IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MUTUAL FUNDS INVESTMENT LITIGATION This Document Relates To: In re Pilgrim Baxter 04-md-15862-04	MDL 1586 Case No. 04-MD-15862 (Judge Andre M. Davis)
STEPHEN CAREY, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. PILGRIM BAXTER & ASSOCIATES, LTD., et al., Defendants.	Case No. 04-cv-01151-JFM

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

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Lead Plaintiff, the Ohio Public Employees Deferred Compensation Plan ("Ohio"), alleges the following based upon the investigation of Lead Counsel, which included a review of internal PBHG Funds ("PBHG") documents, United States Securities and Exchange Commission ("SEC") filings as well as other regulatory filings and reports and advisories regarding PBHG, press releases, media reports, the complaint filed by the SEC, the complaint filed by the New York Attorney General's Office and extensive interviews with a confidential witness with direct knowledge of unlawful trading activities at PBHG and throughout the mutual fund industry ("Timing Witness #1").

I. NATURE OF THE ACTION

1. Lead Plaintiff Ohio brings this action on behalf of all persons that purchased and/or held PBHG mutual funds advised by Pilgrim Baxter and Associates, Ltd. ("PBA") during the period from November 1, 1998, to November 13, 2003, inclusive (the "Class Period"), and were harmed by a pattern of trading practices known as "market timing." The wrongful acts and misconduct alleged herein, much of which has been admitted by defendants, are the subject of administrative actions and investigations currently underway by various regulatory agencies, including the SEC and the New York State Attorney General.

2. PBHG consists of approximately 18 mutual funds in which investors contribute cash for the purpose of creating a pool of assets with which to invest. These mutual funds hold no assets apart from investors' deposits, nor do they conduct any investment or operating activities on their own. Instead, the funds' operations are controlled by PBA, a separate legal entity which, directly and through its subsidiaries and affiliates, performs all activities necessary to carry out the funds' investment objectives. For performing these services, PBA and its affiliates are paid fees from the funds' deposits in an amount equal to a percentage of the assets

under management. Accordingly, the larger the assets under management, the greater the fees PBA receives.

3. Market timing is a practice whereby certain investors take advantage of inefficiencies in the pricing of mutual fund shares by rapidly trading in and out of these funds on multiple occasions within a short period of time. By executing a significant number of these trades quickly, market timers profit by capitalizing on the differential between the price of the mutual fund itself and the value of the underlying securities that comprise the mutual fund.

4. Throughout the Class Period, PBA knew or, but for its recklessness, should have known that market timing and late trading cause significant monetary harm to long-term fund investors. By quickly trading in and out of mutual funds, market timers dilute the investment gains that would otherwise be realized by long-term investors, without sharing any of the losses incurred. Market timers also impose additional transaction costs upon innocent fund investors, due to the huge inflows and outflows of cash resulting from their rapid "in and out" trading. To pay out these market timers on short notice, portfolio managers hired by PBA to manage PBHG assets were required to invest disproportionate amounts of their funds' assets in cash and other highly liquid assets, paying a significantly lower rate of return than other assets purchased consistent with the fund's investment guidelines. These huge inflows and outflows also required portfolio managers to adopt highly sophisticated and expensive hedging techniques to protect the fund's assets against timing activity, thereby increasing expenses borne by innocent investors in the funds.

5. Due to the harm to investors caused by market timing, PBA purported to prohibit this activity by limiting trading in and out of the mutual funds it advised, and by purporting to

banish traders who exceeded these limitations, all of which was detailed in registration statements and prospectuses filed with the SEC throughout the Class Period.

6. PBA has now admitted that, contrary to the representations in the various prospectuses, it permitted market timing to occur during the Class Period, and that innocent investors were harmed as a result of this activity. PBA knowingly permitted various large investors to engage in market timing, and waived the various regulations and redemption fees that would otherwise prohibit this activity, in return for various forms of payment from the market timers. PBA encouraged and facilitated this conduct, despite its knowledge of the harm that market timing caused to long-term investors, primarily to increase the size of the asset portfolios under management and, in turn, PBA's fees for managing PBHG mutual funds. Under the terms of settlements with both the SEC and the New York Attorney General, PBA disgorged $40 million and paid $50 million in civil penalties as a result of its direct participation in the market timing of PBHG mutual funds.

7. PBA did not act alone, however, in the perpetration of this scheme, which cost innocent investors hundreds of millions of dollars in investment losses and improper fees. For example, in addition to selling the right to engage in market timing (generally known as "timing capacity") directly to certain select investors, PBA also engaged various brokerage firms (the "Facilitator Brokers"), including Wall Street Discount Corporation, to sell timing capacity on its behalf. As detailed below, these brokerage firms negotiated for timing capacity in various funds controlled by PBA, and then sold this capacity to the market timers themselves. These brokers received substantial fees from both the timers to whom they sold the capacity, and from the funds controlled by PBA, which were calculated as a percentage of the amounts traded by the market timers.

8. The wrongful conduct of brokers was not limited to negotiating for and selling timing capacity in the funds. Certain brokerage houses also executed, or "cleared" timing transactions (the "Clearing Brokers") with full knowledge of the harmful effects of timing on the performance of mutual funds, in return for fees paid by both the funds managed by PBA as well as the market timers themselves. These Clearing Brokers implemented a variety of deceptive devices and schemes for the purpose of facilitating market timing. Other large brokerage firms provided sophisticated financing arrangements to market timers that included the creation of false accounts to facilitate the timing scheme, all in return for substantial fees and other compensation.

9. Although PBHG was nominally governed by a Board of Trustees throughout the Class Period, these trustees were selected and nominated, without exception, not by the shareholders of the funds themselves, but by PBA. These individuals served on multiple fund boards advised by PBA, including the PBHG Board, and owed their positions, along with the substantial compensation they received as a result, to PBA. As a result, these trustees suffered from inherent conflicts of interest that precluded them from discharging their fiduciary duties of care, loyalty and good faith, which should have included prohibiting market timing, enforcing the terms of the various prospectuses, and otherwise acting to safeguard the best interests of innocent investors in the funds.

II. JURISDICTION AND VENUE

10. This Court and the United States District Court of the Eastern District of Pennsylvania (the "Transferor Court") have jurisdiction over the subject matter of this action pursuant to: § 22 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. § 77v); § 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. §78aa); § 44 of the Investment Company Act of 1940 (the "ICA") (15 U.S.C. §§ 80a-43); and, 28 U.S.C. §§ 1331,

1337. This Court and the Transferor Court also have supplemental jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1367.

11. The claims alleged herein arise under: §§ 11, 12(a)(2) and 15 of the Securities Act (15 U.S.C. §§ 77k, 77l(a)(2) and 77o); §§ 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b), 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §§ 240.10b-5); §§ 34(b), 36(a), 36(b) and 48(a) of the ICA (15 U.S.C. §§ 80a-33(b), 80a-35(a)-(b), 80a-47(a)); and state and common law. In connection with the acts, conduct and other wrongs complained of herein, the defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, the United States mail and the facilities of a national securities exchange.

12. Venue is proper in the District of Maryland and the Eastern District of Pennsylvania (the "Transferor District") pursuant to § 22 of the Securities Act (15 U.S.C. § 77v), § 27 of the Exchange Act (15 U.S.C. § 78aa); and 28 U.S.C. §§ 1391(b) and 1391(c). Many of the acts and transactions giving rise to the violations of law complained of herein occurred in the District of Maryland and the Transferor District, defendants conducted other substantial business within the District of Maryland the Transferor District and many Class members reside within the District of Maryland and the Transferor District. Venue is also proper in the District of Maryland pursuant to the multi-district litigation provisions under 28 U.S.C. § 1407. Additionally, defendant PBHG, formerly known as The PBHG Funds, Inc., was organized as a Maryland corporation from at least November 1, 1998 until June 16, 2001.

III. PARTIES

A. Plaintiff

13. Lead Plaintiff, Ohio, is a deferred compensation plan within the meaning of 26 U.S.C. § 457 and operates for the benefit of current and retired public employees of the State of Ohio. During the Class Period, Ohio purchased and held shares of PBHG mutual funds that

were subject to the wrongful market timing activity complained of herein. As a result of the conduct alleged herein, Ohio suffered damages both in connection with its purchases of PBHG mutual funds and by virtue of holding PBHG mutual funds during the Class Period.

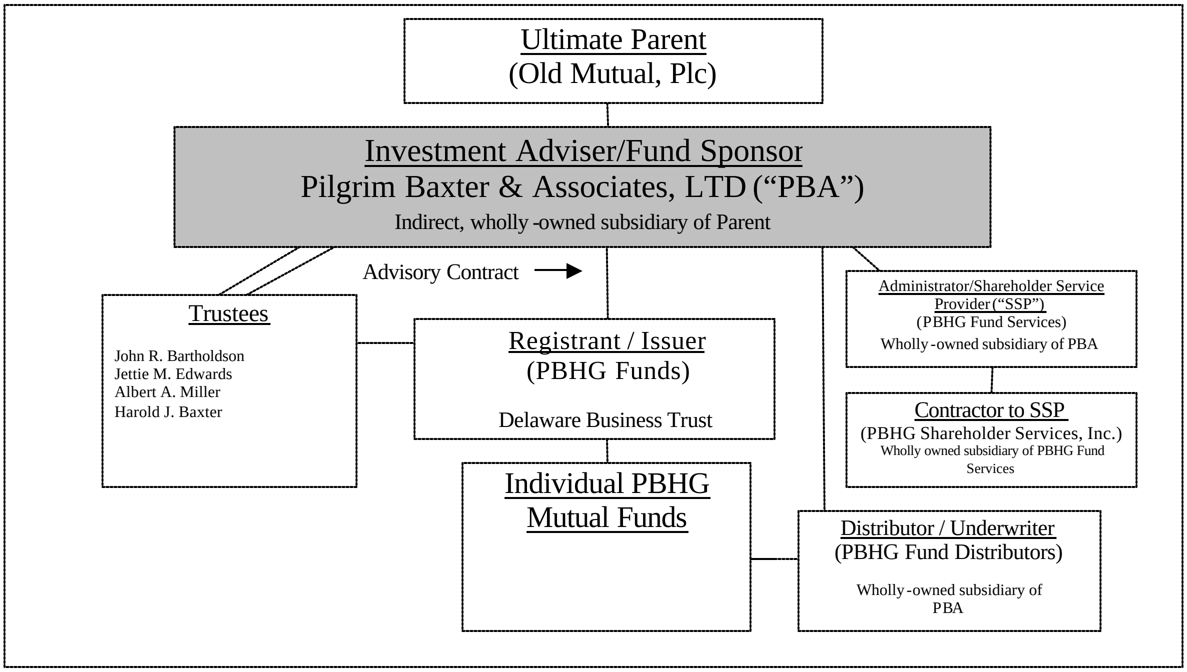
B. PBHG Complex Defendants And Significant Non-Parties

1. Non-Party PBHG Mutual Funds

14. (a) The individual PBHG mutual funds (e.g., "PBHG Growth Fund"), non-parties to this action, are open-ended mutual funds in which investors contribute cash for the purpose of creating a pool of assets with which to invest and purchase securities. In return for their deposits, PBHG investors receive shares in a PBHG mutual fund in an amount directly proportionate to the amount of their investment (i.e., the larger the amount invested, the more shares the investor receives in the fund). This cash is then used by the portfolio managers of the PBHG mutual fund, who are hired and employed by PBA, to purchase stocks or other securities consistent with the investment goals and objectives of the fund. PBHG shares are issued to PBHG investors pursuant to registration statements and prospectuses that must comply with the Securities Act and the ICA.

(b) PBHG mutual funds hold no assets apart from the deposits of their investors, nor do they conduct any operating or investment activities on their own. Instead, these mutual funds are part of a labyrinthine related structure in which separate legal entities, which are nonetheless captive to PBA, and also related to PBHG, perform and control all necessary activities related to the sale and redemption of securities, as well as the management of investments (hereinafter the "PBHG Complex"). Indeed, as detailed below, these related entities not only appoint their own representatives to the board of trustees charged with the fiduciary duty of protecting the interests of investors in each individual fund, but also control the appointment of the purportedly "independent" members of these boards. These same related entities within the PBHG Complex receive substantial fees for the performance of these services, which are calculated as a percentage of the value of the total deposits under management, as set forth below. Thus, the larger the amount of deposits under management, the more that these related entities stand to collect in fees from mutual fund investors. This means that, even in the case in which a PBHG mutual fund loses money on its investments, the related PBHG Complex entities can still increase the fees they earn by simply steering more investors into PBHG mutual funds.

