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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BIANCO, J.

BOYLE, M.J.

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	11 Civ. ________
- against -	**COMPLAINT**
THE NIR GROUP, LLC; COREY RIBOTSKY; and DARYL DWORKIN, Defendants.	ECF Case
	Jury Trial Demand

Plaintiff Securities and Exchange Commission ("Commission"), for its complaint against defendants The NIR Group, LLC ("NIR"), Corey Ribotsky ("Ribotsky"), and Daryl Dworkin ("Dworkin") (collectively, "Defendants"), alleges:

SUMMARY

1. This action involves the misconduct of an unregistered investment adviser who (i) misappropriated over $1 million of client assets and (ii) made materially false and misleading statements to investors in an attempt to conceal the poor performance of his investment and trading strategy during the recent financial crisis. From at least 2004 to 2009, Ribotsky, operating through his Long Island, New York unregistered investment advisory firm, NIR,

defrauded investors in the $876 million AJW family of hedge funds ("AJW Funds"), which invest in PIPE transactions (private investment in public equity).

2. From July 2004 to June 2009, Ribotsky misappropriated for his personal use over $1 million of assets from one of the AJW Funds he was managing through NIR – the AJW Qualified Partners, LLC Fund ("AJW Qualified Fund"). Ribotsky liquidated some of AJW Qualified Fund's assets and misused the proceeds by writing checks to pay for personal services and to purchase luxury items, including cars and expensive jewelry. Ribotsky also wrote checks to himself or to "cash" and then instructed NIR office employees to cash the checks at a nearby bank and give Ribotsky the money. Although Ribotsky was warned by NIR's head accountant that he could not lawfully take this money for himself, Ribotsky continued to do so.

3. In addition to misappropriating client assets, Ribotsky made false and misleading statements to investors in 2007, 2008 and 2009 about the AJW Funds' performance and liquidity. In particular, Ribotsky falsely told investors that, despite the adverse market conditions of that time, NIR could liquidate – that is, fully convert to cash – all of the AJW Funds' PIPE investments in 36 to 48 months. This, however, was a practical impossibility under the investment and trading strategy that NIR touted, given the size of the AJW Funds' PIPE investments and the adverse market conditions at the time.

4. Ribotsky made these false and misleading statements even after the AJW Funds' outside auditor met with him to discuss the results of their audit procedures, in which the auditor calculated that it would take decades, if ever, to liquidate all of the AJW Funds' PIPE investments under NIR's stated investment and trading strategy. This was due, in part, to the fact that by January 2008, NIR had acquired, in many instances, the contractual right to billions of shares of stock in non-performing, distressed companies that were quoted at mere fractions of

a penny mostly on the Pink Sheets (now OTC Link), a private electronic inter-dealer quotation and trading system used in the over-the-counter market. These issuers had very little, if any, trading volume in relation to the billions of shares that the AJW Funds were contractually entitled to receive.

5. Furthermore, in November and December 2008, Ribotsky purported to sell $43.2 million of the AJW Funds' assets to a third-party (the "Purchaser") in an apparent effort to show investors that NIR was continuing to generate cash (or realized gains) in the fourth quarter of 2008. The Purchaser, however, did not pay cash for the AJW Funds' assets; rather, he signed "promissory notes" agreeing to pay the full $43.2 million purchase price in cash within 3-6 months. The Purchaser defaulted on the promissory notes and never paid for the assets, yet he continues to own and control the assets and has not returned them to the AJW Funds.

6. Ribotsky and NIR defrauded investors by failing to conduct any due diligence on the Purchaser or his entities before committing the AJW Funds to the transaction. Ribotsky and NIR failed to conduct any due diligence despite the fact that NIR's offering materials and investor communications touted that NIR engages in extensive due diligence reviews before making investment decisions on behalf of the AJW Funds. Had Ribotsky conducted any meaningful due diligence, as he had told investors he would do, Ribotsky would have learned that entering into a multi-million dollar transaction with the Purchaser and his entities was not in the best interests of the AJW Funds because the Purchaser and his entities were not creditworthy counter-parties. For example, they had no meaningful assets or money to pay for the assets they were acquiring from the AJW Funds and they had a number of unpaid debts, judgments and liens against them.

