii) the ***same*** chief compliance officer (James Feeney); (iv) the ***same*** chief financial officer (Philip Bland); and (v) the ***same*** director of business development (Gregory Wadsworth). TFG and Polygon also list the exact ***same*** office locations on SEC filings.

44. Furthermore, TFG and Polygon share an intertwined genesis and history. Two-thirds of the Board (Dear, Griffith, Knief and Ward) have deep ties with Polygon, while half of the purportedly "independent" members of the Board (Knief and Ward) have recently served on the boards of various Polygon entities. TFG and Polygon have engaged in numerous joint business

ventures and investments, always on terms preferential to the Principals. The Polygon Transaction and Share Repurchase further demonstrate that the purpose of this complex web is to facilitate efforts to divert assets away from TFG and to the Principals and confirms the fact that deep conflicts permeate the Board and irremediably taint the Polygon Transaction and Share Repurchase.

In Contravention of TFG's Articles of Incorporation, the TFG Board Is Not, and Has Never Been, Independent

45. TFG's Articles of Incorporation ("TFG Articles") assure TFG shareholders and regulators that there will be seven members on the Board and that a majority of those directors will be "independent." The Board has the "general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the Company and to prevent and detect fraud and other irregularities." The Board also has the authority and responsibility to declare dividend payments and to prepare the Directors' Report and the Company's financial statements in accordance with applicable law and regulations.

46. The TFG Articles define "Independent Director" as meaning a "Director who is determined by the Directors to satisfy in all material respects the standards for an 'independent' director set forth in United Kingdom's Financial Reporting Council's Combined Code of Corporate Governance, as from time to time in effect." Section B.1.1 of the UK Combined Code of Corporate Governance (2012) provides that independence should be judged by any "relationships or circumstances" which either "***are likely to affect***" or "***could appear to affect, the director's judgment***," in addition to the following indicia of non-independence:

- if the director has been an employee of the company or group within the last five years;
- if the director has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;

- if the director has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or performance-related pay scheme, or is a member of the company's pension scheme;
- if the director has close family ties with any of the company's advisers, directors or senior employees;
- if the director has cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- if the director represents a significant shareholder; or
- if the director has served on the board for more than nine years from the date of their first election.

47. At the time of the Polygon Transaction, the Board consisted of defendants Dear, Dorey, Griffith, Jeffreys, Knief and Ward.[10] TFG stated that the acquisition of Polygon was approved and authorized by the Board following consideration by a committee of "four independent directors with ***no*** financial or beneficial interest in Polygon or the transaction" (the "Independent Committee"), specifically identifying Dorey, Jeffreys, Knief and Ward as members of the Independent Committee. ***This representation was false***. In truth, at least half of the purportedly "independent" members of the Board were not, in fact, independent.

48. The Independent Committee was compromised due to its multiple ties to and significant material and business relationships with Polygon and its affiliates. For example, Defendants falsely represented that Ward was "independent." In truth, he was a longtime business partner of Dear, one of the primary beneficiaries of the Polygon Transaction. The intermingled business dealings of Ward and Dear date back more than 15 years, when the two partners, along with

[10] In April 2010, Olesky stepped down from the Board and was replaced by Ward. On January 24, 2011, it was announced that Jackson had been ousted from the TFG Board (although he remains a principal of the TFG Investment Manager), and the Board has now been reduced from seven members to six.

their spouses, opened a restaurant in London known as the Soup Opera. The deep personal and professional relationship between Dear and Ward also includes the founding of Ward Dear Ltd., a private limited company, by the two defendants which was used to coordinate their multiple business dealings. In addition, Ward was a board member of and had a material business relationship with numerous Polygon entities, including Polygon Global Opportunities Fund, Polygon Global Opportunities Fund LP, Polygon Global Opportunities Master Fund, Polygon General Partners Limited, Polygon Debt Holdings Limited and Kings Road Investments Limited – all entities created by and for the benefit of the Principals. Ward received hundreds of thousands of dollars in compensation for serving on the boards of these entities. Indeed, Ward only relinquished his directorship over the Polygon Funds in 2011 after they were forced into liquidation and replaced by the Polygon Recovery Fund. Furthermore, prior to his involvement with the Polygon Funds, Ward served 19 months as a director with Polygon Credit Holdings Limited, a holding company which owns the TFG Investment Manager and which was formed for the benefit of the Principals. Ward's sole duty while serving on the board of Polygon Credit Holdings Limited was to appoint Griffith as its managing director, a position which has allowed Griffith to reap millions of dollars in management and performance fees through the TFG Investment Manager.

49. Defendants falsely represented that Knief was "independent." In truth, until recently he was a board member of and had a material business relationship with numerous Polygon entities, including Polygon Global Opportunities Fund, Polygon Global Opportunities Fund LP, Polygon Global Opportunities Master Fund, Polygon General Partners Limited, Polygon Debt Holdings Limited and Kings Road Investments Limited – all entities created by and for the benefit of the Principals. Knief received hundreds of thousands of dollars in compensation for serving on the

boards of these entities. Like Ward, Knief only relinquished his directorship over the Polygon Funds in 2011 after these funds were forced into liquidation and replaced by the Polygon Recovery Fund.

50. Despite its representations to the contrary, the Board failed to secure even the semblance of independence in approving a badly conflicted transaction, failing to live up to its obligation to maintain an independent Board under the TFG Articles. The multiple Polygon entities on which Knief and Ward have sat as board members are directly affiliated with and have significant links and/or material business relationships with Polygon and the TFG Investment Manager. In addition, Ward has a history of longstanding personal and professional relationships with one of the primary beneficiaries of the Polygon Transaction, defendant Dear. Moreover, the extraordinary number of concurrent board affiliations of Jeffreys and Dorey and their practice of complete abdication to management precluded their ability to provide meaningful independent review of the Polygon Transaction. Consequently, the so-called "Independent Committee" did not remedy the self-dealing which infected the Polygon Transaction and Share Repurchase, approved in breach of Defendants' duties of independence, good faith and fair dealing.

51. The Principals are the majority owners of Polygon Credit Holdings II Ltd., which owns all ten voting shares in TFG, effectively eliminating any check on the Principals' powers outside Board oversight. As the primary beneficiaries of Polygon, the Principals stood to materially and substantially benefit from any transaction with Polygon. Further, given that the primary beneficiaries of any such transaction – Dear and Griffith – are the principals, directors, and co-founders of both TFG and Polygon, the clear and present danger existed that the Principals would design the Polygon Transaction and Share Repurchase to serve their own interests and not the Company's. Moreover, TFG's Articles provide that the Board ***cannot act*** without the affirmative vote of either Dear or Griffith. In addition, the fundamental interrelatedness of Polygon and TFG –

which shared the ***same***: (i) chief financial officer; (ii) chief compliance officer; (iii) general counsel; (iv) director of business development; and (v) office locations at the time of the Polygon Transaction – further heightened the danger of management self-dealing.

52. The Polygon Transaction and Share Repurchase is the latest in a long line of misconduct designed to enrich the Principals at the expense of TFG and rubber-stamped by the Board. These actions have had the effect of depressing shareholder value, eviscerating investor confidence, and rendering the Company's management "***a byword among investors for some of the hedge fund industry's worst excesses.***"[11] As noted by Scott Johnson, an investment adviser at Stream Capital Management, which has significant holdings in TFG, "***Shareholders really have no voice on Tetragon's board. Even the independent directors are there to benefit Polygon.***"[12]

Without Independent Board Oversight, Defendants' Pattern of Conduct Adverse to Shareholder Interests Has Severely Depressed TFG's Stock Price

53. TFG's non-independent Board has given the Principals free reign to engage in a host of conduct prejudicial to TFG and its public shareholders far outside the industry norm. Since the Company's 2007 initial public offering, Defendants have:

- approved a management fee agreement with the TFG Investment Manager which rewards Defendants even when TFG loses value;
- refused to distribute dividend payments commensurate with TFG's massive cash reserves, while at the same time paying Defendants hundreds of millions of dollars in unearned management fees;
- refused to interact with shareholders in an honest and transparent fashion; and

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[11] Sam Jones, *Polygon Offers Investors Exit Price*, FIN. TIMES, Mar. 6, 2011, http://www.ft.com/intl/cms/s/0/f3e0c880-4830-11e0-b323-00144feab49a.html#axzz2BwrQX6pj.

[12] Bill Alpert, *Review & Preview Follow-Up – A Return Visit to Earlier Stories: Compensation Issues Cloud Tetragon's Value*, BARRON'S, Nov. 29, 2010, at 22.

- repeatedly ignored shareholder remonstrations.

These actions have had a deleterious impact on the market value of TFG shares, as well as TFG's reported NAV per share. For example, on September 31, 2012, just prior to the Polygon Transaction, TFG's share price was only $8.54, a ***40% discount*** to TFG's reported NAV, which at the time Defendants asserted was $14.29 per share.

Defendants Implemented a Scheme to Award Their Closely Related Investment Manager Unjust Compensation

54. Under the leadership, guidance and approval of the conflicted, non-independent Board, TFG entered into an investment management agreement (the "Investment Advisor Agreement") with the TFG Investment Manager that was ***not*** arm's-length. Since signing the Investment Advisor Agreement, the TFG Investment Manager, with the active complicity of the TFG Board, has expropriated approximately ***$500 million***, in what has been described as "***the most flawed compensation system***" ever seen. As reported in *The Wall Street Journal* on February 16, 2010:

> It might be one of the greatest financial performances of 2010 – a fortune created even after losing staggering sums for investors.
>
> Meet the managers of Tetragon Financial Group. They are five Wall Street veterans who, by luck and design, enjoy what Tetragon investor Charles W. Griege Jr. critiqued as "the most flawed compensation system" he had ever seen.
>
> Tetragon is awarding its managers tens, and potentially hundreds, of millions of dollars. This comes despite massive losses in the fund, an offshoot of London-based hedge fund Polygon [Global] Partners LLP, which decorated its Park Avenue offices with embossed wallpaper featuring its name.
>
> * * *

> And Tetragon is pocketing one-quarter of the "gains" it registers each quarter, though it is really just earning back the $767 million in losses recognized over the past year, according to securities filings.[13]

55. The Investment Advisor Agreement allows the TFG Investment Manager to charge an "incentive (performance) fee" equal to 25% of the increase in the NAV of the Company during the calculation period above a nominal hurdle, without limitation and without regard to the interests of TFG. Because the Investment Advisor Agreement does not tie increases in the NAV to a high water mark, it allows the TFG Investment Manager to earn performance fees even when TFG loses value. In addition, the TFG Investment Manager is paid a percentage (1.5% per annum) of the aggregate NAV of the TFG Master Fund on a share-by-share basis.