15. Set forth below is a chart illustrating the relationship between the entities that made up the PBHG Complex as of November 13, 2003. Each of these entities is controlled not by investors in the individual PBHG mutual funds, but by separate corporations ultimately owned or controlled by a single corporate parent, Old Mutual, Plc ("Old Mutual"). Old Mutual operates these subsidiaries, which in turn are responsible for the operations of the individual PBHG mutual funds, for its own benefit rather than the benefit of fund investors. The key subsidiaries within the PBHG Complex are: (i) the Investment Advisor/Fund Sponsor; (ii) the Registrant/Issuer; (iii) the Administrator; and (iv) the Underwriter/Distributor. The role of the parent and each subsidiary in the PBHG Complex is explained in more detail below.



2. The Parent Defendants

16. Defendant Old Mutual is the ultimate parent of PBA and its affiliates, as described herein. Old Mutual is a publicly-traded international financial services company with operations in the United States, the United Kingdom and South Africa. Old Mutual's corporate headquarters is located at Old Mutual Place, 2 Lambeth Hill, 5th Floor, London, United Kingdom, EC4V 4GG. Old Mutual also maintains an office in the United States at 200 Clarendon Street, Boston, MA 02116.

17. Defendant Old Mutual Asset Management is a subsidiary of Old Mutual and maintains offices in the United States located at 200 Clarendon Street, 53rd Floor, Boston, MA 02116. Through its affiliated firms, including PBA, Old Mutual Asset Management provides asset management services and products.

18. Defendant Old Mutual (US) Holdings, Inc. ("Old Mutual U.S.") is a Delaware corporation and a subsidiary of Old Mutual. Old Mutual U.S. maintains offices at 200 Clarendon

Street, 53rd Floor, Boston, MA 02116. Through its affiliated firms, including PBA, Old Mutual Asset Management provides asset management services and products.

19. Old Mutual, Old Mutual Asset Management and Old Mutual U.S. are collectively referred to herein as the "Parent" defendants.

20. The Parent defendants are the ultimate owners or controlling entities of the Investment Adviser/Fund Sponsor, PBA. Additionally, certain other of the Parents' other subsidiaries or affiliates, as set forth below, contracted with the PBHG funds to provide other administrative and/or advisory services. Through these subsidiaries, the Parent defendants collected fees from the PBHG mutual funds themselves for the services they rendered, including fees generated by the wrongful conduct alleged herein.

3. The Investment Adviser/Fund Sponsor Defendant

21. (a) Defendant PBA is a Delaware corporation and is an indirect subsidiary of Old Mutual. PBA is located at 1400 Liberty Ridge Drive, Wayne, PA 19087-5593. PBA is a registered Investment Adviser under the Investment Advisers Act of 1940 ("IAA") and serves as the Fund Sponsor/Investment Adviser to PBHG Funds. As of November 13, 2003, PBHG consisted of 18 mutual funds, with $7.4 billion in assets under management.

(b) PBA is responsible both for the creation of the individual PBHG funds (including the determination of their investment goals and strategy), as well as for managing the day-to-day activities and individual investments of the funds. PBA is ultimately responsible for performing virtually all critical functions of PBHG Funds mutual funds, including: (i) hiring and employing portfolio managers; (ii) selling shares in the funds to the public; (iii) performing all "back-office" operations; (iv) determining the net asset value ("NAV") of the funds on a daily basis; (v) directing and controlling the investments in the funds; (vi) ensuring that the investment policies of the funds are observed; (vii) enforcing the policies of the funds, including restrictions on trading and other activities that could be detrimental to fund shareholders; and (viii) otherwise managing the day-to-day activities of the funds. While PBHG Funds includes dozens of different individual mutual funds, PBA is ultimately responsible for the management and day-to-day operations for all of the PBHG mutual funds. Throughout the Class Period, PBA permitted select investors to engage in the market timing of PBHG mutual funds at the expense of ordinary, long-term shareholders, such as Lead Plaintiff and the other members of the Class, in return for substantial fees calculated as a percentage of the average daily net assets of the PBHG mutual funds.

(c) PBA (and through it, the Parent defendants) was paid for its services during the Class Period pursuant to an investment advisory agreement (the "Advisory Agreement") negotiated between PBA and the trustees of the PBHG (the statutory entity that holds the assets of the individual mutual funds, as explained below). The Advisory Agreement provided for the funds to pay the Investment Advisor, PBA, as much as 100 basis points (1%) annually of their average daily net assets, calculated on a daily basis and payable monthly, in return for PBA investment advisory services alone (i.e. exclusive of other "expenses," which are accounted for separately by PBA and PBHG). Thus, if a PBHG mutual fund had a $1 billion average of assets under management over the course of a year, it would have paid the Investment Advisor as much as $10 million annually, directly from investors' deposits, for PBA's investment advisory services alone.

4. <u>The Registrant/Issuer Defendant</u>

22. (a) Defendant PBHG was the registrant and issuer of shares of PBHG mutual funds during the Class Period. PBHG's principal executive offices are located at 1400 Liberty Ridge Drive, Wayne, Pennsylvania 19087. PBHG is organized as a Delaware business trust and is an open-ended investment company registered pursuant to Section 8 of the ICA (15 U.S.C.

§ 80a-8). Until July 16, 2001, PBHG was organized as a Maryland corporation and known as The PBHG Funds, Inc.

(b) PBHG is an affiliate of PBA, PBHG's Investment Advisor, under § 2(a)(3) of the ICA (15 U.S.C. § 80a-(2)(a)(3)) and is the legal issuer of PBHG mutual fund shares. As such, PBHG only issued such shares to the public during the Class Period pursuant to registration statements and prospectuses issued under Section 10 of the Securities Act, and is therefore absolutely liable to purchasers of the shares for any material misstatements and omissions in the prospectuses under the Securities Act. Lead Plaintiff does not seek recovery for itself or the Class from PBHG mutual fund assets consisting of the deposits or like interests of ordinary PBHG shareholders held by PBHG.

5. <u>The Administrator Defendants</u>

23. Defendant PBHG Fund Services, a registered transfer agent and Pennsylvania business trust, is a wholly-owned subsidiary of PBA and is located at 1635 Market Street, 11th Floor, Philadelphia, PA 19103. PBHG Fund Services functioned as the Administrator and Shareholder Service Provider to PBHG during the Class Period. In these capacities, PBHG Fund Services, on behalf of PBA, oversaw the administration of PBHG's business and affairs, including regulatory reporting and all necessary office space, equipment, personnel and facilities, as well as services performed by various third parties.

24. Defendant PBHG Shareholder Services, Inc., a registered transfer agent and Delaware corporation, is a wholly-owned subsidiary of PBHG Fund Services and an affiliate of PBA, located at 825 Duportail Road, Wayne, PA 19087. PBHG Shareholder Services, Inc. functioned as a contractor to PBHG Fund Services. In this capacity, PBHG Shareholder Services, Inc. assisted PBHG Fund Services with its administrative obligations, as described in

the preceding paragraph. Prior to May 25, 2001, PBHG Shareholder Services, Inc., was known as UAM Shareholder Service Center, Inc.

25. Defendants PBHG Fund Services and PBHG Shareholder Services, Inc. are collectively referred to herein as the "Administrator" defendants.

26. Throughout the Class Period, the Administrator defendants were responsible for performing the day-to-day administrative functions associated with the business of the individual funds. These tasks included: (i) performing back-office operations; (ii) calculating the NAV of the individual funds within the PBHG Complex on a daily basis; and (iii) maintaining books and records for the individual funds. Like their corporate parent, PBA, the Administrator defendants were responsible for administering the business of all the PBHG mutual funds, which were all sponsored by PBA.

27. Similar to PBA, throughout the Class Period the Administrator defendants (and through them, their ultimate Parent, Old Mutual) were paid for their services pursuant to a contract (the "Administrative Agreement") negotiated between PBA and PBHG's Trustees, on behalf of PBHG. PBHG Fund Services collected fees from PBHG shareholders which were calculated daily and paid monthly at an annual rate of 15 basis points (0.15%) of the average daily net assets of each Fund. All told, as much as 45 additional basis points of expenses were captured by PBA and the Administrator defendants, totaling as much as over 60 basis points (.6%) annually of a PBHG mutual fund's average daily net assets, calculated on a daily basis and payable monthly or quarterly, in return for their services. Among the charges approved by PBHG's Board of Trustees were additional fees in the hundreds of thousands of dollars paid to the Administrator semi-annually for maintaining PBHG's website. Thus, during the Class Period, if a PBHG mutual fund had an average of $1 billion of assets under management over the

course of a year, it would have paid the Administrators, directly from PBHG investors' deposits, as much as $6 million annually for their services, in addition to the millions of dollars also paid out of investors' deposits to Administrators' corporate parent, PBA.

6. The Underwriter/Distributor Defendants

28. Defendant SEI Investments Distribution Company ("SEI Distribution Co."), located at 1 Freedom Valley Drive, Oaks, PA 19456, served as the underwriter/distributor for PBHG mutual funds from at least November 1, 1998 until July 16, 2001. SEI Distribution Co. is a wholly-owned subsidiary of SEI Investments Company.

29. Defendant PBHG Fund Distributors served as the underwriter/distributor for PBHG mutual funds from July 16, 2001 until at least November 13, 2003. PBHG Fund Distributors, located at 825 Duportail Road, Wayne, PA 19087, is a wholly-owned subsidiary of PBA and is organized as a Pennsylvania business trust. PBHG Fund Distributors is a registered broker-dealer.

30. SEI Distribution Co. and PBHG Fund Distributors (collectively, the "Underwriter/Distributor" defendants) were responsible for the sale of PBHG mutual fund shares to the public pursuant to registration statements and prospectuses. As registered broker-dealers, the Underwriter/Distributor defendants were paid tens of millions of dollars in commissions per year by PBA, coming directly from PBHG shareholders. For example, commissions generated by PBHG Growth Fund sales could total over $7.5 million in one year alone. As underwriters, the Underwriter/Distributor defendants are strictly liable for any material misstatements or omissions contained in the registration statement and prospectus under the Securities Act.

7. The PBHG Individual Defendants

31. Defendant Gary L. Pilgrim ("Pilgrim") was, throughout the Class Period, until he was forced to resign on November 13, 2003, a co-founder and a Director of PBA, and the

President and Chief Investment Officer ("CIO") of PBHG. Pilgrim also served, at all times relevant herein, as the Portfolio Manager of the PBHG Growth Fund. Pilgrim signed each of the PBHG Registration Statements incorporating PBHG Prospectuses issued and/or effective during the Class Period, as set forth in Appendix B, attached hereto.

32. Defendant Harold J. Baxter ("Baxter") was, throughout the Class Period, until he was forced to resign on November 13, 2003, the co-founder, Chief Executive Officer ("CEO") and Director of PBA, a Director of Old Mutual U.S. and a director or trustee of PBHG. Baxter signed each of the PBHG Registration Statements incorporating PBHG Prospectuses issued and/or effective during the Class Period, as set forth in Appendix B, attached hereto.

33. Defendants Pilgrim and Baxter are collectively referred to herein as the "PBHG Individual" defendants.

34. As detailed below, each of the PBHG Individual defendants, because of their management positions and/or membership on PBHG's Board, had the power and authority to control the contents of PBHG's SEC reports and filings, press releases and other statements to the public, and to cause PBHG to engage in the wrongful conduct complained of herein.

35. Further, defendant Baxter, by virtue of his position as a trustee of the various PBHG mutual funds at issue herein, was responsible for ensuring the truth and accuracy of the various statements contained in the funds' registration statements and prospectuses filed with the SEC and disseminated to investors throughout the Class Period. Baxter also was a fiduciary of PBHG mutual fund investors, and was responsible for managing the affairs of these funds in accordance with his fiduciary duties of care, loyalty and good faith toward shareholders of the funds. These fiduciary duties included, among other things, the following: (i) being fully informed as to the management of the funds over which he served as trustee; (ii) ensuring that

the various PBHG affiliates responsible for the day-to-day management of the funds, including the Investment Advisor, PBA, were acting consistent with the objectives of the funds, and in the best interests of fund shareholders; (iii) negotiating reasonable fees on an arms-length basis with those entities performing services on behalf of the funds, including PBA; (iv) ensuring that policies and regulations concerning investment in the funds, including those prohibiting market timing and late trading, were enforced; and (v) otherwise safeguarding the best interests of fund shareholders. As detailed below, Baxter breached his fiduciary duties to the members of the Class by permitting the wrongful conduct alleged herein.

C. Other Defendants

1. The Timer Defendants

a. Appalachian Trails

36. Defendant AT, L.P., a/k/a Appalachian Trails, L.P. ("Appalachian Trails"), is a Delaware limited partnership. Appalachian Trails is a private investment partnership which maintained hedge fund accounts, used to market time PBHG mutual funds, under the name of "Appalachian Trails" at PBHG.

37. Defendant Michael G. Christiani ("Christiani") was, at all times relevant herein, the Founder, Chairman and CEO of CPTR, LLC, which acts as the general partner of Appalachian Trails and which manages the Appalachian Trails hedge fund accounts.