7. Ribotsky further defrauded investors by instructing Dworkin, an NIR employee, to mislead investors by, among other things, falsifying certain documents that were sent to investors. In particular, in August 2007, Dworkin prepared an investor chart accurately showing that NIR had invested a total of $31.4 million in 57 deals for the relevant period. After Ribotsky reviewed the chart, he told Dworkin that "investors can't see this" and he instructed Dworkin to "change the number to something near $60 million" before sending it to investors, apparently because Ribotsky wanted investors to see an average investment of at least $1 million per deal. Dworkin followed Ribotsky's instructions and changed the figure to $58.6 million on the chart. The falsified chart was subsequently sent to investors.

8. Ribotsky also defrauded investors by using money from one group of investors to pay another group of investors without adequately disclosing this to any of the investors. In May 2007, Ribotsky told investors in an AJW off-shore fund and an AJW on-shore fund that NIR was merging the two funds to create an AJW "master fund." Ribotsky, however, did not disclose to the investors that the reason he was merging the two funds was to gain access to the cash in the off-shore fund to pay outstanding investor redemptions in the on-shore fund. At the time, the on-shore fund lacked sufficient cash, or the ability to generate sufficient cash, to pay all of the outstanding investor redemptions.

VIOLATIONS OF THE FEDERAL SECURITIES LAWS

9. By virtue of the conduct alleged in this complaint, Ribotsky and NIR, directly or indirectly, singly or in concert, have engaged in and are engaged in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and

Sections 206(1), 206(2), 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2) and (4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

10. By virtue of the conduct alleged herein, Dworkin is liable (a) pursuant to Section 20(e) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78t(e)], for aiding and abetting NIR's and Ribotsky's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and (b) pursuant to Section 209(d) of the Investment Advisers Act ("Advisers Act") [15 U.S.C. § 80b-9(e)], for aiding and abetting NIR's and Ribotsky's violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

11. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209 of the Advisers Act [15 U.S.C. §80b-9].

12. The Commission seeks a judgment (a) permanently enjoining Defendants from committing future violations of the above provisions of the federal securities laws; (b) ordering Defendants to disgorge any ill-gotten gains with prejudgment interest thereon; (c) ordering Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209 of the Advisers Act [15 U.S.C. §80b-9]; and (d) ordering such other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action and venue is proper in the Eastern District of New York pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§

77t(b) and 77v(a)], Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14]. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of businesses alleged herein. A substantial portion of the events comprising Defendants' fraudulent conduct occurred in the Eastern District of New York. NIR maintains its principal place of business and offices in this District; Ribotsky and Dworkin reside in this District; and several investors in the AJW Funds reside in this District. Furthermore, Ribotsky misappropriated client assets in this District and made material misrepresentations and omitted to state material facts when communicating with investors and potential investors while working out of NIR's offices in this District.

DEFENDANTS

14. **NIR** is an unregistered investment adviser located in Roslyn, New York. NIR was organized as a limited liability company in November 1999 and is controlled by Ribotsky, who is the firm's sole managing member. For a brief period in 2006, NIR was registered with the Commission as an investment adviser, but NIR withdrew its investment adviser registration just a few months after registering with the Commission. At all times relevant to the allegations in the complaint, NIR provided investment advisory and management services to the AJW Funds through various wholly-owned affiliated entities that serve as managing members of the individual funds.

15. **Ribotsky**, age 40, resides in Old Westbury, New York. Ribotsky is the sole managing member of NIR and controls all of the operations and activities of NIR. Ribotsky does

not hold any securities licenses. Ribotsky attended Brooklyn Law School and NYU Business School for a period of time, but he did not graduate or receive a degree from either institution.

16. **Dworkin**, age 42, resides in Syosset, New York. Dworkin was an NIR analyst from September 2002 through March 2003. He later returned to work at NIR as an analyst from April 2004 through April 2008. On July 7, 2010, Dworkin pled guilty in U.S. v. Daryl Dworkin CR10-515 (EDNY) to criminal charges, including conspiracy to commit securities fraud, arising out of his role in the conduct alleged in this Complaint.

FACTS

General Background

The AJW Funds

17. The AJW Funds are a group of private investment funds that invest in PIPE transactions. The AJW Funds were formed in 1999 and were managed by Ribotsky through NIR and its affiliate entities. According to the AJW Funds' audited financial statements for the period 2000 to 2007, the AJW Funds' assets increased from approximately $17 million in 2000 to approximately $876 million in 2007. The last audited financial statements for the AJW Funds are for year-end December 31, 2007. The AJW Funds' independent auditor has not issued an audit report with respect to the AJW Funds' 2008, 2009, and 2010 year-end financial statements, and NIR has not sent investors any audited financial statements for those years.