56. As one reporter from *The Wall Street Journal* reported, the 25% performance fee was atypical in the industry and Defendants' practice is nothing short of "astounding":

> TFG continues to be a massive money-spinner for Polygon, generating $88 million in fees for it in the first nine months of 2010, the most recent available data.
>
> The revenue is notable because it underlines TFG's astounding fee structure, which resets each quarter without recognizing previous losses. If half of TFG's portfolio is wiped out in a year, Polygon still collects 25% on any subsequent quarterly gain above a nominal Libor hurdle.
>
> That's pretty much what happened between mid-2008 and mid-2009, when TFG's net asset value sank to $693 million from $1.3 billion. But by the fourth quarter of 2009, the leveraged loan market was on the mend, so Polygon wrote back up the value of the TFG portfolio and took a cool $29.8 million in performance fees. Further write ups in the first nine months of 2010 resulted in another $78 million in performance fees, though net asset value remained well below that 2008 figure.
>
> Loss-making funds typically must return to their high water mark before taking performance fees.

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[13] Dennis Berman, *Losing a Ton and Still Making a Killing*, Wall St. J. Online, Feb. 16, 2010, http://online.wsj.com/article/SB10001424052748703562404575067781519982788.html.

> Depending on your point of view, it is either a very clever way for Polygon to maximize TFG's fee potential, or a terrible way to treat shareholders who have had a very rough ride and are now seeing the vast bulk of recent improvements go into Polygon's pocket.
>
> To put it in perspective, shareholders got $41.9 million in dividends in the seven quarters to Sept. 30, 2010, while Polygon's affiliate that manages the fund, Tetragon Financial Management, took $130 million in fees.
>
> Nice work if you can get it.[14]

57. To award themselves performance fees equal to 25% of the increase in the NAV of the Company, Defendants took steps to manipulate TFG's NAV below its fair value. Defendants' markdowns were arbitrary – they were not tied to actual market forces, risks to TFG or the performance or expected performance of TFG's asset portfolio. Instead, the markdowns were designed to allow, and did allow, Defendants to generate millions of dollars in unearned performance fees by simply reversing these artificial markdowns, even when TFG and its shareholders lost value.

58. In TFG's 2008 Annual Report, Defendants announced that they had written down the NAV of the Company's CLO investments by hundreds of millions of dollars purportedly to "fair value" by manipulating downward the underlying assumptions in TFG's mark-to-model method (used for valuing equity tranches of a CLO) to purportedly reflect the market deterioration in TFG's CLO investment portfolio. Also in the fourth quarter of 2008, the TFG Investment Manager established an Accelerated Loss Reserve ("ALR" or "reserve") to further mark down the NAVs of TFG's investments in CLOs. Failing to provide investors with any specifics about how the amount of the ALR was to be determined, Defendants simply asserted that "[t]he ALR was determined by

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[14] Margot Patrick, *Polygon's Tetragon Still Mum on Jackson Ousting*, Wall St. J, THE SOURCE, Jan. 27, 2011, http://blogs.wsj.com/source/2011/01/27/polygons-tetragon-still-mum-on-jackson-ousting/.

applying a more pessimistic set of short-term assumptions to the CLO." Indeed, Defendants attempted to justify taking the additional ALR – on top of the alterations to the mark-to-model method – by simply claiming that "TFG deemed it appropriate to apply an even more pessimistic view in order to reflect further market deterioration in its fair value through an increased ALR."

59. Accordingly, in the fourth quarter of 2008, TFG booked $141 million in ALR, and, in the first quarter of 2009, the TFG Investment Manager forced TFG to book another $290 million in ALR to further mark down the NAV of TFG's CLO portfolio. By the end of fiscal 2009, Defendants had recorded an astounding ***$431 million*** markdown of TFG's investment portfolio. The ALR amount was so dramatic that it exceeded the entire $300 million of proceeds from TFG's initial offering and reduced TFG's NAV by approximately 30%.

60. The ALR was manipulated by Defendants as a mechanism to generate performance fees, as Defendants knew the ALR would allow the TFG Investment Manager to later boost its performance fees merely by booking reversals of the ALR. In effect, TFG's ALR was not part of the process of reporting TFG's investments at fair value. Instead, it was an artifice designed to mark down the NAV below fair value during the market downturn, and then to "earn" additional performance fees on reversals of the ALR that further increased the NAV during market upswings. TFG's application of the ALR is aptly characterized as "cookie jar" accounting. U.S. Generally Accepted Accounting Principals ("U.S. GAAP") prohibit the accrual of reserves for general or unspecified purposes and the accounting of potential losses that are not "probable" and "estima[ble]."[15] The SEC also prohibits the management of earnings, including the employment of unsubstantiated accruals to manage earnings.[16]

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[15] Financial Accounting Standard ("FAS") 5 states that an estimated loss contingency shall be accrued by a charge to net income only if both of the following conditions are met:

61. Defendants' true motivations in adjusting the model and creating the ALR were revealed when the TFG Investment Manager started claiming significant performance fees by simply marking up the NAV of the investments that previously had been written down. With the stroke of a pen, Defendants cashed in on their reversals of the ALR.

62. Since TFG's 2007 initial public offering ("IPO"), Defendants have paid themselves, via the TFG Investment Manager, approximately ***$500 million*** in purported performance fees. For example, Defendants extracted $41 million from TFG at the end of 2010, a time at which the NAV of the underlying investment portfolio was still $211 million ***less*** than TFG's NAV in the third quarter of 2008. Defendants continue to transfer tens of millions of dollars from TFG to themselves and, at the end of third quarter 2012, extracted yet another $20 million in performance fees as a result of reversing this artificial markdown.

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a. Information available prior to issuance of the financial statements indicates that it is ***probable*** that an asset had been impaired or a liability had been incurred at the date of the financial statements. ***It is implicit in this condition that it must be probable that one or more future events will occur confirming the fact of the loss.***

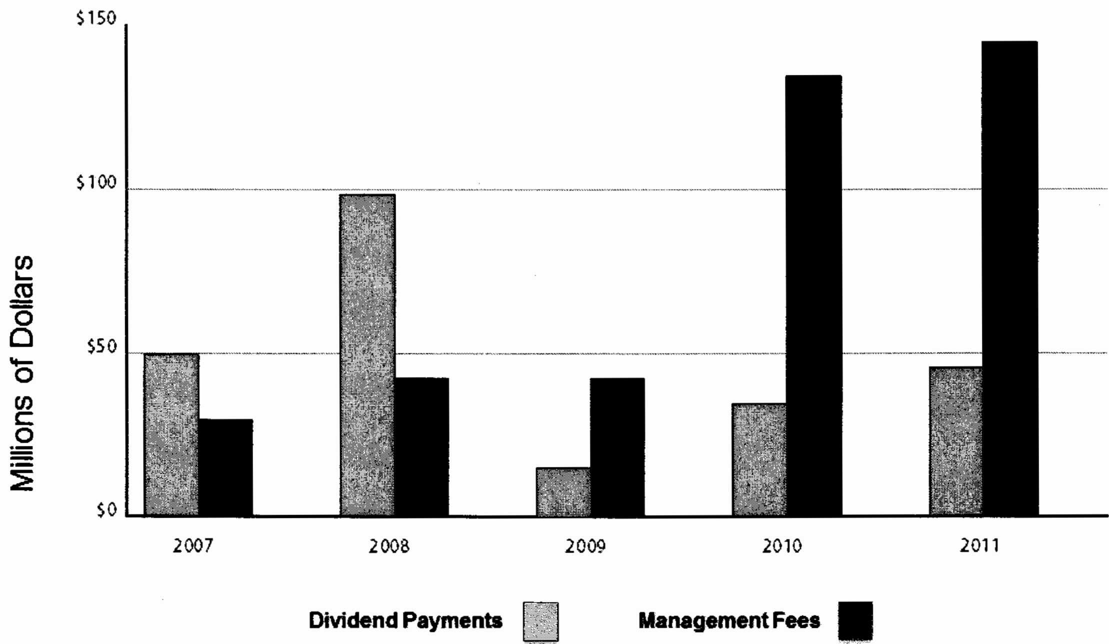
b. ***The amount of loss can be reasonably estimated.***

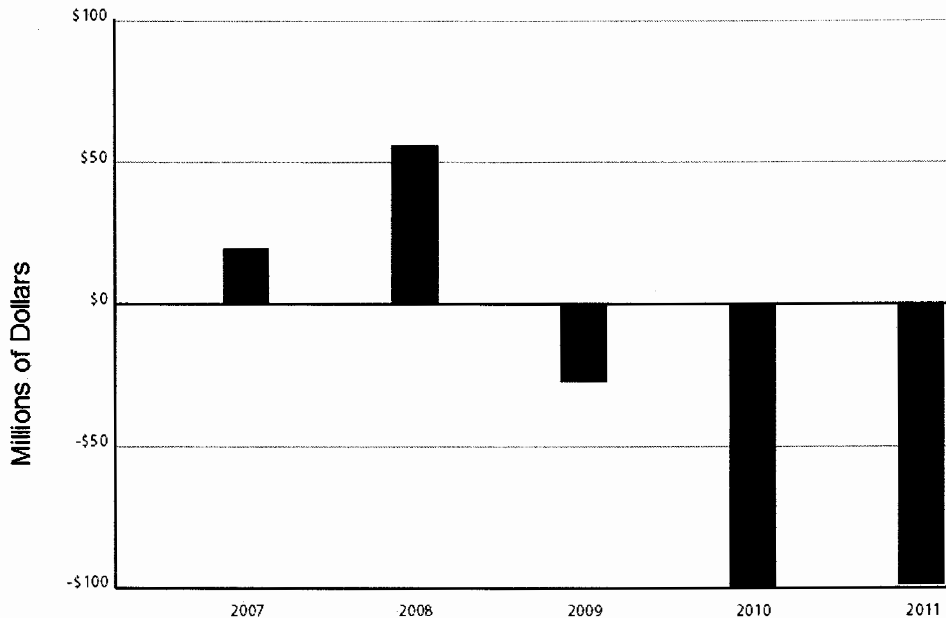
FAS 5, ¶8. "Probable" means "[t]he future event or events are likely to occur." FAS 5, ¶3a. "Some enterprises have in the past accrued so-called 'reserves for general contingencies.' General or unspecified business risks do not meet the conditions for accrual in [FAS 5 ¶8], and no accrual for loss shall be made." FAS 5, ¶14. "The first condition in [FAS 5, ¶8] – that a loss contingency not be accrued until it is probable that an asset has been impaired or a liability has been incurred – . . . is intended to prohibit the recognition of a liability when it is not probable that one has been incurred and to prohibit the accrual of an asset impairment when it is not probable that an asset of an enterprise has been impaired." FAS 5, ¶68.