38. Defendant CPTR, LLC ("CPTR"), located at 30 Tower Lane Suite 1, Avon, CT 06001, a Delaware limited liability company, acted, at all relevant times, as the general partner of Appalachian Trails.

b. Canary

39. Defendant Edward J. Stern ("Stern") was, at all times relevant herein, the Managing Principal of defendants Canary Capital Partners, LLC, Canary Investment Management, LLC and Canary Capital Partners, Ltd.

40. Defendant Canary Investment Management, LLC is a limited liability company organized and existing under the laws of the State of New Jersey, with offices at 400 Plaza Drive, Secaucus, New Jersey 07094.

41. Defendant Canary Capital Partners, LLC is a limited liability company organized and existing under the laws of the State of New Jersey, with offices at 400 Plaza Drive, Secaucus, New Jersey.

42. Defendant Canary Capital Partners, Ltd. is a Bermuda limited liability company.

43. Defendants Canary Investment Management, LLC, Canary Capital Partners, LLC, Canary Capital Partners, Ltd., are collectively referred to herein as the "Canary" defendants.

44. Defendants Appalachian Trails, Christiani, CPTR, Stern and Canary are collectively referred to herein as the "Timer" defendants.

45. Throughout the Class Period, PBA and its affiliates entered into agreements with the Timer defendants that permitted them to engage in the improper market timing of PBHG mutual funds at the expense of ordinary long-term PBHG investors, such as Lead Plaintiff and the other members of the Class, including but not limited to: the PBHG Cash Reserves Fund; the PBHG Emerging Growth Fund; the PBHG Growth Fund; the PBHG Large Cap 20 Fund; the PBHG Large Cap Growth Fund; the PBHG Select Growth Fund (Prior to April 1, 2003, named the "PBHG Select Equity Fund"); and, the PBHG Technology and Communications Fund.

2. The Facilitator Broker Defendants

a. WSDC

46. Defendant Wall Street Discount Corporation ("WSDC") is broker-dealer and maintains its headquarters at 100 Wall Street, 7th Floor, New York, New York 10005.

47. Defendant Alan Lederfeind ("Lederfeind") was, at all times relevant herein, Founder, CEO and President of WSDC.

48. WSDC and Lederfeind acted as brokers of timing "capacity" at PBHG funds, selling the ability to time PBHG mutual funds to the likes of the Timer defendants to the detriment of ordinary PBHG investors.

b. Investec

49. Defendant Investec (US) Incorporated, formerly Investec Ernst & Co., ("Investec"), is a Delaware corporation and a registered broker-dealer with its principal offices located at One Battery Park, 2nd Floor, New York, New York 10004. Investec was a conduit for market timing in and out of PBHG, often in conjunction with WSDC.

50. Defendants WSDC, Lederfeind and Investec are collectively referred to herein as the "Facilitator Broker" defendants.

3. The Clearing Broker Defendants

51. Defendant Bank of America Corporation ("BOA") is a Delaware corporation with its principal offices located at 100 North Tyron Street, Charlotte, NC 28255

52. Defendant Banc of America Securities LLC, ("Banc of America") is a registered broker-dealer and affiliate of BOA.

53. Defendant Theodore C. Sihpol, III was employed as a broker in the New York office of defendant Banc of America's Private Client Services ("PCS") high net-worth group and was actively involved in the market timing activities alleged herein. Specifically, defendant

Sihpol facilitated the market timing and late trading transactions through BOA. In March 2004, defendant Sihpol was indicted on 40 counts of fraud, larceny and falsifying statements in connection with his late trading and market timing activities.

54. Defendants BOA, Banc of America and Sihpol are collectively referred to herein as the "Bank of America" defendants.

55. Defendant Bear Stearns & Co., Inc. ("BSC") is a global investment bank and securities trading and brokerage firm, with its principal executive offices located at 383 Madison Avenue, New York, New York 10179.

56. Defendant Bear Stearns Securities Corp., ("BSS") is a Delaware corporation with its principal offices located at 383 Madison Avenue, New York, NY 10179. BSS is a broker-dealer and affiliate of BSC.

57. Defendants BSC and BSS are collectively referred to herein as the "Bear Stearns" defendants.

58. Defendant Charles Schwab & Co. ("Charles Schwab") is a Delaware corporation with its principal offices located at 120 Kearny, 4^{th} Floor, San Francisco, CA 94104.

59. Defendant Credit Suisse First Boston (USA) Inc. ("CSFB") is a Delaware corporation with its principal offices located at Eleven Madison Avenue, New York, NY 10010.

60. Defendant Prudential Financial, Inc. is a New Jersey corporation with its principal offices located at 751 Broad Street, Newark, NJ 07102.

61. Defendant Prudential Securities, Inc. is a Delaware corporation located at One New York Plaza, 199 Water Street, New York, NY 10292. Prudential Securities, Inc., is a broker-dealer and an affiliate of Prudential Financial, Inc.

62. Defendants Prudential Financial, Inc. and Prudential Securities, Inc. are collectively referred to herein as the "Prudential" defendants.

63. Defendant Security Trust Company, N.A., ("Security Trust"), was based at 2390 E Camelback Road, Suite 240, Phoenix, AZ 85016. On October 29, 2003, the Federal Reserve ordered Security Trust to cease operations. Security Trust was not a publicly held company, it did not hold deposits, and it was not registered with the SEC in any capacity. Security Trust was bought by American Stock Transfer & Trust Company of New York and is now known by the name of its successor, AST Trust Co.

64. Defendant Citigroup, Inc. ("Citigroup") is the ultimate parent of the Salomon Smith Barney defendants named herein. Citigroup is incorporated in Delaware and its principal executive offices are located at 399 Park Avenue, New York, New York 10043.

65. Defendant Citigroup Global Markets Holdings Inc. ("Citigroup Global"), f/k/a Salomon Smith Barney Holdings Inc., operating through its subsidiaries, is a full-service investment banker and securities brokerage. Citigroup Global is a subsidiary of Citigroup and the sole parent of defendant Salomon Smith Barney, Inc. Citigroup Global is incorporated in New York with its principal executive offices at 388 Greenwich Street, New York, New York 10013.

66. Defendant Salomon Smith Barney, Inc., now known as Citigroup Global Markets, Inc., and doing business as Smith Barney Asset Management ("SBAM"), is registered as an investment adviser under the IAA. SBAM is located at 399 Park Avenue, New York, New York 10022. SBAM is also a registered broker-dealer and employer of broker-dealers and financial advisers. SBAM's broker-dealer operations are located at 388 Greenwich Street, New York, New York 10013.

67. Defendants Citigroup, Citigroup Global and SBAM are collectively referred to herein as the "SSB" defendants.

68. Defendants Bank of America, Bear Stearns, Charles Schwab, CSFB, Prudential, STC and SSB are collectively referred to herein as the "Clearing Broker" defendants. As explained in detail below, the Clearing Broker defendants participated in market timing and late trading by executing the trades across the mutual fund industry, including PBHG, and by engineering and implementing market timing and late trading strategies and schemes for the Timer defendants, the John Doe defendants and their brokers. The Clearing Broker defendants earned substantial fees and other compensation for their participation in the wrongful mutual fund trading schemes described in detail herein.

4. The Financier Defendants

69. Defendant Canadian Imperial Bank of Commerce ("CIBC") is a Canadian corporation with offices in the United States located at 425 Lexington Avenue, New York, NY 10017. CIBC is a large integrated financial services institution based in Toronto, Canada with worldwide operations.

70. Defendant JP Morgan Chase and Co. ("JPM") is a Delaware corporation, with its principal offices located at 270 Park Avenue, New York, New York 10017.

71. Defendants CIBC and JPM together with previously named defendants Bank of America, Bear Stearns and CSFB (in their capacities as financiers of market timing and late trading) are referred to collectively herein as the "Financier" defendants. As explained in detail herein, during the Class Period the Financier defendants were lenders to market timers and late traders, including the Canary and John Doe defendants, for the purpose of market timing and shorting mutual funds, including PBHG mutual funds based upon non-public information.

5. The John Doe Defendants

72. The true names and capacities of defendants sued herein as John Does 1 through 100 were other active participants in the widespread unlawful conduct alleged herein whose identities have yet to be ascertained. Such defendants were participants in the market timing schemes detailed Lead Plaintiff will seek to amend this Complaint to state the true names and capacities of said defendants when they have been ascertained.

IV. FACTUAL ALLEGATIONS

A. Overview of Market Timing Practices

1. Background Information And The Forward-Pricing Rule

73. Market timing opportunities stem from inefficiencies in the manner in which shares of individual PBHG mutual funds are priced. PBHG mutual fund shares are priced daily, based on the funds' NAV at the time of the valuation. Unlike equity or debt securities that are valued and traded on stock exchanges, PBHG continuously issues new shares as new investments are received, and redeems shares as investors withdraw assets. The value of these shares is calculated as of 4:00 p.m. Eastern Time ("ET") each day (the close of trading on the New York Stock Exchange), by determining the NAV of the fund (the value of assets less liabilities), and then dividing that amount by the number of shares outstanding. For example, if a mutual fund with 100,000 shares outstanding holds total assets with a value of $1 million, then the NAV will be $10 per share. Thus, a PBHG investor seeking to invest $1,000 in a fund would receive 100 newly issued shares, valued at $10 per share.

74. Since PBHG shares are only priced once per day, the potential exists for an investor to purchase shares at a "stale" price that does not incorporate the latest information, and thereby make a quick profit. For example, if an investor were able to purchase shares of a

mutual fund at the NAV calculated ***before*** his purchase, with knowledge that the investments held within the fund had risen in value before the next NAV calculation, he could make a risk-free profit by simply buying the shares and then selling them the next day at the new, higher NAV.

75. To prevent this arbitrage opportunity, the SEC enacted Rule 22c-1 under the ICA, which provides:

> No registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security ***which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security*** . . .

(emphasis added)

76. Under Rule 22c-1, (also known as the "forward-pricing rule"), PBHG mutual fund investors who place orders to purchase fund shares during trading hours do not know the exact price at which their orders will be executed; instead, these orders are executed at the NAV calculated after the order is received, as of the 4:00 p.m. close of trading on the New York Stock Exchange. Thus, all PBHG investors should have the same opportunity to digest "pre-4:00 p.m. information" before they buy or sell, and no investor should have the benefit of "post-4:00 p.m. information" prior to making an investment decision.

2. Subverting The Forward-Pricing <u>Rule Through Market Timing</u>

77. The forward-pricing rule alone, however, does not eliminate the arbitrage opportunity for frequent traders in mutual funds. This is due to the fact that the NAV of the fund, as calculated after the investor purchases his shares, still might not incorporate all public information.

78. A typical example of arbitrage opportunities created in mutual funds arises in a U.S. mutual fund that holds Japanese shares. Due to time zone differences, the Japanese market may close at 2:00 a.m. New York time. If the U.S. mutual fund manager uses the closing prices of the Japanese shares in his fund to calculate NAV at 4:00 p.m. in New York, he is relying on market information that is fourteen hours old. Any positive market moves during the New York Stock Exchange trading day that will likely cause the Japanese market to rise when it later opens will not be reflected in the "stale" Japanese prices, and thus the fund's NAV will be artificially low.

79. Market timing is the practice of trying to take advantage of this or other types of information delay in the pricing of mutual funds. A market timer who purchases the Japanese fund described above at the stale price is virtually assured of a profit that can be realized the next day by selling. Taking advantage of this kind of short-term arbitrage repeatedly in a single mutual fund is called "timing" the fund. Market timing opportunities also arise in other mutual fund asset categories that trade in relatively illiquid markets, including mutual funds containing securities such as high-yield bonds or small capitalization stocks. In such cases, the fact that some of a PBHG mutual fund's securities may not have traded for hours before the New York Stock Exchange closing time can render the fund's NAV stale, and thus open to being timed.

B. Material Misstatements And Omissions In PBHG Prospectuses Concerning Market Timing

80. Throughout the Class Period, in connection with the offering of PBHG mutual funds, PBHG filed with the SEC and released to the public at least 45 registration statements or amendments thereto incorporating prospectuses, prospectus supplements, statements of additional information and/or amendments thereto (many filed as SEC Form 497, "Definitive Materials") covering the sale of PBHG mutual funds to the public during the Class Period. A

complete list of the registration statements and amendments thereto, which incorporated the prospectuses, prospectus supplements, statements of additional information filed during the Class Period is attached hereto as Appendix B. Collectively, the registration statements, amendments thereto and their corresponding prospectuses, described immediately above, are referred to herein as the "PBHG Prospectuses."

81. Each of the PBHG Prospectuses filed with the SEC and published during the Class Period, referenced above, failed to disclose that PBHG permitted market timing in its mutual funds. To the contrary, these prospectuses warranted that PBHG prohibited the rapid "in and out trading" required for successful market timing. The PBHG Prospectuses issued throughout the Class Period uniformly contained the following (or nearly identical) disclosures regarding the rapid trading essential to market timing:

> [I]f you own shares of any Portfolio other than the Cash Reserves Fund, you are limited to four (4) exchanges annually from such Portfolio to the Cash Reserves Fund. Exchanges are made at net asset value.