18. The AJW Funds were originally comprised of AJW Partners, LLC, New Millennium Capital Partners II, LLC, AJW Qualified Partners, LLC, and AJW Offshore, Ltd.

19. In June 2007, Ribotsky combined AJW Qualified Partners LLC (an on-shore fund) and AJW Offshore, Ltd. (an off-shore fund) to form a master/feeder fund named the AJW Master Fund, Ltd. ("Master Fund").

20. In October 2008, Ribotsky suspended all investor redemption payments and formed a new set of AJW funds. The new funds required investors to agree to longer lock-up periods for redemptions in exchange for lower management and performance fees. The new funds are New Millennium Capital Partners III, LLC, AJW Partners II, LLC, AJW Qualified Partners II, LLC, AJW Offshore II, Ltd. and AJW Master Fund II, Ltd. In forming the new funds, which employed the same PIPE investment strategy, NIR effectively transferred a portion of the existing AJW fund's assets to the new AJW funds. NIR sent existing investors new offering documents and subscription agreements for the new AJW funds. Existing investors were asked to choose whether they wanted to remain in the existing AJW funds or transfer their investments into the new AJW funds. Most investors elected to transfer their investments into the new AJW funds.

21. On March 30 and 31, 2011, NIR informed investors in the AJW Funds that NIR was going to unwind and liquidate the AJW Funds. On April 5, 2011, the Grand Court of the Cayman Islands ("Grand Court") placed the voluntary liquidation of the off-shore Master Fund (which accounts for approximately 70% of all of the AJW Funds' assets) under the Grand Court's supervision. On May 30, 2011, the Grand Court appointed an independent third-party liquidator for the Master Fund.

NIR's PIPE Investment and Trading Strategy

22. Ribotsky, acting through NIR and its affiliated entities, provides investment advisory and management services to the AJW Funds. The AJW Funds were typically invested in 120-130 different companies at any given time. Ribotsky touted the PIPE strategy in investor publications as NIR's "own unique proprietary investment strategy and investment process." The AJW Funds provided cash financing to micro-cap distressed, emerging-growth, and start-up

companies quoted on the Over-the-Counter Bulletin Board ("OTC-BB") or the Pink Sheets. Most of the companies in which NIR invested the AJW Funds' money trade for pennies per share, or for fractions of a penny, in very thinly traded markets. Some of the companies do not trade at all. NIR purportedly provided the companies financing in "tranches" that it claimed extended over 2-4 years.

23. The AJW Funds typically received convertible debentures that paid an annual interest rate of 4% to 12% and had a default penalty of 15% that applied to unpaid principal and interest at the time of maturity. The outstanding principal and interest under the debentures were purportedly convertible into the borrower's common stock at a discount (ranging from 35% to 85%) to the stock's market price at the time of conversion. Because the contractual terms of the financing provided that the debt would always be converted at a discount to the share's market prices at the time of conversion, NIR recorded a "paper profit" (as unrealized gains) when the PIPE deals closed, and NIR accreted the unrealized gains over a 90 day period.

24. NIR sought to convert the paper profits (unrealized gains) to cash income (realized gains) by selling the discounted shares in the open market. The "convert and sell" trading aspect of NIR's investment strategy allowed it to record the cash income received from selling stock in the open market as realized gains on the AJW Funds' books and records and financial statements.

25. Ribotsky represented to investors that NIR could "liquidate" or "exit" all of the AJW Fund's PIPE investments (*i.e.*, fully convert the debentures to stock and sell the stock) within 36 to 48 months.

NIR's Performance History And Management Fees

26. According to the AJW Funds' audited financial statements for the years ending 2000 to 2007, NIR recorded a total of $407 million in returns during that period. Most of the returns, however, were from NIR's write-up each year of the purported fair value of the PIPE investments in the AJW Funds' portfolio and not from realized trading profits from converting the loans to stock and selling the stock in the market.