[16] *See In re Microsoft Corp.*, Exchange Act Release No. 46017, Accounting and Auditing Enforcement Release No. 1563, 2002 SEC LEXIS 1427 (June 3, 2002).

Defendants Used TFG's Massive Cash Reserves to Pay the TFG Investment Manager Unearned Performance Fees

63. TFG has amassed a huge cash reserve, totaling $353 million at the end of the third quarter of 2012, which Defendants have used to direct payments to the TFG Investment Manager rather than the Company's shareholders. At the same time that Defendants have been paying themselves (via the TFG Investment Manager) tens of millions of dollars in unearned "performance" fees, they have drastically cut back on dividend payouts to TFG shareholders. In 2007, the total dividend paid to shareholders was $49 million and the total management and performance fees ("M&P Fees") paid to the TFG Investment Manager was $29 million. This resulted in M&P Fees being equal to 59% of the dividends paid to shareholders. Since 2007, the total dividend payout has substantially ***decreased***, while M&P Fees have ***increased*** by nearly ***500%***. For 2011, the total dividend paid to shareholders was $45 million, whereas M&P Fees were $144.1 million. This translated into M&P Fees being an amount equal to ***320%*** of the dividends paid to shareholders:





To put this massive transfer of TFG's wealth to the Principals in perspective, since the IPO, approximately $5 per share has been diverted to the TFG Investment Manager,[17] while TFG investors have seen TFG's share price increase by approximately 10% of that amount.[18]

Defendants Steadfastly Refuse to Act with Transparency

64. Defendants steadfastly refuse to interact with shareholders in a transparent manner. Defendants also continue to withhold important documents necessary for shareholders to evaluate their investments in TFG. For example, ***Defendants have refused to provide the Investment Advisor Agreement between TFG and the TFG Investment Manager to TFG's own shareholders,***

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[17] Approximately $500 million in fees paid by TFG to the TFG Investment Manager since the IPO, divided by the approximately 110 million issued shares prior to the Polygon Transaction.

[18] TFG's offering price was $10 per share, while TFG stock closed at $10.47 on June 7, 2013.

despite repeated inquiries from investors.[19] Defendants likewise refuse to provide any documents related to the methods in which Polygon and the shares provided by TFG to purchase Polygon were valued in the Polygon Transaction. Indeed, on the first call with investors following the Polygon Transaction, the only Company representative to discuss the transaction, defendant Dear, did so only to ***disavow any knowledge*** of how the assets exchanged were valued:

> I should stress that I have not been made party to the details of how the precise valuation has been done on behalf of the Company by the independent financial advisors, Perella Weinberg. ***So there isn't exact information that I can share on how the assets are valued, that I don't even know myself.***

65. Five months later, in response to growing concerns about the valuation of the Polygon assets and the clear conflicts of interest, Dear ***merely referred investors back to his initial empty response***: "[T]hese questions [regarding the costs of the Polygon Transaction] and many others were answered in detail at the time. So what I would like to do is refer . . . back to the conference call and the Q&A we did at that time that had much detailed information on this . . . ." Likewise, Perella Weinberg has repeatedly denied investor requests for the "fairness" opinion it claims to have prepared to evaluate the Polygon Transaction. Investors still wait for information about the valuations used to justify the purchase price paid by their Company, TFG, for Polygon, and what, exactly, TFG received in return.

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[19] Defendants' evasiveness is further illustrated by their refusal to hold interactive conference calls with investors, despite the fact that such calls are standard practice within the industry. Instead of responding to investors in open and honest dialogue, Defendants continue to force investors to submit questions beforehand, then cherry-pick and edit questions before providing scripted replies. In this way, Defendants avoid responding to investors' concerns and suppress information which may be helpful to investors but adverse to Defendants' personal interests.

Defendants Continue to Disregard Investor Remonstrations

66. Defendants have repeatedly ignored shareholder concerns. The experiences of Omega Advisors is a case in point. Before bringing this lawsuit, Omega Advisors repeatedly attempted – to no avail – to confer with Defendants to address its concerns and avoid litigation.

67. Omega Advisors is an investment advisory company with approximately $8 billion in assets under management and is, together with its affiliates (including Omega Partners) and the clients it advises, TFG's largest outside shareholder. Leon G. Cooperman ("Cooperman") is the Chairman and Chief Executive Officer of Omega Advisors. In October 2009, defendants Herlyn, Rosenberg and Wishnow traveled to Cooperman's New York City offices in order to solicit an investment in TFG by Omega Advisors on behalf of its affiliates and clients. Defendant Wishnow continued to solicit Omega's investment in a follow-up meeting with Cooperman in New Jersey. In these meetings, Defendants assured Cooperman that TFG would be responsive to investor concerns.

68. As a prominent leader of an investment company and a fiduciary in his own right, Cooperman grew deeply troubled by apparent abuses in TFG's management practices and became worried that Defendants' manipulative conduct was unduly harming Company value. In light of the severity and frequency of Defendants' misconduct, Cooperman felt compelled to bring his concerns to the attention of the Board. However, his repeated attempts to engage in meaningful dialogue with the Board were either ignored outright or met with dismissive and perfunctory responses. Ultimately, Cooperman felt he had no choice but to write the following open letter to the Board dated August 2, 2011:

> I have long been a successful investor and today control a little under 10% of the outstanding shares of Tetragon. I acquired these shares in the secondary market. My initial investment in the company was established about two years ago and I have a profit in my position. Why am I writing to the Board of Tetragon?

* * *

• **Incentive fees.** Even before any lawsuit was filed, I wrote to you about management's decision to establish an "accelerated loan loss reserve," based on its own model, in excess of $400 million, and then to pay itself a 25% incentive fee when it subsequently reversed this write-down. I am not talking here about whether these actions violated some kind of legal standard – that is for the courts to decide. But I question whether a fair-minded board and management that had the interests of its shareholders in mind would have acquiesced and agreed under the circumstances to pay management a fee that deprived Tetragon's shareholders in excess of $100 million of value.

• **Value of Fees vs. Value of Dividends.** Since Tetragon's IPO, the management and incentive fees Tetragon has paid to management have exceeded the total dividends paid to the owners/shareholders of Tetragon by about three-fold, and shares of Tetragon have traded consistently below its IPO price. I have spoken to a number of participants in the company's initial IPO and road show, who uniformly recalled that in the presentation, management emphasized that cash flow generated would be returned to the shareholders in the form of dividends. While the initial dividend was set at 60 cents a share, since then, the dividend has languished at substantially lower levels – most recently, at 40 cents a share, despite subsequent greater earnings and higher asset value.

• **Allocation of Opportunities.** Tetragon has acquired interests in two businesses (LCM and GORE) where principals of Polygon have been allowed to invest in the acquisitions. Both of these transactions were financed by Tetragon's balance sheet. I am not commenting on the legality of any participation in these investments. What I am interested in understanding from a business perspective is how you believe Tetragon's investors benefitted from the participation of Polygon's principals in these ventures. Why shouldn't the company have received these profits?

• **Lack of Transparency.** I have complained in the past about what I perceive to be unwillingness on the part of management to provide important information and to respond to fair questions about the company's operations. For example, concerned shareholders have requested and have yet to receive Tetragon's investment management agreement. Tetragon has refused to hold interactive conference calls; instead, it wants to hide behind its requirement that written investor questions be submitted in advance. I, along with other investors, have complied with this policy, only to then find that none of the substantive questions that were submitted were ever addressed by management.

• **Ignoring My Request for a Meeting with You.** For the past two years, I have had an outstanding request to the Board to meet with its members to discuss my views as a concerned Tetragon shareholder about what I believe are problematic policies. I made it clear at that time that I have zero interest in discussing non-public information — I only want to make my views known on what I believe are misguided policies. Tetragon's U.S. counsel initially promised to facilitate such a meeting, but two years later the meeting has yet to materialize.

> It should go without saying that the legal challenges to Tetragon's practices as set forth in the lawsuits against the company should serve as a wakeup call to the Board and to management that there is deep dissatisfaction with the manner in which the company is conducting its affairs. It is incumbent on the Board to formulate and articulate a comprehensive remedial plan to address the shareholders' concerns regarding proper corporate governance, including the inclusion of independent directors on the Board, the need for fair and equitable treatment of the shareholders' interests, the preservation of shareholder value, and greater transparency and responsiveness to shareholder concerns.
>
> In sum, beyond the specific allegations of violations of law contained in the lawsuits, I am deeply troubled by the practices alleged, which include claims that traditional decencies have been denied, that vital information has been withheld, that communication has been frustrated and that conflicted decisions have been made by a board of directors whose composition has at all times violated its own requirement of "independent" membership. In its totality, the pattern of behavior alleged in the complaints offends one's sense of fairness and would raise the ugly prospect of an "out of control enterprise," infecting the marketplace's hard-earned trust and bringing about its destruction.

69. In the months following the publication of Cooperman's letter, the Board largely ignored Cooperman's plea for answers. With growing concern, Cooperman again attempted to engage Defendants in an open letter to the Board dated April 24, 2012:

> Gentleman:
>
> I find myself compelled to write to you, for the second time in a year, to air, in the only forum that you have, as a practical matter, afforded me and other, like-minded investors in Tetragon, my long-standing concerns about the Company's direction, management's self-serving behavior, and your own irresponsible, dismissive treatment of your non-voting shareholder constituency. Regrettably, I do not anticipate a constructive response, in either word or deed, from you or management, as both my experience and your very attitude of cavalier disdain that makes this plaint necessary suggest otherwise. Nonetheless, quixotic though it may be, I feel that I must speak out again.
>
> As you are aware, I am an experienced, long-term-oriented investor who controls approximately ten percent of Tetragon's outstanding shares. I believe that our stock is woefully underpriced — a situation that I attribute squarely to what I perceive as the Board's fawning deference to management's abject disregard of shareholder interests. Having issued non-voting stock may give you the power to abuse "outside" shareholders, but not the right, much less the duty – despite what one might reasonably infer to the contrary from your ostrich-like behavior.

I have tried unsuccessfully, on multiple occasions, to express these concerns in the more standard context of Tetragon conference calls. Characteristically, management has stonewalled all such attempts. The Company, with the Board's acquiescence, has steadfastly refused to hold interactive calls, instead insisting that written questions be submitted in advance for vetting and then failing to address any of the substantive issues raised by me and other compliant shareholders. I have also requested, more than once, to meet with management and the Board to discuss these matters in person. To my chagrin, all such advances have been consistently rebuffed. Your collective conduct has been nothing short of a disgrace (and, if there's any justice in the world, a Harvard Business School case-study-in-the-making).