82. Each of the representations regarding annual exchanges, exemplified above, was materially false and misleading and or omitted to state facts necessary to make the statements made not misleading in light of the circumstances in which they were made. Specifically, defendants failed to disclose that: (i) the PBHG Complex defendants, including Pilgrim and Baxter, had entered into agreements permitting select investors to time their trading of PBHG shares; (ii) pursuant to these secret agreements, the select investors, including the Timer Defendants and others, regularly market timed the PBHG mutual funds; (iii) although it was defendants' stated policy to monitor and take steps to prevent timed trading because of its adverse effect on fund investors, in fact, defendants knew such timed trading was taking place; (iv) defendants regularly allowed, and had entered into agreements which allowed, certain

investors to engage in trades that were disruptive to the efficient management of PBHG mutual funds and/or increased the costs levied on PBHG investors, thereby reducing the PBHG mutual funds' actual performance; (v) the amount of compensation paid by PBHG to PBA, because of the increased net assets under management due to the illegal market timing of funds, as well as side agreements to deposit additional "sticky assets" in other PBA-advised investment vehicles as a condition to engaging in market timing, provided substantial additional compensation to PBA and its affiliates with no benefit to PBHG and its shareholders, and (vi) pursuant to these agreements, the PBHG Complex defendants benefited financially at the expense of ordinary PBHG mutual fund investors, including Lead Plaintiff and other members of the Class.

C. Defendants' Knowledge Of And Direct Participation In The Wrongful Conduct

83. During the Class Period, various hedge funds directly, or through brokers and/or other middlemen, entered into secret agreements with the PBHG Complex to time many different mutual funds. The Timer Defendants and/or their intermediaries, the Broker Defendants, agreed with the PBHG mutual fund managers on a predetermined amount of money to run in and out of predetermined "target" funds to be timed which would exempt the market timers from short-term redemption prohibitions and fees. In return, the market timers agreed to move money among those funds and another "resting place", such as the PBHG Cash Reserves Fund, in the PBHG mutual fund family. By keeping their money – often millions of dollars – in PBA-advised investments, the Timer defendants and other market timers assured PBA that it (and its affiliates) would receive management fees and other compensation from the Timer's deposits, whether their deposits were placed in one of the target funds, or the "resting fund."

84. Internal PBHG documents clearly demonstrate the PBHG Complex's motive behind allowing market timing of PBHG mutual funds: increased wealth for the PBHG

Complex, and specifically Pilgrim, Baxter and the Parent defendants. Indeed, these documents expressly delineate PBHG's only three "revenue drivers": Advisory Fees, Administrative Fees and Third Party relationships. Notably, both Advisory and Administrative Fees can only be increased by increasing the amount of assets under management. During the period from 2000 through the end of 2001, despite a sharp, overall decline in the NASDAQ, cumulative cash flows in PBHG rapidly increased during the same period, to a total of over $7 billion. These cash flows, and the fees generated thereby, were attributable to market timer money, as the Timer and John Doe defendants' cash flows often accounted for hundreds of millions of dollars in only one day, as described below.

85. In addition, during the Class Period, Pilgrim and Baxter alone made hundreds of millions of dollars from their share of the fees collected from PBHG shareholders pursuant to various revenue sharing agreements that they had negotiated. While these "earn out" agreements specifically granted Pilgrim and Baxter an increased share of revenue, potentially in the millions of dollars, for growing the assets under management at PBHG, the agreements provided no incentive and were silent as to the actual performance of PBHG mutual funds under the stewardship of the two men for whom the funds were named.

86. The PBHG Complex defendants disregarded, or, for their own benefit, selectively enforced the express "anti-timing" exchange limitations in PBHG Prospectuses and engaged in a scheme, described herein, for their own gain and for the benefit of the Timer, Broker and Financier defendants, all to the detriment of Lead Plaintiff and the Class. As demonstrated by the unlawful activities described herein, the PBHG Complex defendants, including PBA and its affiliates, continually exerted their influence to specifically allow for and profit from unlawful trading activities by the Timer defendants and their associates.

87. At the peak of the unlawful trading activity, at least 28 PBHG mutual fund market timers were in violation of the four exchange-per-year policy, and their accounts contained total assets of approximately $600 million. The Timer defendants, according to regulatory complaints, controlled over 50 percent of these assets. Additionally, according to government investigations, the PBA and PBHG Complex defendants allowed certain investors, including the Timer defendants, to make as many as 66 exchanges per year without paying redemption fees or otherwise defraying the high transaction costs associated with such rapid trading, which were known by the PBHG Complex defendants to harm ordinary shareholders.

88. While the Timer defendants were being allowed to market time PBHG mutual funds, defendants acknowledged the many harmful effects of market timing. In mid-1998, portfolio managers of PBHG mutual funds complained to PBA senior management about the disruptive effect of market timing activities, which resulted in the drafting of a "timer policy." The policy mirrored the statements in PBHG Prospectuses limiting shareholders to four (4) exchanges annually from any of the PBHG mutual funds to the PBHG Cash Reserves Fund (a money market fund that PBA knew was necessary for the Timers to use as a "parking" spot for timing money).

89. Despite this knowledge, defendants continued to permit timing for the purpose of increasing their fees and compensation. The influx of timer money at PBHG reached staggering proportions during the Class Period. For example, by July 12, 2001, timer assets in the PBHG Growth Fund alone had ballooned to more than $466 million, nearly 14% of the PBHG Growth Fund's assets. Indeed, timing of PBHG mutual funds in 2001 was not only a known fact to PBHG Complex insiders, it was both substantial and traceable. An internal PBHG "Timer

Activity Summary" reflected that as of April 20, 2001, investments by entities engaged in market timing activities reached:

> (i) in excess of $385 million in the PBHG Growth Fund comprising nearly 11% of the assets of the fund;
> (ii) in excess of $91 million in the PBHG Technology & Communications Fund comprising nearly 7.5% of the fund's assets; and
> (iii) $53 million in the PBHG Emerging Growth Fund comprising nearly 8% of the fund's assets.

1. <u>Specific Examples Of Timing At PBHG</u>

a. <u>Pilgrim And Appalachian Trails</u>

90. Defendant Pilgrim directly participated in and profited from the market timing of PBHG mutual funds. On March 1, 1995, Pilgrim and his wife made an initial investment of $1,057,000 to co-found Appalachian Trails, a hedge fund that was specifically designed for mutual fund market timing. Pilgrim and his wife were two of the four original limited partners in Appalachian Trails and owned more than two thirds of the partnership at its inception.

91. Eric C. Schneider ("Schneider"), a CPA who held various posts at PBA and in the PBHG complex throughout the Class Period, was also involved in Appalachian Trails' operations. On November 14 1996, Schneider signed (with notarization) an Appalachian Trails document that rendered him a required co-signor for "any and all disbursements from Appalachian Trails, L.P."

92. Pilgrim and his family members substantially increased their stake in Appalachian Trails after the hedge fund's scheme to market time the PBHG funds began to prove profitable. For instance, in late 2000, Pilgrim increased his investment in Appalachian Trails' from $11.5 million to $18 million, which represented 35 percent of Appalachian Trails' assets. By the end of 2001, Pilgrim had poured an investment of over $28 million into Appalachian Trails, which represented 45 percent of Appalachian Trails' assets.

93. The other key investor in Appalachian Trails was defendant Christiani. Christiani, a hedge fund manager and friend of Pilgrim, managed Appalachian Trails and through an entity he controlled, defendant CPTR, served as Appalachian Trails' general partner.

94. Christiani identified the PBHG Growth Fund as a suitable target for deploying Appalachian Trails' short-term trading scheme. In March 2000, Christiani asked Pilgrim, who was the portfolio manager of the PBHG Growth Fund and thereby responsible for the fund's performance to its investors, for permission to invest through Appalachian Trails in the PBHG Growth Fund and other PBHG mutual funds.

95. Pilgrim discussed Appalachian Trails' plan to time PBHG mutual funds with Baxter who, with knowledge that Pilgrim was personally and significantly invested in Appalachian Trails and knowledge of Appalachian Trails' short-term trading strategy, approved Appalachian Trails' market timing in the PBHG Growth Fund. Pilgrim, with the knowledge and consent of defendant Baxter, granted Appalachian Trails permission to market time at least the PBHG Growth Fund and the PBHG Technology & Communications Fund.

96. Throughout the period of Appalachian Trails' market timing in PBHG mutual funds, neither Pilgrim nor Baxter publicly divulged Pilgrim's position in Appalachian Trails. Further, neither Pilgrim nor Baxter caused PBHG to modify its prospectuses or otherwise inform shareholders of Appalachian Trails' market timing in PBHG mutual funds.

97. After Appalachian Trails and Christiani were given permission by Pilgrim and Baxter to market time PBHG mutual funds, their market timing activities ramped up quickly and spread throughout the PBHG fund family. Beginning in March 2000, Appalachian Trails actively engaged in short-term trading of the PBHG Fund consistent with the strategy set forth in its organizational materials since 1995.

98. Appalachian Trails traded primarily between the PBHG Growth Fund, which held equity securities and was managed by Pilgrim, and the PBHG Cash Reserves Fund, a money market fund with fixed income holdings that was specifically subject to the four-exchange rule explained above. Appalachian Trails made nearly 100 exchanges into and out of the PBHG Growth Fund in 2000 and 2001.

99. Appalachian Trails also market timed the PBHG Technology & Communications Fund in 2001. During the period from February 2001 to April 2001, Appalachian Trails made 8 exchanges between the PBHG Technology & Communications Fund and the PBHG Cash Reserves Fund. A given exchange during this period was as large as $20 million. The aggregate volume of trading during this period with respect to these transactions amounted to approximately $127 million.

100. All told, the aggregate volume of Appalachian Trails' trading was very substantial: at least $2.2 billion between the periods of March 2000 and December alone.

b. Baxter And WSDC

101. Baxter was also heavily involved in the wrongful trading of PBHG mutual funds for his own benefit. In breach of his duties, Baxter granted permission to his life-long friend and college roommate, defendant Lederfeind, to broker timing "capacity" in PBHG mutual funds. During the Class Period, Baxter sold over $500 million in market timing capacity in PBHG mutual funds to Lederfeind and his company, defendant WSDC.

102. From as early as 1998 and through 2003, PBA, through Baxter, also provided Lederfeind with detailed lists of PBHG portfolio holdings. Lederfeind, through his capacity as President and Chief Executive Officer of WSDC, in turn, provided the nonpublic information to certain of WSDC's brokerage customers to facilitate their market timing of PBHG Funds and to

allow them to exercise hedging strategies through other financial and brokerage institutions based upon the same information.

103. According to Timing Witness #1, Lederfeind and WSDC were typically paid a 50 basis point commission (known as a "wrap fee") on all timing assets invested in PBHG mutual funds through WSDC. Lederfeind and WSDC also typically made an extra 25 basis points on the timing assets they brought to PBHG mutual funds, paid by PBHG on the "back end" of the transaction.

c. Canary

104. The PBHG Complex defendants also permitted Canary to time PBHG mutual funds in return for substantial fees. Indeed, at a meeting between Canary principal Stern and Baxter in November 1999, Baxter offered Canary timing capacity so long as Stern agreed to invest an additional sum in the Pilgrim Baxter Hybrid II ("Hybrid II") hedge fund, which was managed by Baxter's daughter, Christine Baxter. Stern ultimately invested $4 million in Hybrid II to secure timing capacity in PBHG mutual funds.

105. The investment that Baxter had pushed for and received in Hybrid II in no way benefited average investors in PBHG mutual funds, including Lead Plaintiff and members of the Class. On the contrary, Stern's investment was exclusively beneficial to PBA insiders, such as defendant Baxter and his daughter and, as described below, was detrimental to ordinary investors because Stern's true return on his investment in Hybrid II was the complete opening of the gates at PBHG to allow for Stern's unlimited timing activities.

106. After funding Hybrid II, Baxter, knowing Stern's timing relationship with PBHG and his highly profitable timing of PBHG mutual funds, attempted to steer Stern into other "sticky asset" side deals. Defendant Baxter approached Stern on two or three occasions, attempting to leverage his position as one of the gate-keepers of timing at PBHG, to secure

Stern's money for an internet golf retailing venture that Baxter was promoting. Christine Baxter similarly approached Stern with other investment opportunities. None of the investments proposed by Baxter to Stern would have benefited ordinary PBHG shareholders.

107. Stern and the Canary defendants were also provided with non-public lists of PBHG mutual fund stock holdings through WSDC. These proprietary lists enabled Canary and Stern to know with certainty which stocks were held by PBHG mutual funds, information that was only disclosed publicly twice a year. The portfolio holdings were used by Canary and Stern to facilitate their market timing strategy.