27. NIR earned management fees equal to 2% of the AJW Funds' assets and performance fees equal to 20% of the AJW Funds' supposed annual profits, which consisted of realized and unrealized gains. According to the AJW Funds' audited financial statements, NIR earned approximately $126 million in management and performance fees during the period 2000 through 2007. Of this amount, approximately $37 million was from management fees and approximately $89 million was from performance fees.

28. As discussed above, the AJW Funds' independent auditor has not issued an audit report with respect to the AJW Funds' 2008, 2009, and 2010 year-end financial statements, and NIR has not sent investors audited financial statements for those years.

Failure of NIR's Investment and Trading Strategy

29. By mid to late 2007, NIR's strategy of investing in distressed and start-up companies began to show signs of failure. Many of the distressed companies that the AJW Funds had made loans to were by then essentially defunct or on the verge of filing for bankruptcy. They were no longer engaging in any meaningful business operations, had "going concern" reports from auditors, were delinquent in their periodic and other filings, and were trading, if at all, primarily on the Pink Sheets for mere fractions of a penny. Accordingly, the

companies that the AJW Funds had loaned money to in prior years were now defaulting on their loan and conversion obligations in 2007.

30. In order to avoid the possibility that NIR would need to write-down the fair value of the AJW Funds' investments in delinquent and non-performing companies, Ribotsky chose to "restructure" the outstanding debt by issuing new debentures to the same delinquent and non-performing companies. Ribotsky rolled the outstanding principal, interest, and default penalties into new debentures and negotiated greater conversion discounts for the issuers' shares. Although this restructuring strategy contractually entitled the AJW Funds to a greater number of shares, for most of the companies, there was little, if any, trading volume for their stock by late 2007. By restructuring the loans in this manner, NIR ended up recording more and more unrealized gains for the investments and avoided having to disclose to investors what otherwise would have been an ever-growing number of defaulted loans held by the AJW Funds.

31. The practical effect of the debt restructurings, however, was that it would be difficult or impossible for NIR fully to "monetize" these PIPE investments – that is, fully convert the unrealized gains to realized gains – because there was insufficient trading volume to sell the billions of shares that the AJW Funds were now contractually entitled to under the terms of the restructured debentures.

32. Despite the fact that by 2007 it was unlikely that NIR could ever fully convert and liquidate most of the PIPE investments, NIR was still reporting double digit performance returns for the AJW Funds. Ribotsky and NIR were able to do so by restructuring bad debt, which resulted in the recording of more and more unrealized gains. NIR continued to earn management and performance fees that were calculated, in part, by reference to the period-over-period increase in unrealized gains for the AJW Funds' now illiquid PIPE investment portfolio. For

example, during the first six months of 2008, NIR earned approximately $7.5 million in management fees.

The Funds' Independent Auditor Tells Ribotsky It Will Take Decades, if Ever, to Liquidate the Funds' PIPE Investments Under NIR's Stated Investment and Trading Strategy

33. In connection with the audit of the AJW Funds' 2007 year-end financial statements, the AJW Funds' independent auditor (the "Auditor") analyzed the amount of time it would take NIR to liquidate the PIPE investments under NIR's stated investment and trading strategy. Based on several different audit procedures that the Auditor performed in early 2008, the Auditor calculated that it would take NIR decades, if ever, to liquidate the AJW Funds' PIPE investments. The Auditor met with Ribotsky several times over the course of January, February and May 2008 to discuss the results of their analyses and provided him with their audit work papers detailing their analyses.

34. One of the audit procedures that the Auditor conducted was an "aging analysis" of the AJW Funds' PIPE investment portfolio. This analysis concluded that it would take NIR 25 years to liquidate just one-half of the PIPE investment portfolio and an unspecified amount of time beyond 25 years to liquidate the remaining half. In fact, the Auditor's work papers note that that actual number of years it would take to liquidate the PIPE investments was even greater because the aging analysis assumed that NIR was the only party selling stock in the thinly traded markets for these securities, which would not be the case. The aging analysis was based on 2007 market conditions, including the companies' share price on December 31, 2007 and the average daily trading volume over a six month period leading up to that date.

35. In another analysis, called a "turnover analysis," the Auditor calculated that it would take NIR approximately 11 years to liquidate the entire PIPE investment portfolio. This

analysis was based on NIR's 2007 rate of turnover for the PIPE investment portfolio. The Auditor calculated that NIR liquidated approximately 9% of the PIPE investment portfolio in 2007 and, at that rate, it would take approximately 11 years to liquidate the entire PIPE investment portfolio.