Therefore, I ask you once more, in this admittedly unorthodox forum to which you have effectively relegated me, to address the following issues that for some time now have been troubling me. This letter is a reflection of my frustration with management's and the Board's continuing failure to attend to what I believe is their proper mission of maximizing shareholder value, as distinct from management's own, and to treat the Company's non-voting shareholders in something better than the adversarial manner that has arguably become the hallmark of Tetragon investor relations.

• **Lack of Transparency.** What lies behind management's and the Board's unwillingness to provide important information (such as Tetragon's investment management agreement with Polygon) repeatedly requested by shareholders, and to respond to fair questions about the Company's operations and governance? Why does the Company refuse to hold interactive conference calls, requiring instead that written questions be submitted in advance so they can be culled and the inconvenient ones routinely ignored? Why has the Board, for going on three years now, refused to meet with me, despite repeated entreaties, to discuss my views as an informed, long-term shareholder concerning what I and others believe are problematic policies of Tetragon management? Don't you, as Tetragon's corporate stewards, realize that your patent aversion to hearing anything but a Hallelujah Chorus of praise could be perceived by the market as an abdication of fiduciary responsibility that may ultimately be (and that indeed, in this investor's view, already has been) negatively discounted in Tetragon's share price?

• **Dividend Policy.** Why is it that from the date of the Company's IPO in March 2007 through the end of 2011, cumulative management and incentive fees paid by Tetragon to Polygon, at $300 million-plus, exceeded cumulative dividends distributed to Tetragon shareholders by more than 50 percent, despite the fact that the Company's shares have consistently traded below their IPO price? A number of IPO participants with whom I spoke uniformly recalled management's assurances, in the course of the road show, that cash flow generated would be returned to shareholders in the form of dividends. While the quarterly dividend was initially set at 15 cents per share, it has languished at much lower levels since then — most recently, at 10.5 cents per share, despite substantially higher cash earnings (approaching $3 per share), cash position ($1.91 per share as of this January 31st up more than 5 percent

from the previous month-end), and book value. What possible justification is there for this diversion of shareholder value?

• **Management and Incentive Fees.** How can the Board justify paying management and incentive fees to Polygon through 2011 of $100 million-plus in the aggregate more than the dividends paid to Tetragon stockholders during that period? Is it your intention to reward management for delivering a stock price that sits about 40 percent below the Company's book value while two comparables, KKR Financial and Carador Income Fund, trade at book and at a premium to book, respectively? What was the Board thinking when it permitted management to establish an "accelerated loan loss reserve" of more than $400 million, based on management's own model, and to then pay itself a 25 percent incentive fee of more than $100 million when it subsequently reversed that questionable write-down? Despite the absence of any high-water-mark requirement, it seems to me that a fair-minded management would voluntarily abjure at least a portion (if not all) of its incentive fee under these circumstances, and that a diligent Board would vigorously admonish them to do so.

* * *

These questions are not allegations of legal impropriety — not being a lawyer, I'm not in a position to judge — so much as sources of profound puzzlement for which the Board and management have, despite my and others' repeated prodding, offered no cogent explanations to date. What I said in my previous letter is of no less exigency today: It is incumbent on the Board to formulate and articulate a comprehensive remedial plan to address shareholder concerns regarding proper corporate governance (including increased transparency and disclosure, interactive conference calls, and the election of independent directors to credibly address any perceived and actual conflicts of interest), fair and equitable treatment of non-voting shareholders (including a stepped-up dividend policy and, where appropriate, share buy-back policy), and improved responsiveness to non-voting shareholder concerns (including enhanced communications with the Board and management).

In the final analysis, any corporate board is responsible for overseeing management. Here, with our stock trading around 60 percent of book value while two comparables are trading at or above book, and with management profiting far more than Tetragon shareholders from the value being created off our dimes, the Board has both the right and the responsibility to scrutinize management's policies and to meet with a well-intentioned, long-term investor to discuss matters of concern to many, if not all, of the Company's owners.

I closed my previous letter with a thinly-veiled plea: "I look forward to hearing about how you intend to address these concerns in a timely fashion." It should be a source of deep embarrassment to you that, almost a year later, I am still waiting.

70. To no avail. To date, Cooperman's concerns remain unaddressed. Defendants steadfastly refuse even the semblance of transparency and continue to deny shareholders' requests for the Investment Advisor Agreement of the TFG Investment Manager or any documents related to the valuations used in the Polygon Transaction. Indeed, as recently as May 9, 2013, Defendants reaffirmed their refusal to hold interactive conference calls, instead opting to continue their pattern of ignoring investor concerns.

DEFENDANTS' CURRENT MISCONDUCT

71. Defendants have used the web of interrelated Polygon/Tetragon entities to aggrandize the Principals at the expense of TFG and its public shareholders. In effect, Defendants have transferred millions of shares from TFG's treasury to the portfolios of Dear, Griffith and their affiliates. On October 29, 2012, the Board announced that it would use 11.7 million non-voting TFG shares to acquire the asset management business of Polygon, the entity owned and controlled by the Principals and with which at least half of the Board's purportedly "independent" members have been intimately involved.

72. The market value of the shares transferred to the Principals in exchange for Polygon was $97 million at the time of the Polygon Transaction.[20] Even if this amount reflected the true value of the consideration paid by TFG (which it does not), TFG was still fleeced by the deal. In fact, the true worth of the shares taken from TFG is significantly higher than their trading price. As several commentators have noted, TFG shares trade at a substantial discount because the

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[20] Based on the closing price of TFG stock on October 26, 2012 ($8.43), the last trading day before the announcement of the Polygon Transaction and Share Repurchase, and accounting for a $0.12 ex-dividend declared on October 25, 2012.

disreputable business practices of Defendants, as detailed in ¶¶53-70, have made the stock unappealing for investors. A November 29, 2010 article in *Barron's* explains:

> Trading at a discount of almost 40% to book value, the Amsterdam-listed shares of [TFG] seem to underrate the company's position as one of the few well-capitalized investors in the recovering market for [CLOs]. . . . "Most investors . . . refuse to invest in a vehicle that permits the investment manager to write down asset values during a downturn in the credit cycle and then simply write up the values in subsequent quarters and take 25% of the 'appreciation' for doing nothing."[21]

The repeated abuse of shareholders at the hands of Defendants has taken a terrible toll on TFG, its shareholders and its share price. At the end of the third quarter of 2012, TFG was trading at a price of $8.54 per share, ***40%*** below its NAV per share at the time of $14.29. TFG peers, such as KKR Financial and Carador Income Fund, trade at or above book value.[22] A more accurate measure of TFG's stock value is the NAV-per-share equivalent of $14.29 at the time of the Polygon Transaction.[23] Consequently, the consideration paid to Polygon and its principals in recognition of TFG's actual book value was at least $167 million, or the number of non-voting shares exchanged (11.7 million) multiplied by the NAV-per-share equivalent ($14.29).

73. Furthermore, given the excessive and improper discount rate that Defendants used to mark down TFG's underlying asset portfolio in violation of U.S. GAAP, TFG's actual NAV is significantly higher than what has been represented to investors. As detailed in ¶¶53-62, Defendants artificially marked down assets in order to award themselves performance fees when those assets rose in value. According to TFG's Q3 2012 Performance Report, all of TFG's U.S. CLO deals were

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[21] Bill Alpert, *Review & Preview Follow-Up – A Return Visit to Earlier Stories: Compensation Issues Cloud Tetragon's Value*, BARRON'S, Nov. 29, 2010, at 22.

[22] For example, on December 31, 2012, KKR Financial traded at $10.56, while its NAV per share was $10.31. On September 31, 2012, Carador Income Fund traded at its NAV per share of $1.03.

[23] As of October 31, 2012. *See* TFG Monthly Update for October 2012.

"discounted at 20%," despite the fact that these deals were considered "strong" with "decreas[ing]" risk premia, while European CLO deals were discounted "at 30%." Given that CLO investments made up more than 70% of TFG's overall asset base at the time of the Polygon Transaction, the undervaluation of TFG's CLO holdings served to substantially understate TFG's overall NAV. Adjusting TFG's CLOs to reflect their weighted average discount rate at the time of the Polygon Transaction, without Defendants' artificial distortion, increases TFG's NAV by $107 million. When this amount is added to TFG's NAV at the end of October, the NAV value of the shares transferred to Polygon increases to $178 million. Thus, the value of the TFG stock given to Defendants was worth considerably more than even TFG's NAV.

74. TFG received woefully inadequate consideration for the massive transfer of wealth from its corporate treasury to the Principals' portfolios initiated by the Polygon Transaction. In return for stock worth more than $178 million, TFG received: (i) Polygon's asset management business (which, run by Dear and Griffith, largely overlaps with the TFG Investment Manager); (ii) Polygon's 13% stake in GORE (which was initially funded in large part by TFG itself); (iii) Polygon's 25% stake in LCM (which was already 75% owned by TFG); and (iv) the value of certain management and service contracts. These assets are worth far less than the substantial amount of TFG non-voting stock the Principals received in the Polygon Transaction.

75. Indeed, by Defendants' own estimates, TFG vastly overpaid for its acquisition of Polygon. In TFG's Monthly Update for October 2012, Defendants disclosed that TFG only received an NAV increase of $0.48 per share as a result of the Polygon Transaction, or $55 million. By contrast, Defendants received 11.7 million TFG shares worth $97 million as measured by their trading price at the time of the transaction, or 80% more valuable than the consideration received by TFG. When the actual worth of TFG stock is accounted for, Defendants gave the Principals stock

worth $178 million – more than ***three times*** more valuable than the Polygon assets TFG received in return, causing TFG to overpay for Polygon by more than $120 million. Defendants have attempted to justify the diversion of TFG assets to the Principals via the Polygon Transaction by claiming that "restrictions" on the TFG shares received by Dear and Griffith impaired the shares' value.[24] However, Defendants' assertion fails as Dear and Griffith own and control all of TFG's voting shares and therefore the "restricted" nature of those shares is illusory.

76. TFG shareholders cannot fully assess the totality of the damage to the Company as a result of the Polygon Transaction, because Defendants continue to conceal documents concerning the transaction. For example, Defendants refuse to provide shareholders a copy of the opinion Perella Weinberg purportedly prepared to justify and evaluate the fairness of the Polygon Transaction. And despite repeated requests, Defendants refuse to provide any information on the valuations underlying the Polygon Transaction.

77. In the November 5, 2012 conference call with investors, Dear conspicuously avoided providing any details on how Polygon or TFG assets were valued in the deal:

> I should stress that I have not been made party to the details of how the precise valuation has been done on behalf of the Company by the independent financial advisors, Perella Weinberg. So there isn't exact information that I can share on how the assets are valued, that I don't even know myself.
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> * * *
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> And so I think the answer to that question is that I cannot give details on valuation rather doing that myself. But to my mind, the importance is in the process on how it was set up.