108. Moreover, the PBHG mutual fund stock holdings were essential in order for timers such as Stern and Canary to construct "mirror" baskets of stock. These "mirror" or "short" baskets were created using the proprietary PBHG portfolio holding information. The baskets were used to hedge against risk in market timing PBHG mutual funds, by providing the means for Stern and the Canary defendants to include a short-selling strategy in their market timing scheme and further mitigate any risk to their timing strategies. This allowed for even greater profits for the Timer defendants and also benefited PBA and the PBHG Complex defendants, as the ability to short-sell PBHG mutual funds made PBHG a more attractive fund family to market time, thereby increasing timing activities at PBHG.

2. The Financier Defendants' <u>Participation In The Wrongful Conduct</u>

109. During the Class Period, market timing and/or late trading constituted a niche-business catered to by investment banks, including defendants Bank of America, Bear Stearns, CIBC, CSFB and JPM. The Financier defendants provided market timers and/or late traders with financing specifically designed for this purpose.

110. In some cases, the mutual fund family permitting the market timing and/or late trading arranged the financing by the investment banks for the market timers and/or late traders. In other cases, the market timers and/or late traders approached the investment banks for financing. Market timers and late traders openly discussed with the investment banks the purpose of the loans – to market time and/or late trade mutual funds – and often disclosed such purpose expressly in the financing documents. Loan agreements regularly specified collateral – sometimes fund concentration and market exposure – demonstrating that the investment banks knew they were providing financing to market timers and/or late traders. Many financing agreements even required the timers to provide the Financier defendants with daily reports on their collateral and trading activity and/or open access to such records.

111. Among the market timing financing tools offered by the Financier defendants were "equity swaps," whereby market timers/late traders were actually allowed to manage accounts in the name of a Financier defendant pursuant to a written management agreement. The steps taken in a swap agreement were as follows: (i) the bank and the market timer/late trader would enter into a management agreement outlining the market timing and/or late trading, and overall investment objectives; (ii) the bank would open an account and the market timer/late trader would create a subsidiary that was made the manager of the account; (iii) the bank would have a subsidiary, often in London, perform the "swap" with the market timer/late trader; and (iv) the market timer/late trader would pay LIBOR +125-200 basis points to the bank subsidiary, which would pay the market timer/late trader the return on a reference index. For every $1 in collateral provided by the market timer/late trader, the bank would extend up $10 for trading.

112. By way of example, because timing PBHG funds was so profitable, Stern and the Canary defendants' timing at PBHG quickly outgrew the approximately $10 million in margin

account financing that Investec and WSDC were able to provide them with. Accordingly, Stern sought financing from JPM in the summer of 2000. JPM agreed to loan Stern up to $150 million to facilitate Stern and Canary's market timing. Stern set up a new entity, Cockatoo Capital, LLC, ("Cockatoo") – a Canary-controlled entity – as a loan counterparty to JPM. According to Timing Witness #1, JPM knew that the money lent to a Cockatoo would be used for the purpose of timing PBHG mutual funds. Also among the activities JPM knew that Stern wished to finance was the "shorting" of PBHG mutual funds.

113. Throughout Stern and Canary's market timing of PBHG mutual funds, JPM had full access to Stern and the Canary defendants' trading records and therefore was on notice that its loans were being used to fund and facilitate market timing trades and to create "short" baskets with proprietary PBHG information, which was also used in the timing scheme. JPM profited substantially from the market timing carried out through its loans to Cockatoo, charging a rate of LIBOR plus 125 to 150 basis points on "long" trades, and $.06 per share plus a 200 basis-point-over LIBOR "rebate" on the "short" trades that it financed. Moreover, JPM's loans served to increase the volume of Stern and Canary's timing at PBHG and other fund families by multiplying Stern and Canary's effective capital.

3. The Clearing Brokers' <u>Participation In The Wrongful Conduct</u>

114. The active participation in and facilitation of market timing and/or late trading by financial institutions, acting as clearing "platforms", was central to the success of the Timer, Broker and PBHG Complex defendants' scheme. Internal PBHG documents reveal that the PBHG Complex defendants permitted the timing of PBHG mutual funds through various Clearing Brokers, including defendants Bank of America, Bear Stearns, Charles Schwab, CSFB, Prudential, Security Trust and SSB. The Clearing Broker defendants serviced, among others,

both the Facilitator Brokers (including brokers from within the ranks of the Clearing Broker defendants, who often earned as much as $15 million a year in commissions from timing activities alone) and Timers directly.

115. The Clearing Broker defendants disregarded the excessive mutual fund trades being transacted through their trading systems, or platforms, by the market timers and directly participated in such excessive trading. Moreover, the Clearing Broker defendants specifically engineered trading strategies that catered exclusively to timers and late traders. For instance, Prudential developed a "shotgun" system that allowed market timers to scatter trades across various mutual funds to enable the timers to successfully execute larger and more frequent trades in a variety of fund families. Other Clearing Broker defendants, such as Bear Sterns and Bank of America, actually installed special equipment for timers and their brokers to allow them to execute market timing and late trading transactions themselves, while the Clearing Broker defendants captured the resulting fees and commissions.

116. The Clearing Broker defendants were motivated to engage in such conduct by the many sources of income offered by opening their execution systems to market timers and late traders, including the fees and commissions they received for processing the market timing and late trading transactions. The Clearing Broker defendants also leveraged various *quid pro quo* benefits from market timers and timing brokers, such as the ability to cross-sell other products and services they offered to the market timers and brokers, including financing and private client services. By collecting such fees and other benefits, the Clearing Broker defendants directly benefited from the rapid in and out trading by certain of the market timers, while harming long-term fund investors who bore the transaction costs and other harms, as described herein, of such excessive trading.

117. For example, defendant Bank of America provided certain timers, including Canary, with an electronic trading system that permitted them to circumvent restrictions on the frequency and timeliness of its trades. Beginning in 2001, Banc of America: (i) set up a state-of-the-art electronic trading platform, allowing the timers to trade late as late as 8:30 p.m. ET, in the hundreds of mutual funds that the bank offered its customers, including PBHG;s and (ii) provided timers with financing for their late trading and market timing activity in the hundreds of mutual funds that Bank of America could access by virtue of its size and power.

118. Bank of America profited greatly from the fees generated by clearing market timing activity. Furthermore, at least one timer – Canary – agreed to leave millions of dollars of "sticky assets" in Bank of America bond funds on a long-term basis while also paying Bank of America substantial fees, often over a million dollars per month.

119. In addition, throughout the Class Period, Bear Stearns facilitated market timing throughout the mutual fund industry. Bear Stearns actively facilitated the illegal trading of mutual funds by knowingly permitting its affiliated broker-dealers to execute market timing and late trades over its clearing platform. Bear Stearns' illegal use of its platform involved trading in several mutual fund complexes, including at least Alliance, Fremont, Invesco, MFS, PBHG, Pimco and Van Eck. Moreover, Bear Stearns employees expressly approved this trading, and communicated with various market timers and mutual fund firms to further the illegal trading via the firm's platform. In fact, according to Timing Witness #1, from the late 1990's through 2001, a large portion of all timing brokers cleared their trades using Bear Stearns' platform.

120. Bear Stearns knowingly facilitated illegal trading through a network of introducing broker-dealers, to whom Bear Stearns provided access to its clearing platform. Bear Stearns' network of broker-dealers included in-house personnel and outsider firms such as Brean

Murray and Kaplan & Co., which had core businesses of market timing mutual funds on behalf of hedge fund clients.

121. Senior Bear Stearns employees approved the use of the firm's trading platform for this illegal purpose. For instance, during the Class Period, representatives of Brean Murray & Co. met with Michael Zackman of Bear Stearns to specifically discuss arranging market timing and late trading capabilities through the firm's platform. This meeting resulted in Bear Stearns installing a computer in Brean Murray's offices that accessed its trading platform, known internally as the Bear Stearns Mutual Fund Routing System ("MFR System"). Similar to the sophisticated equipment that Bank of America set up in timers' offices, the MFR System provided Brean Murray with a direct link to Bear Stearns' clearing platform through which Brean Murray could make automated market timing trades at will.

122. Bear Stearns also provided its network of brokers with access to the MFR System so that they could engage in late trading. For instance, Bear Stearns permitted its affiliated brokers at Brean Murray to enter trades as late as 5:30 p.m. ET, but at the NAV set as of the 4:00 p.m. New York Stock Exchange close. Further, Bear Stearns also disabled the time stamp function on the MFR System so that there was no record for regulators of the when the late trades were placed.

123. Throughout the Class Period, Bear Stearns profited from its participation in the market timing and late trading scheme. Primarily, Bear Stearns profited from the commissions and fees generated from timers trading over the firm's platform. Moreover, Bear Stearns also profited from the various other arrangements it extended to timers, including financing of the market timing schemes.

D. <u>The Failures Of Baxter And The PBHG Trustees</u>

124. The ICA and the rules promulgated thereunder by the SEC require that PBHG be governed by a Board of Trustees (the "Board"), and that , in most cases, the majority of the members of the Board be independent from and unaffiliated with PBA or its parents, subsidiaries or affiliates. The purpose of this independence requirement is to ensure that the management of the mutual funds is not dominated by the Fund Sponsor/Investment Advisor and that, instead, the fund is managed in the best interests of its shareholders. This responsibility not only includes retaining and monitoring the performance of the investment adviser, PBA, and its affiliates, but negotiating contracts with these parties and ensuring that the fees paid are reasonable in relation to the services performed. The Investment Company Institute ("ICI"), a mutual funds lobbying and trade group, recently described the duties of mutual fund boards:

> Unlike the directors of other corporations, mutual fund directors are responsible for protecting consumers, in this case, the funds' investors. The unique "watchdog" role, which does not exist in any other type of company in America, provides investors with the confidence of knowing the directors oversee the advisers who manage and service their investments.
>
> In particular, under the Investment Company Act of 1940, the board of directors of a mutual fund is charged with looking after how the mutual fund operates and overseeing matters where the interests of the fund and its shareholders differ from the interests of its investment adviser or management company.

125. In reality, PBHG's Board was dominated, throughout the Class Period, by PBA and its affiliates, who not only effectively controlled the trustee nomination and appointment process, but also the fees that the purportedly independent trustees earned from serving on the fund board. Further, PBHG's three additional, purportedly "independent" trustees (the "PBHG Trustees"), who fulfilled this role in addition to their full-time occupations, served on boards

overseeing dozens of individual mutual funds within the PBHG fund family, rendering it difficult to oversee the activities of the funds consistent with their fiduciary duties.

126. Defendant Baxter and the PBHG Trustees failed to meet their duties under the ICA. Pursuant to Section 15(c) of the ICA:

> It [is] the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company.

15 U.S.C. § 80a-15(c). Notably, Baxter filled dual roles subject to the obligations of ICA § 15(c), having both acted as a trustee of PBHG and an officer of PBA, the investment adviser to PBHG. Accordingly, Baxter was specifically obligated to disclose the market timing activity at PBHG to the other trustees, and the other trustees were likewise obligated to request such relevant information. Baxter, however, did not disclose the relevant information, nor did the PBHG Trustees request such information, in violation of the provisions of 15(c) of the ICA.

127. Throughout the Class Period, Baxter and the PBHG Trustees breached their fiduciary duties and failed to adequately protect the interests of PBHG shareholders, to whom they owed duties of care and loyalty throughout the Class Period. All of the market timing and related activity alleged herein that harmed PBHG investors was permitted to occur notwithstanding Baxter and the PBHG Trustees' supposed oversight of PBHG. As explained above, Baxter failed to fulfill his duties as a trustee of PBHG by facilitating market timing, revealing proprietary PBHG information to the detriment of PBHG mutual fund shareholders, and by favoring his own interests and those of his friends and family without due consideration for the interests of PBHG mutual fund shareholders.

128. The PBHG Trustees were well-compensated for their services, earning tens of thousands of dollars in fees, through their service to PBA as directors or trustees on numerous

boards of funds advised by PBA, including PBHG. For example, in 1999, the PBHG Trustees were each paid $91,000 in direct compensation for sitting on three PBA-related boards; of the $91,000, the PBHG Trustees made $51,000 that year from their service on ***other*** (i.e. non-PBHG) boards advised by PBA. Indeed, the PBHG Trustees owed over half of the compensation they made in relation to their roles as trustees to PBA and their service on non-PBHG boards that were nonetheless advised and effectively controlled by PBA. While the PBHG Trustees realized these large salaries, paid for in part by PBHG mutual fund shareholders, they were serving on the boards of other mutual funds advised by PBA and were charged with monitoring the performance of as many as 29 individual PBA-advised mutual funds at a time. As a result of the foregoing, the PBHG Trustees were beholden to PBA and its affiliates, and therefore suffered from disabling conflicts of interest that prevented them from discharging their fiduciary duties.