36. The Auditor also performed an analysis of the AJW Funds' top 25 PIPE investments to determine how long it would take NIR to liquidate these investments, which accounted for 62% of the total value of the AJW Funds' PIPE investment portfolio. The Auditor calculated that, as of December 31, 2007, only 3 out of the 25 investments could be liquidated in 4 years or less. The Auditor calculated that it would take tens and, in some cases, hundreds of years to liquidate most of the PIPE investments under NIR's stated investment and trading strategy. In fact, the Auditor calculated that 2 PIPE investments would take over 700 years to liquidate and that 3 PIPE investments were in companies that had no trading activity at all for their common stock. This meant that it was unlikely that these PIPE investments could ever be liquidated in the open market.

37. For example, one of the AJW Funds' largest PIPE investments was a $6.8 million principal investment in a company called Modern Technologies ("MODC"), which was a Pink Sheet stock that had been delisted from the OTC-BB on October 25, 2006 for failing to file required financial reports. The Auditor's analysis revealed that, as of December 31, 2007, NIR was carrying this investment on the AJW Funds' books at a discounted fair value of $16.8 million, which was based on the AJW Funds' contractual right to convert the outstanding loan amount into 27 billion shares of MODC stock, which was quoted for $0.001 per share on the Pink Sheets as of December 31, 2007. Based on the six month average daily trading volume, which was just 145,295 shares per day, the Auditor calculated that it would take NIR

approximately 751 years to fully convert and sell out of this investment in order to liquidate (*i.e.*, fully convert to cash) under NIR's stated investment and trading strategy.

38. The following is a summary of the Auditor's calculations for the number of years it would take NIR to liquidate the AJW Funds' Top 25 PIPE investment under NIR's stated investment and trading strategy:

AJW Funds Top 25 12/31/2007			
Company	**Total Shares (Convertible)**	**Price Per Share**	**Est. Years to Fully Convert/Sell**
MHGI	188,133,397,544	$0.00019	95
TXTG	4,716,667	$0.75	20
DLAV	12,206,262,745	$0.00388	4
EPCG	133,626,458,246	$0.00019	137
CCNG	233,423,636,923	$0.00013	711
MODC	27,165,483,400	$0.001	751
CYBL	853,979,379	$0.0255	0
ACTK	Not Traded	Not Traded	Not Traded
CYDF	3,419,062,087	$0.00631	8
WTVN	25,886,054,761	$0.00113	27
GLBT	194,157,196,923	$0.00013	43
GRWW	3,060,022,063	$0.007	32
PFEH	50,004,640,632	$0.00038	96
CYSG	133,357,891,154	$0.00013	140
MGWL	Not Traded	Not Traded	Not Traded
DIBZ	Not Traded	Not Traded	Not Traded
ASVN	57,297,025,161	$0.00031	12
AVTI	4,175,406,116	$0.00419	8
SSHS	24,153,329	$0.30	99
BNYN	10,424,152,107	$0.00138	10
ABPH	3,354,056,010	$0.004	20
INSN	103,916,252,747	$0.00013	41
IGAI	24,337,922,632	$0.00038	31
ITRO	4,741,356,611	$0.00263	1
ADMH	4,108,354,114	$0.003	8

The Fraudulent Conduct

Misappropriation of Fund Assets

39. Sometime after forming the AJW Funds in 1999 and 2000, Ribotsky and a business partner decided to set up a private company to make personal PIPE investments for themselves. They formed a private investment vehicle called Equilibrium Equity, LLC ("Equilibrium") which made the same type of PIPE investments that the AJW Funds were making. That is, they made loans to micro-cap companies in exchange for debentures that allowed the loans to be converted into the issuers' stock. Sometime after forming Equilibrium, Ribotsky bought out his partner. Ribotsky then became the sole member of Equilibrium and, therefore, the sole owner of the convertible debentures that constituted Equilibrium's sole assets.

40. In July 2004, Ribotsky decided to personally invest in one of the funds he was managing – the AJW Qualified Fund. However, instead of investing in the fund by making a payment to the AJW Qualified Fund, Ribotsky chose to make an "in-kind" investment by assigning and transferring to the AJW Qualified Fund all of the assets (convertible debentures) that Ribotsky owned through his private company, Equilibrium. Ribotsky transferred all of Equilibrium's debentures, which he valued at $581,525, to the AJW Qualified Fund in July 2004. At that point, Ribotsky became an investor in the AJW Qualified Fund under the same terms and conditions as the other investors in the fund and he relinquished all of his direct ownership interest in the debentures which he previously owned through Equilibrium.