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[24] For example, in a November 5, 2012 conference call with investors, Dear admitted that Defendants ***further discounted*** the TFG stock exchanged for Polygon: "the restrictions on the stock that meant it's illiquid non-salable for the time being have the market effect on the value of the restricted stock. So, I don't think it's that simple to compare it either to NAV or the current share price."

If true, Dear's claim that he had no knowledge of the valuation represents a stunning admission – as a fiduciary and controlling shareholder of TFG, Dear was under a fiduciary obligation to ensure that TFG received the best value in acquiring Polygon. In his statements to investors, Dear essentially admitted that he had made no effort to ensure that TFG received a fair price for its purchase of Polygon. Further, Dear's claim that he did not know how Polygon's assets were valued contrasted sharply from the intimate knowledge Dear displayed on the call of the "market value" of the consideration he received from TFG as the "seller."

78. In the very same release announcing the Polygon Transaction, Defendants also announced the Share Repurchase. The Polygon Transaction and Share Repurchase were integrally intertwined. Under the terms of the Share Repurchase, TFG offered to purchase for cash $150 million in value of non-voting shares at $9.25-$10.65 per share. On December 7, 2012, TFG announced the results of the Share Repurchase: TFG had repurchased 15.4 million TFG non-voting shares at a purchase price of $9.75.

79. The Share Repurchase represents the most aggressive share repurchase in TFG's history. By comparison, during the whole of 2011, TFG repurchased only 5.1 million shares, less than ***one-third*** of what TFG repurchased in a single transaction in the Share Repurchase. Indeed, the Share Repurchase stands out as a dramatic break from precedent, and its effect was to place in the hands of the Principals more than 10% of all outstanding TFG shares. Prior to the announced tender offer, many investors, including Omega Advisors, had pressed for a more aggressive repurchase program for years, only to have those pleas fall on deaf ears. The unusual scope, design and timing of the Share Repurchase confirms that it was intended to significantly drive up the value of the TFG shares illegitimately transferred to the Principals via the Polygon Transaction – ***after*** the amount of

shares to be transferred to Dear and Griffith had been determined – in direct contravention of Defendants' fiduciary obligations.

80. The sequence of the Polygon Transaction and Share Repurchase betrays the true motivations driving them. If Defendants were acting in the best interests of the Company they would have conducted the Share Repurchase ***before*** entering into the Polygon Transaction (assuming *arguendo* both actions were in the best interests of the Company, which they demonstrably are not). In this way, the value of the Company's shares would have increased prior to its entering into a stock acquisition of Polygon, thus allowing TFG to acquire the same Polygon assets for significantly fewer shares.

81. By way of example, TFG's stock closed at $8.43 per share on the last day of trading before the announcement of the Share Repurchase, or $8.31 when a $0.12 ex-dividend declared the previous day is accounted for.[25] That translated into a market value of $97 million for Polygon, based on its purchase price of 11.7 million TFG shares. Soon after this announcement, TFG's stock traded at as much as $9.62 per share. Thus, if Defendants had waited until ***after*** announcing the Share Repurchase they would only have had to issue 10.1 million Company shares to acquire Polygon for equal value, or approximately 1.6 million shares less than what they paid. And at the $14.29 per share NAV ascribed to TFG by Defendants, Defendants would have had to issue only 6.8 million Company shares to acquire Polygon, or ***five million*** fewer shares. Finally, at the U.S. GAAP-corrected $15.23 NAV-per-share price, TFG would have had to issue only 6.4 million

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[25] An ex-dividend is a classification of trading shares where a declared dividend belongs to the seller rather than the buyer. Because the person who owns the security on the ex-dividend date will receive the dividend amount, the share's trading price is ordinarily discounted by the ex-dividend amount the following day.

Company shares. By this calculation, Defendants issued approximately ***80%*** more shares than necessary.[26]

82. At the end of the third quarter of 2012, TFG posted a massive net cash balance of $353 million. Consequently, it had more than enough cash on hand to purchase Polygon's assets even at their inflated purchase price. Paying for Polygon with cash from TFG's massive cash reserves would have prevented defendants Dear and Griffith from taking advantage of TFG's severely depressed stock price and avoided having TFG overpay by tens of millions of dollars on the deal. By financing the Polygon Transaction with stock instead of cash, Defendants acted not to protect and advance the interests of TFG and its shareholders, but rather to ***maximize the amount of undervalued TFG stock that the Principals would receive from TFG***. Taking advantage of the trading price of TFG shares allowed the Principals to acquire a much greater equity stake in TFG pursuant to the Polygon Transaction than they would otherwise have been able to had the Company's shares been trading at full value, and, perversely, allowed Defendants to benefit from the very actions which have caused the Company's stock to underperform and hurt shareholder value.

83. The Polygon Transaction and Share Repurchase were announced on the same day and in the same medium – specifically in an October 29, 2012 press release – which confirms that these actions were inextricably interrelated, contemplated, formulated and implemented together by Defendants. This fact was further confirmed by Dear's November 5, 2012 discussion with investors: "I am sure that the buyer [TFG] would want to stick to the [Polygon Transaction] as a stock

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[26] Moreover, given that Defendants adjusted further downward the value of TFG shares used in the Polygon Transaction by some 43%, instead of upward as was proper, far fewer than 6.4 million shares should have issued. Using the NAV increase attributable to Polygon ($55 million), and the adjusted NAV-per-share value of TFG stock ($15.23), Defendants should have issued only ***3.6 million*** TFG shares to acquire Polygon – or less than ***one-third*** the number of shares Defendants gifted to the Principals.

deal . . . . But I'm sure the buyer also wanted to deploy cash [in the Polygon Transaction] in order for the repurchase that was talked about with the tender offer."

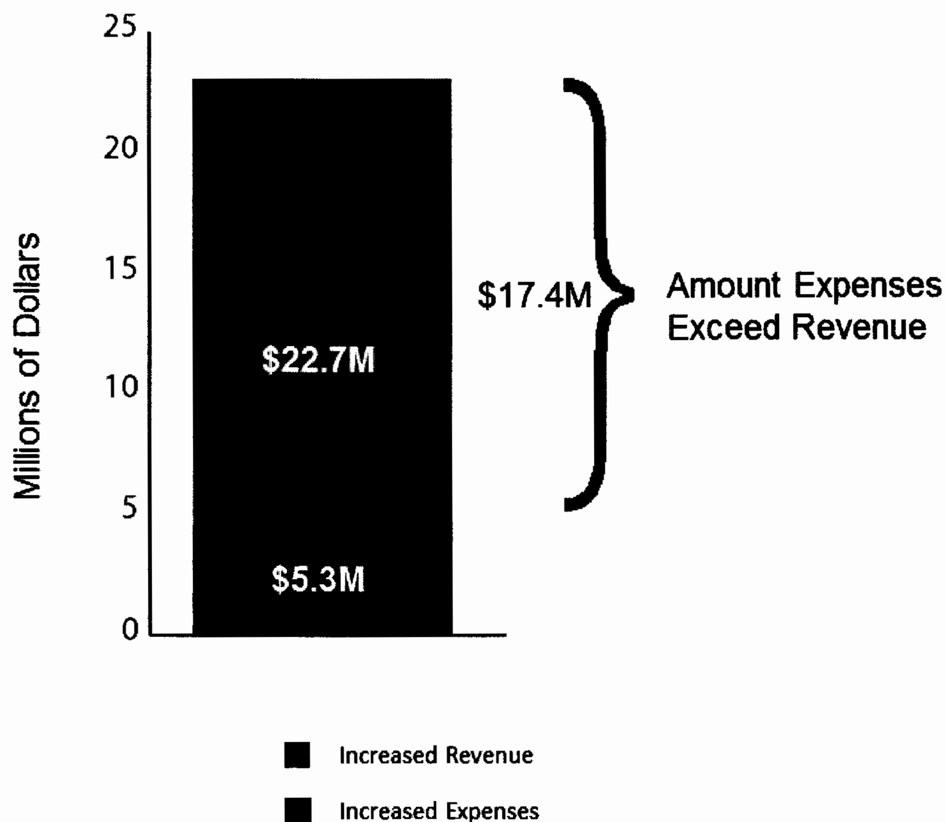
84. In a March 19, 2013 conference call, Dear admitted that TFG only buys back shares "if the shares are trading and we think ***at a discount to the [Company's] value***." On the same call, TFG's chief financial officer admitted that the Share Repurchase added "***$0.86 of NAV per share***." ***Thus, Defendants have confirmed that they knew that they were using significantly undervalued TFG shares to finance the Polygon Transaction and, further, that sequencing the Share Repurchase to follow the Polygon Transaction caused TFG to divert additional assets to the Principals.***

85. A look at TFG's stock price surrounding Defendants' announcement of the Polygon Transaction and Share Repurchase illustrates the ways in which the timing of these events enriched Defendants. On October 26, 2012, the last trading day before the Polygon Transaction and Share Repurchase were announced, TFG's stock closed at $8.43 per share. Soon after the October 29, 2012 announcement of the pending tender offer, the price for TFG stock jumped to $9.62 per share during the day's trading on November 2, 2012. This represented an increase of $1.19 per share, or a 13.4% rise in TFG's stock price, in a matter of days. By the close of the Share Repurchase on December 6, 2012, TFG's share price had increased to $9.94. When spread over the 11.7 million shares acquired by the Principals in the Polygon Transaction, the Principals netted $18 million solely from the rise in TFG's stock price (in addition to the compensation received in the transaction itself), an amount to which they would not have been otherwise entitled but for the structuring of the Polygon Transaction and Share Repurchase by Defendants to benefit Dear and Griffith to the detriment of TFG.

86. On a March 19, 2013 conference call, Defendants announced that the Company had once again reversed its massive ALR in the fourth quarter of 2012. This allowed the TFG Investment Manager to wrongfully expropriate another $30 million in "performance" fees. On the same call, Defendants also announced that they had "recalibrated" their CLO modeling as a result of "observable data" in the fourth quarter of 2012. Specifically, Defendants had decreased the discount rate used in the modeling of TFG's CLO portfolio and eliminated the ALR for U.S. deals, ***effectively admitting that the ALR had been unnecessary***. Shareholders had implored Defendants for years to take similar action in order to increase TFG's share price. ***Ironically, Defendants did so only after they had gifted millions of TFG shares to the Principals via the Polygon Transaction***. By March 21, 2013, TFG's stock price had increased to $11.42 per share, allowing the Principals to reap ***$35 million*** in ill-gotten gains on stock acquired in the Polygon Transaction from accretion in TFG's share price alone.