129. Further illustrative of the conflicts of interest presented by the overlapping and mutually beneficially relationship between the trustees and PBA is the fact that Baxter and the PBHG Trustees approved the retention of PBA as PBHG's Investment Adviser, even though the sale of PBA to Old Mutual automatically terminated PBA's contract with PBHG, pursuant to § 15(a) of the ICA (15 U.S.C. § 80a-15(a)), on September 26, 2000, during the height of market timing activity fostered by PBA. As described above, upon reviewing the new proposed advisory contract between PBA and PBHG, Baxter was obligated to provide all relevant information to evaluate its terms, and both Baxter and the PBHG Trustees were obligated to request such information from PBA, which they failed to do.

130. The captive nature of PBHG's board is also exemplified by its retention of sub-advisers to "advise" various PBHG mutual funds. Despite the fact that the Board had never

competitively bid out the advisory contract for PBHG, even when it was automatically terminated, the Board repeatedly approved PBA's retention of "sub-advisers" from outside the PBHG Complex, which served to increase the management costs borne by investors. Indeed, the Board has been criticized heavily by mutual fund industry analysts at Morningstar, recently receiving grades of "F" and "poor" as a result of defects in the Board's structure and composition described herein. These PBHG Board defects criticized by Morningstar existed throughout the Class Period.

E. Defendants' Profits From The Unlawful Conduct

1. Excessive Investment Advisory Fees And Administrative Expenses

131. PBA and its affiliated entities within the PBHG complex had powerful incentives to facilitate the market timing activities described herein. As described above, PBA and the Administrator defendants, among other captive entities within the PBHG Complex, captured combined advisory and management fees as high as 200 basis points, or 2% (for PBHG's "International" funds) annualized of the NAV of the fund calculated on a daily basis, placing PBHG among the highest of its peer mutual funds in terms of the fees it charged. Thus, the large infusions of cash provided by the Timer defendants and others, while detrimental to other investors in PBHG mutual funds, were a source of large profits to PBA and its affiliates by dramatically increasing the amount of assets under management, and thereby increasing the dollar amount of fees payable from those assets. As detailed above, neither PBA nor any other affiliated entities named as defendants herein ever disclosed their practice of permitting and facilitating market timing, much less the fact that they earned millions of dollars in management and advisory fees as a result of permitting this unlawful activity.

132. Throughout the Class Period, Baxter and the PBHG Trustees authorized, and PBA charged and collected, millions of dollars in fees. As a direct result of the illegal market timing and activity alleged herein, the percentage of average annual assets under management was significantly increased by the influx of the timing assets. Notwithstanding the corresponding economies of scale that resulted from the increase of assets under management at PBHG, the PBHG Trustees, PBA and the PBHG Complex defendants did not reduce their fees. Rather, Baxter and the PBHG Trustees continued to authorize, PBA continued to charge and collect, and the PBHG Complex continued to profit from, the same, or a greater, percentage of fees.

133. The PBHG Prospectuses uniformly disclosed that the advisory fees were charged "at an annual rate based on the average daily net assets of each [individual PBHG mutual fund]." The actual fees charged (inclusive of "expenses," which were not disclosed as fixed, predictable percentage fees to investors) were at an annual rate of 122 basis points (1.22%) up to 144 basis points (1.44%) of the fund's average daily net assets calculated on an asset-weighted basis, throughout the Class Period (not including money market funds). Timer money parked in PBHG's money market fund, the PBHG Cash Reserves Fund, generated fees between 52 and 75 basis points (0.52% to 0.75%) per annum. These fees were computed on a daily basis and paid monthly to PBA by PBHG investors and were consistently among the highest in the top 100 mutual funds surveyed for fee information.

134. As detailed above, the influx of the illegal market timing and late trading assets at PBHG increased the average annual assets under management, thereby increasing the amount of total fees authorized by the Baxter and the PBHG Trustee defendants, and charged and collected by PBA. The advisory services provided by PBA on the assets of the Timer defendants and other timers did not, however, justify the payment of advisory fees on the timing assets. In fact,

as further incentive to the PBHG Complex and PBA specifically, the fees collected as a result of the increased assets under management resulting from market timing were collected without any additional advisory services being provided.

135. By facilitating the market timing activities alleged herein, the PBHG Complex and PBA were able to profit substantially from the receipt of increased advisory fees, based upon the inclusion of Timer defendant cash infusions into the calculation of assets under management. PBHG mutual funds generated hundreds of millions of dollars of fees every year across various categories of PBHG mutual funds. In particular, as organized by their corresponding investment strategy category, from 1998 to 2003, the PBHG Complex captured: between $82 million and $164 million annually in revenues from fees charged to the "Long-term" category of PBHG mutual funds; between 1998 and 2003, PBA and its affiliates captured between $82 million and $100 million annually in revenues from fees charged to the "Equity" category of PBHG mutual funds; and between $84 million and $167 million annually in revenues from fees charged to the "Industry" category of PBHG mutual funds. Moreover, in comparison to its direct distribution peers within the mutual fund industry during the Class Period, the PBHG Complex ranked consistently in the worst half (and often in the worst quarter) of its peer group, charging from 122 basis points (1.22%) up to 144 basis points (1.44%) in fees with respect to the above categories of mutual funds.

2. Profits Derived From "Sticky Assets"

136. As an additional inducement for facilitating market timing, the PBHG Complex defendants, including the PBHG Individual Defendants, often asked for and received "sticky assets." These were typically long-term investments made not in the mutual fund in which the timing activity was permitted, but in one of PBA's other financial vehicles that assured a steady flow of fees or other benefits to the PBHG Complex, but added no value for PBHG shareholders.

Often the "sticky assets" would be placed, and sit quietly, in low-risk money market or government bond funds; but sometimes they would end up in a hedge fund, such as the Hybrid II hedge fund, as described above, run by PBA or its affiliates (but with a higher fee structure than the typical mutual fund), generating huge fees for PBA and its affiliated entities.

3. Profits Derived From Reorganizing The PBHG Complex To Capture Greater Fees

137. Over the course of the Class Period, the Parent defendants reorganized the PBHG Complex to eliminate the payment of fees to entities outside of their own corporate structure, and thereby increased their stake in the market timing-related profits. For instance, on July 16, 2001, PBHG was reorganized from a Maryland corporation into a Delaware business trust and on the same date, PBHG's outside distributor, SEI Investments Distribution Co., was replaced with PBHG Fund Distributors, a wholly-owned subsidiary of PBA, allowing PBA and its parent, Old Mutual, to capture a greater amount of fees and commissions generated by investment activity at PBHG, including market timing-generated revenue.

4. Pilgrim And Baxter's Profits

138. Pilgrim and Baxter, according to internal PBHG documents and published reports, made at least $541 million each from two sales of PBA – one to United Asset Management in 1995 and the second to Old Mutual in 2000 – based upon the corresponding revenue sharing agreements that they entered into as part of the two sales. Upon their resignation on November 13, 2003, Old Mutual paid Pilgrim and Baxter a lump sum of approximately $68 million. A very substantial portion of the money that Pilgrim and Baxter received was a direct result of the influx of market timing assets into PBHG mutual funds. In fact, but for the sharp increase in assets under management at PBHG due to market timing, Pilgrim and Baxter would not have been able

to negotiate such a high payout, including their lucrative revenue sharing contracts, with Old Mutual.

5. Timer Defendant Related Profits

139. The Timer defendants made millions of dollars timing PBHG mutual funds. Their profits were independent of the overall investment performance of the PBHG mutual funds in which they invested, and, in fact, as described herein, their rapid trading actually hurt the performance of the PBHG mutual funds in which the Timers had invested.

140. At the same time PBHG mutual fund shareholders were experiencing significant declines in their assets, Pilgrim was profiting from his involvement in the scheme to market time PBHG mutual funds. Defendant Pilgrim shared directly in Appalachian Trails' multi-million dollar profits from trading in the PBHG Growth Fund, PBHG Technology and Communications and other PBHG mutual funds during the Class Period, as a limited partner in this hedge fund. Indeed, Pilgrim's share of the profits during 2000 and 2001 alone was approximately $3.9 million, representing an annual return of 49% on Pilgrim's market timing investment in the PBHG Growth Fund, according to a *Newsweek* article published on December 8, 2003.

141. Appalachian Trails, CPTR and Cristiani's market timing activities also proved extremely profitable. Appalachian Trails earned millions by trading PBHG mutual funds throughout the Class Period. For example, during 2000 and 2001 alone, Appalachian Trails realized approximately $13 million in profits from its trading activity in PBHG mutual funds. Similarly, according to a *Fortune* article published on April 19, 2004, Stern and Canary achieved an 18% return in their first year of market timing PBHG's mutual funds with Baxter's assistance.

6. Broker And Financier Profits

142. The Broker and Financier defendants also profited from the timing activity. The Broker defendants collected fees from both their timer clients and PBHG for adding to the assets

under management at PBHG. JPM, too, was paid fees by its timer clients for its facilitation of timing at PBHG as a percentage of the money it loaned to the Timer defendants and other related financing fees and services, as described above.

F. The Harm Of Market Timing To PBHG Investors

143. Market timing caused significant harm to typical PBHG mutual fund investors in a variety of ways. For example, market timing caused "dilution", by not only depriving non-timer PBHG mutual fund investors of gains they would otherwise realize on their investments, but also by forcing them to incur a disproportionate share of the losses on days that the NAV declines. The timer steps in at the last minute and takes part of the buy-and-hold investors' upside when the market goes up; and as a result the next day's NAV, as calculated on a per share basis, is less than it would have been had the timer not invested in the fund. Conversely, if the timer sells shares on days that market prices are falling below the calculated NAV, the arbitrage has the effect of making the next day's NAV, as calculated on a per share basis, lower than it would otherwise have been thus magnifying the losses experienced by other investors in the fund.

144. The harm to PBHG mutual fund investors from market timing extends beyond dilution. For example, as detailed above, successful market timing requires repeated, rapid trading of PBHG shares with significant amounts of cash which, in turn dramatically increases transaction costs, such as commissions, on the long-term investors that eat away at returns. Trades necessitated by market timer redemptions can also lead to realization of taxable capital gains, or may result in managers having to sell stock into a falling market which impose costs on the fund's long-term investors.

145. In fact, PBHG consistently ranked in the top 10 mutual fund complexes in terms of asset turnover among the top 100 funds surveyed during the class period across all applicable asset categories. This means that ordinary PBHG investors were forced to pay taxes, commissions and fees resulting from the buying and selling of stocks and other instruments by portfolio managers hired by PBA on behalf of PBHG investors. A good deal of this high turnover can be attributed to PBHG portfolio managers having to liquate and buy positions rapidly throughout the Class Period in response to market timing activity.

146. Market timing at PBHG also harmed mutual fund investors by forcing portfolio managers to invest heavily in highly liquid, short-term investments that carry a lower rate of return than other securities, to ensure their ability to redeem shares sold by market timers. Fund managers were therefore forced to enter into special investments as an attempt to "hedge" against timing activity (instead of simply refusing to allow it), thus deviating altogether from the ostensible, publicly stated investment strategy of their funds, and incurring further transaction costs while at the same time leading to decreased investment performance and additional expenses.

147. Experts estimate that mutual fund investors, including PBHG shareholders, have lost billions of dollars annually as a result of market timing. Indeed, one recent study estimated that U.S. mutual funds lose $4-$5 billion per year to timers. Eric Zitzewitz, Who Cares About Shareholders? Arbitrage-Proofing Mutual Funds (October 2002) 35, http://faculty-gsb.stanford.edu/zitzewitz/Research/arbitrage1002.pdf. University of South Carolina law professor John Freeman has similarly estimated that market timing trades may have drained more than $5 billion a year from long-term fund shareholders.

148. PBHG was aware of the harm caused by market timing as early as 1998 and articulated the harms that market timing caused long-term PBHG mutual fund investors in a June 16, 1998 document entitled "MARKET TIMER POLICY", which states in relevant part:

> ***Market timers can have a significant impact on a portfolio manager's ability to effectively manage the assets of their funds. Portfolio activity generated by these cash flows can create capital gains and/or losses which result from the buying and selling of stock to cover the cash flows and generate additional transaction costs that are passed along to all of the underlying shareholders. These transactions also generate additional transaction cost*** [sic]***, which are passed along to all of the underlying shareholders. . . .***

(emphasis added)

149. The types of harm to ordinary PBHG shareholders described above were manifested in the poor performance of PBHG mutual funds relative to peer funds. For example, from 2000 to 2002, PBHG "Industry," "Long-term" and "Equity" funds performed among the ten worst of the largest 100 or so mutual funds in those corresponding categories, as measured by their nominal, asset-weighted performance. Additionally, relative to other mid-cap growth funds with similar asset classes and investment strategies, the PBHG Growth Fund lagged behind its peers by 18.3% and 14.0% in 2000 and 2001, respectively (during the peak period of market timing).