41. Almost immediately after making his personal investment in the AJW Qualified Fund, Ribotsky began to misappropriate assets from that fund for his personal use. From August 2004 through June 2009, Ribotsky converted the debentures that he had transferred from Equilibrium to the AJW Qualified Fund into the issuers' common stock. Ribotsky then arranged

to have the stock delivered to an Equilibrium brokerage account instead of an AJW Qualified Fund brokerage account. Ribotsky then sold the stock in the open market and transferred the cash proceeds to an Equilibrium bank account instead of an AJW Qualified Fund bank account. In total, between August 2004 and June 2009, Ribotsky generated approximately $1,060,000 in cash proceeds in the Equilibrium brokerage and bank accounts by converting debentures and selling stock that belonged to the AJW Qualified Fund. Ribotsky misappropriated nearly all of this money for his personal use, as described below.

42. Between June 2006 and April 2008, Ribotsky withdrew $155,500 in cash from Equilibrium's bank account by writing checks to himself or to cash. Ribotsky instructed office employees to take the checks to a local bank, cash them, and give him the money. In addition, between August 2004 and March 2008, Ribotsky misappropriated additional money from the sale of stock that belonged to the AJW Qualified Fund and its investors as follows: (i) writing checks totaling $24,681 for Lexus and Mercedes car payments; (ii) writing a check to a jewelry store for $15,750 to purchase a Rolex watch; (iii) withdrawing $19,000 in cash from ATM machines; (iv) spending $23,000 for audio and computer services for his home residence; and (v) transferring nearly $815,000 to various personal bank accounts or accounts under his control that were not accounts that belonged to AJW Qualified Fund.

43. At some point in 2004, NIR's head accountant told Ribotsky that Ribotsky could not take for himself the money in the Equilibrium accounts that came from the conversion of debentures and the sale of stock that belonged to the AJW Qualified Fund and its investors. Ribotsky told the head accountant "not to worry about it" and he continued to take the money for himself.

False and Misleading Statements and Omissions of Material Fact

Time Required to Liquidate the AJW Funds' PIPE Investments

44. In 2007 and 2008, Ribotsky told investors and prospective investors that NIR could "liquidate" or "exit" all of the AJW Funds' PIPE investments in 36 to 48 months. Ribotsky continued to tell this to investors even after the Auditor showed Ribotsky their analyses calculating that it would take NIR decades, if ever, to liquidate all of the AJW Funds' PIPE investments under NIR's stated investment and trading strategy.

45. Specifically, Ribotsky made the following false and misleading statements to investors:

(a) **October 21, 2008 email from Ribotsky to investor**
Investor: "How much in proceeds could you realistically have raised if you had to convert as much as you could and tried to sell the converted shares?"
Ribotsky: "[W]e could if needed sell the entire portfolio in 36 months getting the current NAV. If we were to want to fire sale it, the time would be less, but we may not get the exact discounted market value we carry the investments at."

(b) **March 30, 2008 email from Ribotsky to investor, attaching Due Diligence Questionnaire signed by Ribotsky**
Q: Describe your strategy (in as much detail as possible):
A: N.I.R. specializes in private placements in public small capitalization companies . . . PIPE's are structured as convertible preferred securities, or secured convertible debt that converts to common stock, Full Liquidation could take from 1 to 4 or more years.

(c) **July 17, 2008 email from Ribotsky to investor**
Ribotsky: "We usually look at the total sale of the whole portfolio if we were going to sell it all in approximately 36 to 48 months."

(d) **October 16, 2008 letter signed by Ribotsky to investors**
Ribotsky: "[I]t is generally expected to take approximately 36 months or longer to successfully sell the securities of all of the portfolio companies held by the [AJW Funds]."

(e) **<u>October 1, 2007 email from Ribotsky to investor</u>**
Investor: "How liquid is your portfolio? How fast can you liquidate 50%, 75% and 100%?"
Ribotsky: "As you know unlike most we always have 15-25% in cash at all times . . . [and] [t]o liquidate the remaining 75% in total in a complete liquidation of the fund we would say approximately 36 months."