87. Adding insult to injury, the Polygon Transaction dramatically increased the expenses that TFG must pay to its asset managers, which now include – in addition to the TFG Investment Manager (run by the Principals) – Polygon (also run by the Principals), LCM (affiliated with the Principals), and GORE (founded by the Principals). In 2012, operating and administrative expenses paid to TFG's asset managers – all of which are linked to the Principals – ballooned to $46 million, a 76% increase over 2011, largely due to increased "compensation expenses for the Asset Management team" after the Polygon Transaction. As the Polygon Transaction closed at the end of October, these expenses accrued in ***only two months***. In the words of TFG's chief financial officer, "the operating expenses will naturally grow up in 2013, as we see four quarters rather than one quarter." This prediction has since proved true. In the first fiscal quarter of 2013, the only full financial period for which the impact of the Polygon Transaction is available, TFG reported that

operating expenses increased ***$23 million***, or ***93%,*** from the same quarter a year ago, "primarily due to the acquisition of Polygon," while the "Asset Management" business acquired in the Polygon Transaction generated only ***$5 million*** in the quarter. ***In other words, the acquisition of Polygon has resulted in an $18 million net loss to TFG in a single quarter***:



Consequently, over time, increased operating and administrative expenses as a result of the Polygon Transaction will ***entirely offset*** the paltry benefit to its NAV TFG received in the transaction and will ultimately result in a net ***loss*** to NAV. These added expenses will flow from TFG to the

Principals and ensure that the Polygon Transaction and Share Repurchase will continue to harm the Company and its shareholders into the future.

88. Despite the manifest unfairness of the Polygon Transaction to TFG, Perella Weinberg issued the so-called "fairness" opinion used by the Principals and the TFG Board to approve the Polygon Transaction. Tellingly, Perella Weinberg, the Principals and the Board refuse to provide the basis for that opinion despite repeated requests from investors. In truth, no legitimate basis exists. By issuing an unfounded fairness opinion, Perella Weinberg assisted Polygon, the Principals, the TFG Board and the TFG Investment Manager in their scheme to deprive TFG of tens of millions of dollars via the Polygon Transaction.

89. This is not the first time that Perella Weinberg has opined on the "fairness" of a transaction by one of its corporate clients which agreed to grossly overpay for assets to further managements' designs. For example, in late 2011, Perella Weinberg "advised" Hewlett-Packard Co. ("HP") in its $11 billion acquisition of Autonomy Corporation plc ("Autonomy"). One year later, HP wrote down the value of Autonomy by $9 billion, or approximately 80% of its purchase price, due to "serious accounting improprieties, disclosure failures, and outright misrepresentations." The gross overvaluation of Autonomy in connection with its sale to HP has spawned numerous lawsuits against Perella Weinberg, and the acquisition is currently being investigated by the Serious Fraud Office of the U.K., the U.S. Department of Justice and the U.S. Securities and Exchange Commission.

DAMAGE TO TFG

90. Over the past several years, TFG's directors and officers have severely injured TFG and impaired its business, goodwill, and reputation by breaching their fiduciary duties of loyalty and good faith, which has adversely impacted and continues to adversely impact TFG's stock price, causing it to trade at a discount of more than 40% as compared to TFG's NAV. Furthermore,

Defendants have designed and implemented a two-step scheme to illegitimately transfer more than 10% of TFG's then outstanding non-voting stock to themselves for overvalued Polygon assets which they own, and then improperly structured a tender offer to further increase the injury to TFG and further enrich Defendants as a result of this unlawful transaction. By this scheme, Defendants have caused and continue to cause tens of millions of dollars in losses to TFG's asset base.

91. By this action, plaintiff seeks to remedy Defendants' misconduct and recover damages for TFG.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

92. Plaintiff incorporates ¶¶1-91.

93. Plaintiff brings this action derivatively on behalf of TFG to redress injuries suffered, and yet to be suffered, by the Company as a direct and proximate result of Defendants' misconduct. At the time of filing, Omega Advisors is the investment advisor to owners of more than 10 percent of TFG's outstanding shares, including more than 12 million shares held by Omega Partners. Omega Partners has held TFG shares continuously since September 2009, and will adequately represent the interests of the Company in this litigation. This action is not a collusive one to confer jurisdiction on this Court which it would not otherwise have.

94. As detailed in ¶¶40-52, and reiterated herein, the TFG Board has never been independent. At all relevant times the TFG Board consisted of defendants Knief, Dorey, Jeffreys, Dear, Griffith and/or Ward. Each of these defendants, by virtue of: (i) being directly responsible for designing and/or authorizing the Polygon Transaction and Share Repurchase; (ii) profiting from the misconduct alleged herein; and (iii) having irreparable conflicts of interest with and among each other and TFG, is incapable of adequately evaluating a demand that the Board members take action against themselves and other current directors and officers of TFG for the misconduct alleged herein.

As a result, none of TFG's six directors can be counted on to exercise valid business judgment in evaluating a pre-suit demand upon the Board:

(a) Dear and Griffith are directors of TFG and principals of the TFG Investment Manager, the architects of the Polygon Transaction and Share Repurchase, and the primary beneficiaries of the scheme's corrupt bargain.

(b) Ward, in addition to authorizing the Polygon Transaction and Share Repurchase, has numerous personal and professional ties which compromise his independence. Dear and Ward, along with their wives, co-owned a restaurant in London together, known as the Soup Opera, and even launched an umbrella corporation to coordinate their joint business ventures, known as Ward Dear Ltd. In addition, Ward was also board member of and had a material business relationship and significant links with numerous Polygon entities, including Polygon Credit Holdings Limited, Polygon Global Opportunities Fund, Polygon Global Opportunities Fund LP, Polygon Global Opportunities Master Fund, Polygon General Partners Limited, Polygon Debt Holdings Limited and Kings Road Investments Limited – all entities created by and for the benefit of the Principals. Ward made hundreds of thousands of dollars while serving on the boards of these entities. Furthermore, Ward oversaw the massive implosion of wealth involving Polygon's flagship investment vehicles, the Polygon Funds. Under Ward's directorship, the value of the Polygon Funds declined by almost 95%, from nearly $8 billion in assets under management to approximately $450 million at the time of the Polygon Transaction, in what has been described as "one of the hedge fund industry's most spectacular falls from grace." Ward only relinquished his directorship over the Polygon Funds in 2011 after the funds were forced into liquidation and replaced by the Polygon Recovery Fund. Indeed, Ward served on the boards of Polygon entities for longer than he has served on the Company's Board and been rewarded with handsome pay packages for this service. As a

result, Ward cannot be considered "independent" in directing TFG to purchase the broken Polygon entity to which he is so intimately and notoriously tied. Furthermore, prior to his involvement with the Polygon Funds, Ward served 19 months as a director with Polygon Credit Holdings Limited, a holding company which owns the TFG Investment Manager and which was formed for the benefit of the Principals. Ward's sole duty while serving on the board of Polygon Credit Holdings Limited was to appoint Griffith as its managing director, a position which has allowed Griffith to reap millions of dollars in fees via the TFG Investment Manager. As such, Ward is beholden and under the dominion of the Principals.

(c) Knief, in addition to authorizing the Polygon Transaction and Share Repurchase, has numerous personal and professional ties which compromise his independence. Until recently, Knief was a board member of and had a material business relationship and significant links with numerous Polygon entities, including Polygon Global Opportunities Fund, Polygon Global Opportunities Fund LP, Polygon Global Opportunities Master Fund, Polygon General Partners Limited, Polygon Debt Holdings Limited and Kings Road Investments Limited – all entities created by and for the benefit of the Principals. Knief made hundreds of thousands of dollars while serving on the boards of these entities. Furthermore, like Ward, Knief oversaw the implosion in wealth experienced by the Polygon Funds and only relinquished his directorships in 2011 after these funds were forced into liquidation and replaced by the Polygon Recovery Fund. Like Ward, Knief served on the boards of Polygon entities for longer than he has served on the Company's Board and has been rewarded with handsome pay packages for this service. As such, Knief is beholden to and under the dominion of the Principals. Knief cannot be considered "independent" in directing TFG to purchase the broken Polygon entity to which he is so intimately and notoriously tied.

(d) Dorey and Jeffreys, in addition to authorizing the Polygon Transaction and Share Repurchase, are professional directors incapable of providing effective fiduciary oversight. Based in Guernsey, Dorey and Jeffreys sit on the boards of numerous businesses and receive hundreds of thousands of dollars in annual compensation in exchange for authorizing management proposals without regard to their terms or underlying impact. In an article about the propriety of offshore hedge fund directors, *The New York Times* quoted one senior investment manager: "You might as well save your [director fees] and buy a rubber stamp."[27] Others have described offshore professional directors like Dorey and Jeffreys as "paper directors" who provide little or no oversight in the "black hole of accountability" that is offshore hedge fund management:

> Officially, [offshore hedge fund] directors are independent watchdogs who protect the interests of investors, such as pension funds. The problem is that some appear to be little more than "paper directors," with perhaps billions of retirement dollars exposed to funds with weak oversight and potentially conflicted governance. This might not be an urgent concern if hedge funds lived up to their hype, but broadly speaking, they do not: hedge funds have actually been underperforming the S&P.
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> [C]rucial questions necessary for investors to reasonably judge risk remain unanswered: hired by hedge fund managers themselves, whose interests do these directors really have at heart? How many boards do they sit on simultaneously, and is it alongside other directors who also are serving on the same multiple boards? What is their level of competence, and does their supposed oversight have any teeth? Hedge funds are known for their "lone wolf" approach, without the same supervision as, say, a mutual fund or a typical corporation. This gives hot-shot managers enormous latitude to invest and operate as they see fit. And the culture of hedge funds is straight from today's *Shadow Elite* playbook in that accountability is elusive.
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> This black hole of accountability might be easier to accept if the money at stake came solely from super-rich, private investors who want to take a personal gamble. But as we said, institutional money is now deeply tied up in hedge funds -- and not just mom and pop pensions, but also academic and charity endowments.

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[27] Azam Ahmed, *In Caymans, It's Simple to Fill a Hedge Fund Board*, N.Y. TIMES, July 1, 2012, http://dealbook.nytimes.com/2012/07/01/in-caymans-its-simple-to-fill-a-hedge-fund-board/.

Given the wall of secrecy, it is likely that many institutional investors lack the information to sort out the potential perils.