150. Furthermore, according to statements made by the SEC, the relatively small size of PBHG compared to other mutual fund families may have resulted in even more pronounced damages to individual members of the Class, as the damaging effects of illegal trading concerning PBHG Funds were shared by a relatively smaller group of investors. For instance, a long-term PBHG Growth Fund shareholder would have suffered a loss of 65% of the total value of an investment made in January of 2000 and held through the end of 2002.

151. The Timer defendants' market timing of PBHG mutual funds specifically diluted the Market-timed funds and caused other harm to the purchasers and shareholders of the PBHG

funds. The harm caused to PBHG shareholders because of this trading included increased transaction costs that they were forced to bear on a pro-rata basis. For example, in contrast to Pilgrim and Appalachian Trails' substantial profits derived from market timing the PBHG Growth Fund, during 2000-2001, a buy-and-hold shareholder invested in the PBHG Growth Fund who was not a participant in the fraudulent trading schemes would have lost over 60% of his investment in 2000 and over 26% in 2001. Similarly, a shareholder who held the PBHG Technology & Communications Fund during the period of Appalachian Trails' unlawful trading in 2001 would have lost over 19% of his investment.

152. As explained above, the timing activity facilitated by the Facilitator and Clearing Brokers, and their clients, severely disrupted the management of the PBHG mutual funds that were being subjected to the rapid timing. Moreover, the impact of market timing on PBHG mutual funds by the Timer defendants was substantial, given the massive amounts of money that were being rifled through the funds almost every day. According to PBHG's own internal documents, it was not uncommon for hundreds of millions of dollars of timing assets – sometimes over $400 million (as documented in a November 29, 2001 PBHG internal document, "Timer Activity Summary") – to flow through the funds each and every day. The result of these massive in and out flows was a frustration of the timed funds' investment objectives, increased fees, expenses, tax liabilities and added expenses generated by the resulting unneeded work on behalf of PBA and PBA-affiliated employees that did not benefit typical investors, but was nonetheless paid for by all PBHG investors.

V. CLASS ALLEGATIONS

153. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) on behalf of all persons and entities who purchased and/or held shares in any mutual fund in the PBHG fund family adversely affected by market timing that was

advised by PBA during the period from November 1, 1998 to November 13, 2003. Excluded from the Class are defendants, their legal representatives, parents, affiliates, heirs, successors or assigns, the family members of the PBHG Individual defendants and any entity in which defendants have or had a controlling interest, and any other person who engaged in the unlawful conduct described herein (the "Excluded Persons"). Also excluded are any officers, directors, or trustees of the Excluded Persons, and all trustees and portfolio managers of PBHG or PBA.

154. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Lead Plaintiff at the present time and can only be ascertained from books and records maintained by PBA and/or its agent(s), Lead Plaintiff believes that Class members number in the hundreds of thousands.

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

(a) whether federal, state and/or common law was violated by defendants' acts and omissions as alleged herein;

(b) whether the registration statements and prospectuses set forth in Appendix B, annexed hereto, contained substantially the same misstatements of material fact or omitted to state substantially the same material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(c) whether defendants breached their fiduciary duties to Lead Plaintiff and the members of the Class; and

(d) whether Lead Plaintiff and the other members of the Class have sustained damages and, if so, the appropriate measure thereof.

156. Lead Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Lead Plaintiff has retained competent counsel experienced in class and securities litigation and intends to prosecute this action vigorously. Lead Plaintiff is a member of the Class and does not have interests antagonistic to, or in conflict with, the other members of the Class.

157. Lead Plaintiff's claims are typical of the claims of the members of the Class. Lead Plaintiff and all members of the Class purchased or held shares in mutual funds in the PBHG fund family adversely affected by market timing that were advised by PBA, and have sustained damages arising out of the uniform course of wrongful conduct alleged herein.

158. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members individually to seek redress for the wrongful conduct alleged. Lead Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

VI. CAUSES OF ACTION

VIOLATIONS OF THE SECURITIES ACT

COUNT I

Against Defendants Pilgrim, Baxter, PBHG, SEI Distribution Co.
And PBHG Fund Distributors For
Violations Of § 11 Of The Securities Act

159. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter, except that, for purposes of this claim, Lead Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct.

160. This claim is brought pursuant to Section 11 of the Securities Act (15 U.S.C. § 77k) against defendants Pilgrim, Baxter, PBHG, SEI Distribution Co. and PBHG Fund Distributors.

161. The defendants named in this Count violated Section 11 of the Securities Act in that the registration statements and prospectuses issued for PBHG shares contained untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. The PBHG Prospectuses failed to disclose and misrepresented, *inter alia*, the following material and adverse facts:

(a) that defendants regularly allowed, and had entered into agreements which allowed, certain investors to engage in trades that were disruptive to the efficient management of PBHG mutual funds and/or increased PBHG's costs and thereby reduced the actual performance of PBHG mutual funds; and

(b) that, pursuant to these unlawful agreements, defendants benefited financially at the expense of the PBHG investors.

162. The defendants named in this Count issued, caused to be issued, and participated in the issuance of the materially false and misleading written statements and/or omissions of material facts that were contained in the PBHG Prospectuses.

163. The defendants named in this Count, and each of them, had the duty of investigating the information contained in the prospectuses before the dissemination to PBHG shareholders, and failed to satisfy that duty. Defendants, and each of them, owed to the PBHG shareholders, including Lead Plaintiff and the Class, the duty to ensure that the statements

contained in the prospectuses were true and complete and that there was no omission to state material facts required to be stated in order to make the statements contained therein not misleading. By virtue of the misrepresentations and omissions contained in or omitted from the prospectuses, as herein alleged, defendants, and each of them, are liable to Lead Plaintiff and the Class.

164. Prior to purchasing and/or reinvesting in PBHG mutual fund shares, Lead Plaintiff and Class members were provided with the appropriate prospectuses, without the knowledge of the untruths and/or omissions contained herein. Lead Plaintiff and Class members purchased and/or reinvested in the shares of the PBHG traceable to the false and misleading prospectuses.

165. As a direct and proximate result of defendants' misconduct and material misstatements and omissions contained in the prospectuses, Lead Plaintiff and the Class suffered substantial damages. The true value of PBHG shares was lower than the NAV price that Lead Plaintiff and other Class members paid, and the value of PBHG shares decreased substantially subsequent to and due to defendants' violations.

166. This claim was brought within the applicable statute of limitations. At the time they purchased and/or reinvested in the PBHG shares traceable to the defective prospectuses, Lead Plaintiff and Class members were without knowledge of the facts concerning the false and misleading statements and omissions alleged herein and could not reasonably have possessed such knowledge.

COUNT II

Against Defendants PBHG, SEI Distribution Co. And PBHG Fund Distributors For Violations Of § 12(a)(2) Of The Securities Act

167. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter, except that, for purposes of this claim, Lead Plaintiff

expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct.

168. This claim is brought pursuant to Section 12(a)(2) of the Securities Act against defendants PBHG, SEI Distribution Co. and PBHG Fund Distributors.

169. Each of the defendants named in this Count was a seller of a security, specifically PBHG mutual funds sold pursuant to the PBHG Prospectuses.

170. By means of the PBHG Prospectuses, the defendants named in this Count sold PBHG mutual funds to Lead Plaintiff and the members of the Class. The defendants' actions of solicitation consisted primarily of the preparation and dissemination of the PBHG Prospectuses.

171. The PBHG mutual funds sold pursuant to the PBHG Prospectuses by defendants named in this Count were sold through the use of interstate communication, the use of interstate commerce, and the use of the mails.

172. The PBHG mutual fund shares were sold through the use of the PBHG Prospectuses which contained untrue statements of material fact or omitted to state material facts necessary in order to make the statements made not misleading.

173. The defendants named in this Count cannot prove that they did not know or, in the exercise of reasonable care, could not have known of the untruth or omission described in the preceding paragraph.

174. By reason of the conduct alleged herein, each defendant named in this Count violated Section 12(a)(2) of the Securities Act. As a direct and proximate result of defendants' conduct, Lead Plaintiff and the other members of the Class suffered substantial damage in connection with the purchase of PBHG mutual funds, and are entitled to rescission.

COUNT III

Against Defendants Old Mutual, Old Mutual
Asset Management, Old Mutual U.S., Pilgrim, Baxter And PBA
For Violations Of § 15 Of The Securities Act

175. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter, except that, for purposes of this claim, Lead Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct.

176. This claim is brought pursuant to Section 15 of the Securities Act against defendants Old Mutual, Old Mutual Asset Management, Old Mutual U.S., Pilgrim, Baxter and PBA as control persons of PBHG and PBHG Fund Distributors. It is appropriate to treat these defendants as a group for pleading purposes and to presume that the false, misleading, and incomplete information conveyed in the prospectuses, public filings, press releases and other publications are the collective actions of the defendants named in this Count.

177. PBHG and PBHG Fund Distributors are each liable under Sections 11 and 12(a)(2) of the Securities act as set forth herein.

178. Each of the defendants named in this Count was a "control person" of PBHG and PBHG Fund Distributors within the meaning of Section 15 of the Securities Act, by virtue of their position of operational control and/or authority over such funds. The defendants named in this Count directly and indirectly, had the power and authority, and exercised the same, to cause PBHG and PBHG Fund Distributors to engage in the wrongful conduct complained of herein. The defendants named in this Count issued, caused to be issued, and participated in the issuance of materially false and misleading statements in the prospectuses.

179. Pursuant to Section 15 of the Securities Act, by reason of the foregoing, the defendants named in this Count are liable to Lead Plaintiff and members of the Class to the same

extent as are PBHG and PBHG Fund Distributors for their primary violations of Sections 11 and 12(a)(2) of the Securities Act.

180. By virtue of the foregoing, Lead Plaintiff and other Class members are entitled to damages against the defendants named in this Count.

VIOLATIONS OF THE EXCHANGE ACT

COUNT IV

Against All Defendants For Violations Of § 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder

181. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter, except for Claims brought pursuant to the Securities Act.

182. This claim is brought pursuant to Section 10(b) of the Exchange Act (15 U.S.C. § 78j) against all defendants on behalf of all persons who purchased shares in any mutual fund in the PBHG fund family adversely affected by market timing that was advised by PBA during the Class Period.

183. During the Class Period, each of the defendants named herein carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did deceive the investing public, including Lead Plaintiff and other Class members, as alleged herein, and caused Lead Plaintiff and other members of the Class to purchase PBHG shares or interests at distorted prices that they would not have paid had they known of the unlawful conduct alleged herein. In addition, in connection with the unlawful purchases and sales of securities described above, members of the Class suffered damages from, among other things, the dilution of their investment in PBHG mutual funds. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

184. Defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of PBHG's securities, including Lead Plaintiff and other members of the Class, in an effort to enrich themselves through undisclosed manipulative trading tactics by which they wrongfully appropriated PBHG's assets and otherwise distorted the pricing of PBHG securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued as primary participants in the wrongful and illegal conduct and scheme charged herein.

185. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about PBHG's operations, as specified herein.

186. Defendants employed devices, schemes and artifices to defraud and a course of conduct and scheme as alleged herein to unlawfully manipulate and profit from secretly timed trading and thereby engaged in transactions, practices and a course of business which operated as a fraud and deceit upon Lead Plaintiff and members of the Class.

187. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing the truth.

188. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the price of PBHG securities were distorted during the Class Period such that they did not reflect the risks and costs of the continuing course of conduct alleged herein. In ignorance of these facts that market prices of the shares were distorted, and relying directly or indirectly on the false and misleading statements made by the PBHG Complex defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of materially adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, Lead Plaintiff and the other members of the Class acquired the shares or interests in PBHG mutual funds during the Class Period at distorted prices and were damaged thereby.

189. At the time of said misrepresentations and omissions, Lead Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Lead Plaintiff and other members of the Class and the marketplace known of the truth concerning PBHG's operations, which were not disclosed by defendants, Lead Plaintiff and other members of the Class would not have purchased or otherwise acquired their shares or, if they had acquired such shares or other interests during the Class Period, they would not have done so at the distorted prices which they paid.

190. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

COUNT V

Against All Defendants
For Violations Of § 10(b) Of The
Exchange Act And Rule 10b-5 Promulgated Thereunder

191. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter, except for Claims brought pursuant to the Securities Act.

192. This claim is brought pursuant to Section 10(b) of the Exchange Act (15 U.S.C. § 78j) against all defendants on behalf of all persons who held shares in any mutual fund in the PBHG mutual fund family during the Class Period and were injured in connection with the purchase and/or sale of PBHG mutual funds by the market timers and/or late traders, as alleged herein.