46. Ribotsky's statements above representing the length of time it would take NIR to liquidate the AJW Funds' portfolio of PIPE investments were materially false and misleading in light of the market conditions at the time. The statements were false because by late 2007 most of the AJW Funds' PIPE investments were convertible into billions of shares of stock in companies that traded for mere fractions of a penny and had little, if any, trading volume in relation to the billions of shares that the AJW Funds were contractually entitled to receive. Therefore, it would take decades, if ever, for NIR to convert and sell the stock in those companies in order to liquidate the AJW Funds' PIPE investments under NIR's stated investment and trading strategy.

47. In fact, as of December 31, 2007, at least seven companies in which the AJW Funds had invested did not trade at all and, therefore, there was no trading market for NIR to sell the stock of these companies. The Auditor met with Ribotsky in early 2008, and showed him their analyses calculating that the length of time if would take NIR to liquidate the AJW Funds' PIPE investments under NIR's stated investment and trading strategy was nowhere close to the 36 to 48 month period Ribotsky was telling investors. Therefore, Ribotsky knew, or was at least reckless in not knowing, that his statements to investors about the length of time it would take NIR to liquidate the PIPE investments were false and misleading at the time he made them.

48. Ribotky's statements were also misleading because Ribotsky omitted material information when making the statements to investors. In order to make Ribotsky's statements to investors not misleading, Ribotsky should have told investors, at a minimum, that the 36 to 48

month exit period he was representing was not possible under the market conditions existing in late 2007 and 2008. By failing to disclose this relevant and material information when communicating with investors, Ribotsky misled investors into believing that, despite the adverse market conditions of late 2007 and 2008, NIR could still fully liquidate the AJW Funds' assets in 36 to 48 months.

Additional False and Misleading Statements and Omissions of Material Fact

49. In addition to the false and misleading statements Ribotsky made to investors in late 2007 and 2008 about the time it would take to liquidate the AJW Funds' assets, Ribotsky made other false and misleading statements in late 2007, 2008, and 2009 about the AJW Fund's liquidity and performance.

50. The following statement made by Ribotsky was false and misleading:

> **October 21, 2008 email from Ribotsky to investor**
> ***Investor***: "What are the proceeds from converted stocks you have sold this month of October?"
> ***Ribotsky***: "We typically sell $5 million to $15 million a month. This month [October] has been a little slower while September was a little better."

51. Ribotsky's answer to this investor's question was false and misleading because the AJW Funds' monthly stock sales proceeds for September and October 2008 were nowhere near the $5 to $15 million monthly range that Ribotsky referenced in his email. In fact, the AJW Funds' monthly stock sales proceeds for September and October 2008 were just $277,561 and $131,802, respectively. Moreover, from February to October 2008, the AJW Funds' monthly proceeds from selling stock never exceeded $1 million.

52. The investor to whom Ribotsky sent this false and misleading statement subsequently invested his IRA savings in the AJW Funds in early 2009.

53. The following statement made by Ribotsky was false and misleading:

> **<u>November 7-8, 2007 email from Ribotsky to investor</u>**
> ***Ribotsky***: "But in this case [ABPH] the liquidity of the deal is within the time frame [2-4 years] we have allotted for it . . . ."

54. Ribotsky's statement was false and misleading based on the 2007 market data available to him at the time he made the statement. According to the Auditor's subsequent calculations, which were based on essentially the same market data, the exit period for the particular investment Ribotsky was referring to in his email – ABPH – was approximately 20 years.

55. The following statement made by Ribotsky was false and misleading:

> **<u>March 30, 2008 email from Ribotsky to investor, attaching Due Diligence Questionnaire signed by Ribotsky</u>**
> ***Q***: "What is the longest term held security in the fund and why?"
> ***A***: "5 years but extremely small positions that continue to be slowly being [sic] sold into the market."

56. This statement was false and misleading because Ribotsky knew at the time he made it that the AJW Funds had a number of PIPE investments that were older than 5 years. In fact, the AJW Funds had PIPE investments in at least 15 companies that dated as far back as 2000, 2001 and 2002. These investments were still being carried on the AJW Funds' books, presumably because they were illiquid and NIR could not fully convert and sell out of these positions under NIR's stated investment and trading strategy.