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Indeed, many independent directors hold multiple directorships, sometimes numbering in the hundreds. Moreover, many of these directors are interconnected, sitting together on multiple boards, as the Foundation database shows. And they appear often to be appointed with little regard to the complexity of the investments, whether there might be conflicts of interest, and whether it is possible for a director to feasibly oversee and assess risk when he or she sits on such a large number of funds.[28]

Dorey and Jeffreys epitomize the problem with offshore professional directors. While only the TFG Board (might) know with certainty how many directorships Dorey and Jeffreys held at the time of the Polygon Transaction and Share Repurchase, it is known that within the last several years Jeffreys alone has sat concurrently on the boards of more than ***three hundred businesses***.[29] If Jeffreys were

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[28] Janine Wedel, *Caymans' Folly: Do You Know Where Your Pension Funds Are?*, HUFFPOST BUSINESS, Feb. 14, 2013, http://www.huffingtonpost.com/janine-r-wedel/caymans-folly-do-you-know_b_2684536.html?utm_hp_ref=business.

[29] The following is an abbreviated list of Jeffreys' recent directorships: Tetragon Financial Group Limited; Tetragon Financial Group Master Fund Limited; Ampezzo Capital PCC Limited; Dragon Capital Clean Development Limited; Equitix GP 1 Limited; Equitix GP 2 Limited; European Equity Asset Holder (A) Limited; European Equity Asset Holder (C) Limited; Japanese Equity Asset Holder (A) Limited; Japanese Equity Asset Holder (C) Limited; Pacific Basin Equity Asset Holder (A) Limited; Pacific Basin Equity Asset Holder (C) Limited; UK Equity Asset Holder (A) Limited; UK Equity Asset Holder (C) Limited; NAEF Asset Holder Limited; North American Asset Holder (C) Limited; US Equity Holdings Limited; Global High Yield Asset Holdings (A) Limited; Global High Yield Asset Holdings (C) Limited; DARF Holdings (Sterling) Limited; DARF Holdings (USD) Limited; GEF Asset Holder Limited; PFB Data Centre Fund Limited; Prosperity Quest II Unlisted Limited; Reiten Capital Partners VI GP Limited; Reiten Capital Partners VII GP Limited; Reiten & Co Capital Partners VIII GP Limited; EQT Expansion Capital I Limited; EQT Expansion Capital II Limited; PFB Regional Office Fund Limited; Argo Real Estate Opportunities Fund Limited; Curzon Capital Investment Management Limited; Prosperity Quest II GP Limited; Spring Holding Guernsey Limited; E4DO Limited; ECRF Limited; Ark Holding Guernsey Limited; Ark Holding Guernsey II Limited; Ark Holding Guernsey III Limited; Blackcastle Limited; Buster Holding Guernsey Limited; Caroline Holding Guernsey Limited; Cilbup Holding Guernsey Limited; Definite Holding Guernsey Limited; Definite Holding Guernsey II Limited; Definite Holding Guernsey III Limited; Delphi Holding Guernsey Limited; Dream Holding Guernsey Limited; Calypso Holding Guernsey Limited;

EFDO Limited; Estate Holding Guernsey Limited; Fashion Holding Guernsey Limited; Fasteners Holding Guernsey Limited; Isabelle Holding I Limited; Leader Holding Guernsey Ltd; Pharao Guernsey Holding Ltd; Piston Holding Guernsey Ltd; Piston Holding Guernsey II Ltd; Q Fund of Funds GP Limited; Roma Holding (Guernsey) I Ltd; Seeker (Guernsey) Holdings Ltd; Snowball Holding Guernsey Ltd; Snowstorm Holding Guernsey Ltd; Titan Holding Guernsey Limited; Tolkien Holding Guernsey Limited; Tube Holding Guernsey I Limited; Tube Holding Guernsey II Limited; Tube Holding Guernsey III Limited; Walzer Holding Guernsey Limited; Walzer Holding Guernsey II Ltd; Walzer Holding Guernsey III Ltd; Wire Holding Guernsey Limited; Wopnnif Holdings Limited; TimeLease III Limited; TimeLease IV Limited; TimeLease V Limited; Leader (Cayman Islands) Limited; Leader Holding (BVI) Limited; Leader Holding (BVI) II Limited; Estate Holding Guernsey Limited; Kerrera Company Limited; Jenway Development Ltd.; Trivana Limited; PSM Investments Limited; Hingley International Limited; PSM IP Limited; Lanton Limited; IT Infrastructure Park Private Ltd; Pasco Software I Park Private Ltd; Alpha Tiger Property Development Company; Company (Chennai) Private Ltd; Alpha Tiger Property Development Company (Pune) Limited; Janstar Investment Limited; Granbo Investment Limited; EQT Guernsey Limited; EQT I and III Limited; EQT DLP Limited; Munskjö Guernsey Holding Limited; Munskjö Luxembourg SarL; Wöpnnif Holdings Limited; Nnifpow Holdings Limited; EQT III Ch I and II SarL; EQT IV Limited; EQT IV Investments Limited; EQT IV RFA Limited; Caesar Holding Limited; Caesar Raseac SarL; FS Invest SarL; FS Invest 2 SarL; Oskar Rakso SarL; Seeker Guernsey Holdings Limited; Seeker Reekees SarL; Sapling HoldCo 1and 2 Limited; SSP Financial Limited; Wire Holding Guernsey Limited; Gordon Holding Guernsey Limited; Gordon Holding Guernsey I-V Limited; EQT Opportunity Limited; EQT Opportunity Investments Limited; EQT Opportunity RFA Limited; Phoenix Holding Guernsey Limited; EQT Greater China II Limited; EQT Greater Investments II Limited; EQT Greater China RFA Limited; Roma Holding (Guernsey) I and II Limited; EQT V Limited; EQT V Investments Limited; EQT V RFA Limited; Alpha Pyrenees Luxembourg SarL; Alpha Pyrenees Trust Limited; Alpha Pyrenees Trust Finance Company Limited; Alpha Tiger Property Trust Limited; Alpha German Property Income Trust Limited; Alpha German Property Income Trust SPV 1-18 Limited; Ingenious Media Acquisition Capital Limited; Multi-Manager Investment Programmes PCC Limited; Reiten Capital Partners VI GP Limited; Pisatz Holdings Limited; Pisatz Property III, V, VII, XI, XIII and XVII Limited; Pisatz Investments Limited; Prime Infrastructure (Channel Island) Holdings Limited; Prime Infrastructure (Guernsey) Holdings Limited; Prime Infrastructure (Jersey) Holdings Limited; Prime Infrastructure (Guernsey) Limited; Abacus (GSK) Trustees Limited; The Abacus Global Managed Pension Plan Limited; Whiteley Trustees Limited; Abacus (C.I.) Limited; Abacus (Guernsey) Limited; Abacus Corporate Nominees Limited; Abacus Corporate Services Limited; Abacus Corporate Trustee Limited; Abacus Financial Services Limited; Abacus Fund Managers (Guernsey) Limited; Abacus Fund Managers (Jersey) Limited; Abacus Group Services (Guernsey) Limited; Abacus Secretaries (Guernsey) Limited; Abacus Trustees (Guernsey) Limited; Abacus Trustees (Jersey) Limited; Avenue Investments Limited; Breakwater Limited; Burwood Investments Limited; Court Lodge Limited; Crecy Investments Limited; Cygnet Ventures Limited; Seaglase Limited; Elmleigh Holdings Limited; Crofton Holdings Inc; Drystart Inc; Eagle Ventures Limited; Heathcote Investments Inc; Japat Limited; Rum Point Property Ltd; Viking Technology Limited; Internet Ventures Limited; Maclen Limited; Partridge Ventures Limited; Phoenix Ventures Limited; Raven Ventures Limited; Red Kite Ventures Limited; Ropat Limited; Sabresteel Limited; Swan Ventures Limited; Tosli

to spend ***a single working day a year*** discharging his fiduciary obligations for each of the organizations he concurrently served on, he would not have any time to sleep, eat or take a day off. Likewise, Dorey has demonstrated his complete abdication to management on numerous occasions. In *The Hedge Fund Mirage*, hedge fund manager Simon Lack describes Dorey's "oversight" of a conflicted transaction in a manner disturbingly reminiscent of Dorey's approval of the Polygon Transaction and Share Repurchase:

Investments Limited; Wingate Developments Limited; Wild Goose Limited; Hammex Trading Limited; Picus Limited; Shandrani Limited; Knowledge Brokers International Limited; Curbridge Holdings Limited; Fareham Investment Properties Limited; Hightor Limited; Trinity Investments Limited; Kingfisher Limited; Progress Enterprises SA; J.T. Limited; Templar Tax Services Limited; Progress Enterprises SA; Heathcote Investments Inc; Anderson & Anderson International Limited; Antwi Investments Limited; Bailiwick Treasury Services Limited; Booker Tate Overseas Pension Plan Limited; Breakwater Limited; Brisk Holdings Limited; Consulting and Executive Services Limited; Curbridge Holdings Limited; Dotcomplement Limited; Dryade Investments Limited; Du Parcq (Guernsey Limited; EAC Investco Limited; EAC Opco Limited; Global Beauty Holdings Limited; Global Beauty Limited; Global Media Limited; Gold King Co. Limited; HDT Turnaround Management and Consultancy Limited; IGC GP Limited; Investor (Guernsey) II Limited; Investor Capital Management Asia Limited; Investor Group Asia G.P. Limited; Investor Group G.P. Limited; Investor Growth Capital Limited; Investor Investment AEA Limited; Investor Investment August Capital Limited; Investor Investment Capital Partners Limited; Investor Investment EVP Limited; Investor Investment HCV Limited; Investor Investment HFPC IV Limited; Investor Investment Idea Edge Limited; Investor Investment Menlo Limited; Investor Investment MF XI Limited; Investor Investment MSDW Limited; Investor Investment NCP Limited; Investor Investment Northern Europe Limited; Investor Investment PGI Limited; Investor Investment Polaris IV Limited; Investor Investment Polaris Limited; Investor Investment SC Limited; Investor Investment SHV 2 Limited; Investor Investment SHV Limited; Investor Investment TWCP Limited; Investor USVP Investment Limited; Investor Investment WT4 Limited; Investor Investments Asia Limited; Investor Investments Novare Limited; ISP Trustee Company Limited; Jecos Limited; Jera Limited; Jervis Limited; Le Vallon Estates Limited; Maclen Limited; Malero Limited; Manifest Yourself Limited; Medical Patents Limited; Nextgear Invest Limited; Nextgear SPV II Limited; Nextgear SPV Limited; Nowor Limited; Panache Properties (U.K.) Limited; Pepaju Limited; Picus Limited; Roots Investments Limited; Row Limited; SFS International Finance Limited; Shrandani Limited; Sherbourne Limited; Simi Limited; Step by Step Limited; Templar Guernsey Limited; Templar International Treasury Services Limited; The Red Sunset Holding Limited; Thunderbolt Holdings Limited; Timani Limited; Tosli Investments Limited; TTSL Guernsey Limited; Yarra Properties Limited; Zettech Software Products Limited.