193. During the Class Period, each of the defendants named herein carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did deceive the investing public, including Lead Plaintiff and other Class members, as alleged herein, and caused Lead Plaintiff and other members of the Class to hold PBHG shares or interests that they would not have held had they known of the unlawful conduct alleged herein. In addition, in connection with the unlawful purchases and sales of securities by the market timers described above, members of the Class suffered damages from, among other things, the dilution of their investment in PBHG mutual funds. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

194. Defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the holders of the PBHG securities, including Lead Plaintiff

and other members of the Class, in an effort to enrich themselves through undisclosed manipulative trading tactics by which they wrongfully appropriated PBHG's assets and otherwise distorted the pricing of their securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued as primary participants in the wrongful and illegal conduct and scheme charged herein.

195. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about PBHG's operations, as specified herein.

196. Defendants employed devices, schemes and artifices to defraud and a course of conduct and scheme as alleged herein to unlawfully manipulate and profit from secretly timed trading and thereby engaged in transactions, practices and a course of business which operated as a fraud and deceit upon Lead Plaintiff and members of the Class.

197. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing the truth.

198. Lead Plaintiff and the other members of the Class were damaged by virtue of their status as holders of the various mutual funds in the PBHG fund family adversely affected by market timing that were advised by PBA. In connection with the unlawful purchases and sales of securities by market timers and late traders, as alleged herein, Lead Plaintiff and the other members of the Class suffered substantial damages, including but not limited to the dilution of

the value of their investment stemming from the activity of the market timers and late traders. But for these unlawful purchases and sales, Lead Plaintiff and the other members of the Class would not have suffered damages from the dilution of their investment alleged herein.

199. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

COUNT VI

Against Defendants Pilgrim, Baxter, Old Mutual, Old Mutual Asset Management And Old Mutual U.S. For Violations Of § 20(a) Of The Exchange Act

200. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter, except for Claims brought pursuant to the Securities Act.

201. This claim is brought pursuant to Section 20(a) of the Exchange Act (15 U.S.C. § 78t) against Defendants Pilgrim, Baxter, Old Mutual, Old Mutual Asset Management and Old Mutual U.S.

202. The defendants named in this Count acted as controlling persons of PBA and PBHG within the meaning of Section 20(a) of the Exchange Act for the reasons alleged herein. By virtue of their operational and management control of the PBHG Complex and systematic involvement in the fraudulent scheme alleged herein, each of the defendants named in this Count had the power to influence and control and did influence and control, directly or indirectly, the decision making and actions of PBHG and PBA, including the content and dissemination of the various statements which Lead Plaintiff contends are false and misleading. The defendants named in this Count had the ability to prevent the issuance of the statements alleged to be false and misleading or cause such statements to be corrected.

203. In particular, each of defendants named in this Count had direct and supervisory involvement in the operations of PBHG and PBA and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

204. As set forth above, each of the defendants named in this Count violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the defendants named in this Count are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, Lead Plaintiff and other members of the Class suffered damages in connection with their purchases of PBHG mutual fund shares during the Class Period.

VIOLATIONS OF THE INVESTMENT COMPANY ACT OF 1940

COUNT VII

Against Defendants PBHG, Pilgrim, Baxter, SEI Investments Distribution and PBHG Fund Distributors For Violations Of § 34(b) Of The Investment Company Act

205. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter.

206. This claim is brought pursuant to Section 34(b) of the ICA (15 U.S.C. § 80a 33(b)), against Defendants PBHG, Pilgrim, Baxter, SEI Investments Distribution and PBHG Fund Distributors.

207. Under Section 34(b) of the ICA, it is unlawful for any person to make any untrue statement of a material fact in any registration statement application, report, account, record, or other document filed or transmitted pursuant to this title or the keeping of which is required pursuant to Section 31(a) (15 U.S.C. § 80a 30(a)). It is also unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to

prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

208. The defendants named in this Count made untrue statements of a material fact in PBHG's registration statement, application, report, account, record, and/or other document filed or transmitted pursuant to this title, or the keeping of which is required pursuant to Section 31(a) (15 U.S.C. § 80a 30(a)).

209. Lead Plaintiff and other Class members have been injured as a result of defendants' statements, conduct, and violations.

COUNT VIII

Against Defendants Pilgrim, Baxter, PBA, SEI Investments Distribution and PBHG Fund Distributors For Violations Of § 36(a) Of The Investment Company Act

210. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter.

211. This claim is brought pursuant to Section 36(a) of the ICA (15 U.S.C. § 80a 35(a)) against Pilgrim, Baxter, PBA, SEI Investments Distribution and PBHG Fund Distributors.

212. Under Section 36(a), the defendants named in this Count are deemed to owe fiduciary duties to Lead Plaintiff and other Class members and are prohibited from engaging in misconduct with respect to PBHG.

213. The defendants named in this Count devised and participated in a scheme to obtain substantial fees and other income for themselves and their affiliates by engaging in and/or allowing others to engage in market timing of PBHG mutual funds throughout the Class Period, solely for their own benefit and to the detriment of Lead Plaintiff and the Class, in violation of their fiduciary duties to Lead Plaintiff and other Class members. Defendants further failed to reveal material facts concerning their conduct, such that Lead Plaintiff and other Class members

could have made informed decisions about the true value and performance of PBHG mutual funds.

214. Lead Plaintiff and other Class members have been injured as a result of defendants' statements, conduct, and violations.

COUNT IX

Against Defendants PBA, PBHG Fund Services, PBHG Shareholder Services, Inc. And PBHG Fund Distributors For Violations Of § 36(b) Of The Investment Company Act

215. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter.

216. This claim is brought pursuant to Section 36(b) of the ICA, (15 U.S.C. § 80a 35(b)), against defendants PBA, PBHG Fund Services, PBHG Shareholder Services and PBHG Fund Distributors.

217. Under Section 36(b) of the ICA, the defendants named in this Count are deemed to owe a fiduciary duty to Lead Plaintiff and other Class members with respect to the receipt of fees and compensation that defendants receive for services of a material nature.

218. Defendants devised and implemented a scheme to obtain substantial and excessive fees and other income for themselves and their affiliates by allowing others to engage in timing of PBHG mutual funds throughout the Class Period and in violation of their fiduciary duties to Lead Plaintiff and other Class members. Defendants failed to reveal material facts concerning their conduct, such that Lead Plaintiff and other Class members could have made informed decisions about the true value and performance of the PBHG mutual funds. Moreover, the investment advisory contract between PBA and PBHG was not the product of arm's-length bargaining and the fees charged under the contract did not bear a reasonable relationship to the

services rendered under it, especially with respect to PBA's participation in market timing activities.

219. Lead Plaintiff and other Class members have been injured as a result of defendants' statements, conduct, and improper fees.

COUNT X

Against Defendants Defendants Old Mutual, Old Mutual Asset Management, Old Mutual U.S., Pilgrim And Baxter For Violations Of § 48(a) Of The Investment Company Act

220. Lead Plaintiff hereby incorporates by reference all of the allegations set forth above as though fully set forth hereafter.

221. This claim is brought pursuant to Section 48(a) of the ICA (15 U.S.C. § 80a 47) against defendants Old Mutual, Old Mutual Asset Management, Old Mutual U.S., Pilgrim and Baxter.

222. Under Section 48(a) of the ICA, it is unlawful for any defendant to do indirectly that which, under the Act, it could not do directly.

223. The defendants named in this Count devised and implemented a scheme to obtain substantial fees and other income for themselves and their affiliates by allowing others to engage in market timing of PBHG mutual funds throughout the Class Period and in violation of their fiduciary duties to Lead Plaintiff and other Class members. Defendants failed to reveal material facts concerning their conduct, such that Lead Plaintiff and other Class members could have made informed decisions about the true value and performance of the PBHG mutual fund shares.

224. Lead Plaintiff and other Class members have been injured as a result of defendants' statements, conduct, and excessive fees.

VIOLATIONS OF STATE AND COMMON LAW

COUNT XI

Against Defendants Pilgrim, Baxter, Old Mutual,
Old Mutual Asset Management, Old Mutual U.S.,
PBA, PBHG Fund Services, PBHG Shareholder Services, Inc.,
PBHG, SEI Distribution Co. And PBHG Fund Distributors
For Breach Of Fiduciary Duty/Constructive Fraud

225. Lead Plaintiff incorporates by reference the allegations set forth above as though fully set forth hereafter.

226. Defendants Pilgrim, Baxter, Old Mutual, Old Mutual Asset Management, Old Mutual U.S., PBA, PBHG Fund Services, PBHG Shareholder Services, Inc., PBHG, SEI Distribution Co. and PBHG Fund Distributors owed fiduciary duties to Lead Plaintiff and the Class to use reasonable care and skill in operating, administering, issuing, underwriting, distributing and managing the PBHG family of funds. As a part of their fiduciary duties to Lead Plaintiff and the Class, the defendants named in this Count also owed a duty to make a full and truthful disclosure of all material facts, to ensure that their representations regarding market timing were complete and accurate, and to ensure that actions were taken to protect long-term holders of mutual fund shares in the PBHG family of funds from damage caused to their investments from market timing and late trading.

227. The defendants named in this Count intentionally or recklessly breached their fiduciary duties by allowing favored investors to conduct timed trading in the PBHG family of funds, by misrepresenting and concealing the existence of such market timing, and by placing their own financial interests above those of Lead Plaintiff and members of the Holder Class.

228. Defendants' breaches of their fiduciary duties to Lead Plaintiff and the Class tended to deceive, to violate public and private confidence and to injure public interests.

229. Lead Plaintiff and members of the Class suffered injury as a result of defendants' conduct in the form of following, *inter alia*: increased transaction costs and expenses; reduced investment performance; and, Lead Plaintiff and members of the Class paid a higher price for PBHG mutual fund shares than they would have paid had the mutual funds been priced accurately to reflect the dilution of profits and increased costs and expenses that were caused by the breaches of duty by defendants alleged herein.

230. The breaches of fiduciary duty by the defendants named in this Count proximately caused the damages suffered by Lead Plaintiff and the members of the Class.

COUNT XII

Against All Defendants For Aiding And Abetting Breach of Fiduciary Duty

231. Lead Plaintiff incorporates by reference the allegations set forth above as though fully set forth hereafter.

232. The defendants named in Count XI owed a fiduciary duty to Lead Plaintiff and members of the Class, as alleged above. That duty was breached when those defendants permitted favored investors to market time in the PBHG family of funds.

233. The defendants named in this Count, both separately and in concert, as alleged herein, knowingly aided, encouraged, cooperated and/or participated in, and substantially assisted in the breaches of fiduciary duties by the defendants named in Count XI, above.

234. As a result of defendants' aiding and abetting the breaches of fiduciary duty by the defendants named in Count XI, above, Lead Plaintiff and members of the Class suffered damages.

COUNT XIII

Against All Defendants For Unjust Enrichment

235. Lead Plaintiff incorporates by reference the allegations set forth above as though fully set forth hereafter.

236. Lead Plaintiff and members of the Class conferred a benefit on the defendants. Defendants derived revenue and other benefits, including management fees, and were otherwise unjustly enriched from transactions connected with the PBHG family of funds, to the detriment of Lead Plaintiff and members of the Class.

237. Defendants' enrichment is directly and causally related to the detriment of Lead Plaintiff and members of the Class.

238. The benefit was accepted by defendants under such circumstances that it would be inequitable for it to be retained without payment. As alleged above, defendants, *inter alia*, breached their fiduciary duties to Lead Plaintiff and members of the Class and breached contracts with Lead Plaintiff and members of the Class, and therefore defendants are not justified to retain the benefits conferred upon them.

239. As a result of all of the defendants' conduct, Lead Plaintiff and members of the Class suffered damages.

240. There is no adequate remedy at law to compensate for these injuries to Lead Plaintiff and members of the Class.

VII. PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiff, on behalf of itself and the members of the Class, prays for judgment as follows:

1. Declaring this action to be a proper class action maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure and declaring Lead Plaintiff to be a proper Class Representative;

2. Awarding Lead Plaintiff and the other members of the Class compensatory damages as a result of the wrongs alleged herein, including interest thereon, and further awarding punitive damages, disgorgement and restitution;

3. Awarding Lead Plaintiff and the other members of the Class their costs and expenses in this litigation, including reasonable attorneys' fees and experts' fees and other costs and disbursements; and

4. Granting Lead Plaintiff and the other members of the Class such other and further relief as the Court may deem just and proper.

VIII. JURY TRIAL DEMANDED

Lead Plaintiff demands a trial by jury of all issues so triable.

Dated: September 29, 2004

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

/s/

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Dated: September 29, 2004

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CERTIFICATE OF SERVICE

I, Alan Schulman, do hereby certify that on this 30th day of September 2004, a true and correct copy of ***CONSOLIDATED AMENDED CLASS ACTION COMPLAINT*** was electronically filed in this case on September 30, 2004, and was served on counsel of record via electronic mail in Portable Document File ("PDF") in accordance with Fed. R. Civ. P. 5(b).

/s/
ALAN SCHULMAN

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