The fund [Cognis] had a board of directors, but few were convinced that they'd acted as the fiduciary representative of the investors that their role required. Rupert Dorey, the lead director and a resident of the Channel Islands who made his living sitting on the boards of investments companies appeared to be little more than Myra's [the managing partner's] employee. As far as we could tell all his information came from Myra, and [Dorey] gave the impression of wanting to wrap up the transaction quickly, ending his involvement as the independent representative of by now very unhappy investors. Board memberships of hedge funds can be easy money until you have to do some work.

In fact there was little evidence that the Board had done any independent assessment of the transaction at all.[30]

As "paper directors," Dorey and Jeffreys are beholden to and under the dominion of the Principals. By approving the Polygon Transaction and Share Repurchase, Dorey and Jeffreys have violated their fiduciary duties by once again rubber-stamping a conflicted transaction detrimental to the Company.

95. The egregiousness of the violations complained of herein confirms that the Board is: (i) not independent or disinterested; and (ii) incapable of exercising valid business judgment in evaluating a pre-suit demand. Indeed, the directors provided ***no*** valid business reason for entering into the Polygon Transaction, for financing the Polygon Transaction with stock instead of cash, or for conducting the Share Repurchase after the transaction was completed. Nor can they. As demonstrated herein, the Polygon Transaction and Share Repurchase benefitted no one except Defendants to the detriment of TFG and its shareholders. Defendants continue to refuse to provide the report, or the documentation underlying it, purportedly generated by Perella Weinberg to evaluate the Polygon Transaction. This latest transgression follows a pattern by the Board of acquiescing to the Principals' schemes to enrich themselves at the expense of TFG's outside

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[30] Simon Lack, The Hedge Fund Mirage: The Illusion of Big Money and Why It's Too Good to Be True (2012).

shareholders. A pre-suit demand upon the Board – a board which has repeatedly ignored shareholder remonstrations – is a futile action and is therefore excused.

96. In addition, TFG's Articles of Incorporation make it effectively impossible for TFG's directors to, on their own, commence this action on behalf of the Company. As described earlier, the Principals control the Company through their ownership of Polygon Credit Holding II Ltd., which holds all 10 of TFG's voting shares. Under Article 86 of the TFG Articles, any resolution by the six-person Board requires the affirmative vote of five directors. As explained on TFG's website, "***the Board of Directors will not be able to act without the affirmative vote of one or more directors affiliated with the Voting Shareholder*** [*i.e.*, Dear or Griffith]." Under TFG Article 88(g), a director may be removed from office for any reason by resolution of the holders of the voting shares (*i.e.*, Dear and Griffith). Thus, TFG's directors would be unwilling to commence this proceeding on behalf of the Company for fear of being removed from office by the voting shareholders. ***Indeed, the one director audacious enough to refuse to acquiesce to the Principals' self-dealing, Jackson, was immediately stripped of his position and barred from even entering TFG's offices.*** Moreover, under TFG Article 89, the voting shareholders (again, Dear and Griffith) have complete authority to set the remuneration of the directors. The Principals have provided each of the four "independent" directors hundreds of thousands of dollars over the years as compensation in exchange for approving, without question, the Principals' schemes to divert TFG's wealth towards themselves. The "independent" directors would not risk losing these payments by crossing the Principals. In addition, pursuant to TFG Article 63, the voting shareholders (once again, Dear and Griffith) may call an "extraordinary general meeting" to vote against the decision to commence proceedings against the TFG Investment Manager. As a result, even if – against all probability – the Board were to approve a suit against itself and others as sought herein, such act would prove ultimately futile, as

the Principals could, and no doubt would, unilaterally veto this decision. Finally, under TFG's 2007 Offering Memorandum, the Board has limited authority to terminate the Investment Advisor Agreement – the principal relief sought by plaintiff. "As a result, the Company may not be able to replace the [TFG] Investment Manager or any [Polygon] Services Provider because of poor performance, disagreements over investment decisions and strategic decisions or other factors. Moreover, in the event these contracts are terminated, the Voting Shares must approve any replacement Investment Manager, and the action by the Board of Directors to hire such replacement ***requires the vote of at least one of the Polygon-affiliated directors*** [*i.e.*, Dear or Griffith]." Consequently, ***the Board cannot replace the Investment Advisor Agreement on terms free from the Principals' corrupting influence without Court intervention.***

97. Plaintiff has not made any demand on shareholders of TFG to institute this action since such demand would be a futile and useless act for the following reasons:

(a) TFG is a publicly traded company with approximately 110 million shares outstanding, and hundreds, if not thousands of shareholders;

(b) Making demand on such a number of shareholders would be impossible for plaintiff who has no way of finding out the names, addresses or phone numbers of all TFG shareholders; and

(c) Making demand on all shareholders would force plaintiff to incur huge expenses, assuming all shareholders could be individually identified.

COUNT I

Against Defendants Dear, Griffith, Herlyn, Rosenberg, Wishnow, the TFG Investment Manager, Polygon Credit Holdings Ltd. and Tetragon Financial Management GP LLC for Violating the Investment Advisers Act of 1940

98. Plaintiff incorporates ¶¶1-97.

99. The TFG Investment Manager is registered as an investment adviser under the Advisers Act.

100. Defendants Dear, Griffith, Herlyn, Rosenberg and Wishnow are the officers of the TFG Investment Manager, and as such direct its conduct and have primary responsibility for its actions.

101. Polygon Credit Holdings Ltd. owns and controls Tetragon Financial Management GP LLC, which in turn controls and has primary responsibility for the TFG Investment Manager as its general partner.

102. The TFG Investment Manager violated §206 of the Advisers Act by engaging in manipulative conduct in designing and implementing the Polygon Transaction and Share Repurchase. Section 206 provides in relevant part:

> It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly –
>
> (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
>
> (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; [or]
>
> * * *
>
> (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

103. The Investment Advisor Agreement entered into between the TFG Investment Manager and the Company should be deemed void pursuant to §215 of the Advisers Act, which provides that every

> (b) . . . contract made in violation of any provision of this title and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or

> order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision.

104. Accordingly, plaintiff seeks rescission of the Investment Advisor Agreement and restitution of the consideration given pursuant to its purported terms.

COUNT II

Against Defendants Dear, Dorey, Griffith, Jeffreys, Knief, Ward and Polygon Credit Holdings II Ltd. for Breaches of Fiduciary Duties

105. Plaintiff incorporates ¶¶1-104.

106. Each of the Individual Defendants named in this Count was a director and/or officer of TFG and, as such, owed to TFG the highest duty as a director of a Guernsey company. In addition, Polygon Credit Holdings II Ltd. owed to TFG fiduciary duties as its controlling shareholder. Each of these defendants agreed to and did participate in a deliberate course of action designed to divert corporate assets in breach of the fiduciary duties these defendants owed to TFG.

107. As demonstrated by the allegations above, defendants named herein breached their fiduciary duties of loyalty, good faith, and independence owed to TFG and its shareholders and failed to disclose material information and/or made material misrepresentations to shareholders regarding the Polygon Transaction and Share Repurchase.

108. Defendants have violated their fiduciary duties of loyalty, good faith, and independence owed to TFG and its shareholders, have engaged in unlawful self-dealing, and have acted to put their personal interests and/or their colleagues' interests ahead of the interests of TFG and its shareholders. As directors and/or officers of TFG and/or its controlling shareholder, Defendants participated in the wrongful acts alleged herein. They thereby breached their fiduciary duties to TFG shareholders.

109. In committing the wrongful acts particularized herein, Defendants have pursued or joined in the pursuit of a common course of conduct and have acted in concert with one another in furtherance of their common plan or design. At all relevant times, Defendants collectively and individually initiated a course of conduct which was designed to and did cause TFG's assets to be diverted to the Principals via the Polygon Transaction and Share Repurchase.

110. Defendants' misconduct was not due to an honest error of judgment but rather to their bad faith and was done knowingly, willfully, intentionally or recklessly.

111. By reason of the foregoing acts, practices and course of conduct, Defendants have failed to exercise good faith and instead have acted knowingly or in reckless disregard of their fiduciary obligations owed to TFG and its public shareholders, thereby harming TFG.

COUNT III

Against All Defendants for Unjust Enrichment

112. Plaintiff incorporates ¶¶1-111.

113. As a result of the conduct described above, Defendants will be and have been unjustly enriched at the expense of TFG, in the form of, among other things, unjustified stock transfers to entities in which Defendants hold material and significant business interests and/or the payment of unjustified compensation.

114. All the stock transfers and payments provided to Defendants based upon or related to the Polygon Transaction and Share Repurchase were unjustly awarded and at the expense of TFG, resulting in substantially unearned benefits.

115. Defendants knew that they were unjustifiably receiving the benefits as a result of the Polygon Transaction and Share Repurchase and it would be unjust to allow Defendants to retain these benefits.

116. The Company received inadequate compensation for these stock transfers and payments and was in fact damaged by such transfers.

117. Defendants should be ordered to disgorge the gains which they have and/or will unjustly obtain and/or a constructive trust should be imposed for the benefit of the Company.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment as follows:

A. Against Defendants and in favor of TFG for the amount of damages sustained by the Company as a result of Defendants' violations of law;

B. Extraordinary equitable and/or injunctive relief as necessary or permitted by law, equity and the statutory provisions sued hereunder, including disgorgement, attachment, impoundment, imposition of a constructive trust on or otherwise restricting the disposition of the payments at issue herein;

C. Directing the TFG Board to take all necessary actions to reform its corporate governance and take steps to amend, alter, rectify and/or enjoin the terms of the Polygon Transaction and Share Repurchase or its enforcement, so as to terminate the wrongful diversion of assets to Defendants and their affiliates via the two-step scheme complained of herein;

D. Ordering rescission of the Investment Advisor Agreement between TFG and the TFG Investment Manager under the Advisers Act and restitution of all fees and other benefits received by Defendants thereunder;

E. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

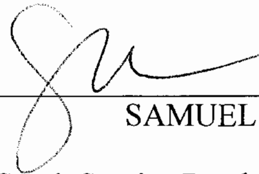
F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: June 18, 2013

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
DAVID A. ROSENFELD



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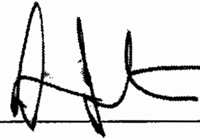
Attorneys for Plaintiff

VERIFICATION

I, Devandranauth Shastri, on behalf of Omega Overseas Partners, Ltd., hereby verify that I am familiar with the allegations in the Verified Derivative Complaint for Violations of the Investment Advisers Act of 1940, Breach of Fiduciary Duty and Unjust Enrichment; that I have authorized the filing of the Complaint; and that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 17 day of June, 2013.

OMEGA OVERSEAS PARTNERS LTD.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