57. The following statement made by Ribotsky was false and misleading:

> **<u>December 10, 2008 email from Ribotsky to investor</u>**
> ***Investor***: "When I inquired a few months ago, you had not yet had any defaults or bankruptcies in your portfolio but indicated that is always a possibility. Have there been any defaults or bankruptcies since?"
> ***Ribotsky:*** "No defaults or no bankruptcies."

58. Ribotsky's statement was false and misleading because several companies in which the AJW Funds were invested had, at the time, already defaulted in 2008. On June 13, 2008, Ribotsky was copied on an internal NIR email advising him that 2 portfolio companies were in default. The email read: "PFMS . . . defaulted as of 4/18 [and] RKLC . . . defaulted as of 5/2." Therefore, Ribotsky knew that at least two companies had defaulted in 2008 when he told the investor there were "no defaults." In addition, another internal NIR email, dated August 21, 2008, from an NIR analyst lists at least 3 companies that were in default: "Companies in default are ADMH, RKLC, UNVC." Although Ribotsky is not listed as a recipient of this email, the email was circulated within NIR and was based on the research of an NIR employee. Therefore, this information was certainly available to Ribotsky when he told the investor that there were no defaults in 2008. This is the same investor who invested his IRA savings in the AJW Funds in early 2009.

59. The following statements made by Ribotsky were false and misleading:

(a) **June 30, 2008 email from Ribotsky to investor**
Investor: "Can you please tell me what the status [is of the AJW Funds' 2007 audited financial statements] and why this is taking longer than expected?"
Ribotsky: "Unfortunately they [the Auditor] have taken longer this year and with our switch to the master/feeder structure have to do some additional audit procedures. Further to that there are new auditing standards for all funds that are creating some backlog throughout the auditing community."
Investor: "We know that dealing with an external auditor can take more time then [sic] expected. I just want to check if this is the only reason for the delay."
Ribotsky: "Yes this is the only reason for the delay."

(b) **January 14, 2009 email from Ribotsky to investor**
Investor: "Why was the audit for 2007 not issued until August 14, 2008?"
Ribotsky: "The 07 audit was delayed due to personnel changes at the auditor."

60. Ribotsky's answers were false and misleading because the delay in the 2007 audit of the AJW Funds' financial statements was due to the Auditor's concerns about whether NIR was properly recording the fair market value of the PIPE investments. The delay was not due to personnel changes at the Auditor or to the switch to the master feeder fund structure, as Ribotsky told the investors. In response to the Auditor's valuation concerns, and at the Auditor's request, NIR retained a third-party valuation expert in June 2008 to review the methodology that NIR was using to record the fair market value of the PIPE investments. The third-party valuation expert completed its report in July 2008. The Auditor subsequently concluded its audit work and issued an unqualified audit report for the AJW Funds' year-end December 31, 2007 financial statements in August 2008. Ribotsky's failure to mention the real reason for the audit delay – that the Auditor had concerns about whether NIR was properly recording the fair market value of the PIPE investments and, therefore, required additional audit procedures – rendered Ribotsky's answers to the investors' questions about the audit delay false and misleading.

61. The following statement made by Ribotsky was false and misleading:

> **March 16, 2008 newsletter signed by Ribotsky to investors**
> "In terms of [Q4 2007] deal highlights, the following are examples of two companies that we added to our portfolio . . . The first company is a developer of environmental process technology for photochemical, silver, and water recycling . . . The second portfolio company is focused on becoming the content management system for social networks and small business markets."

62. Ribotsky's statement was false and misleading because the two companies described in the newsletter were not "added to [the] portfolio." Rather, they were existing portfolio companies that NIR simply provided additional financing to during the fourth quarter of 2007. The ability of NIR to continue making investments in new companies was important to investors because it demonstrated to investors that, despite the adverse market conditions in late 2007 and 2008, there was still a market for NIR's PIPE investment strategy.

63. The false and misleading statements and omissions of material facts alleged above were made in the offer or sale and in connection with the purchase or sale of securities because they were made to prospective and existing investors, many of whom made subsequent investments in the AJW Funds. For example, Ribotsky sent the March 30, 2008 email and attached due diligence report, described above, to a prospective overseas investor. After receiving the email and due diligence report, the overseas investor invested $25 million in the AJW Funds in May 2008. Moreover, Ribotsky sent the July 17, 2008, October 21, 2008, December 10, 2008, and January 14, 2009 emails, described above, to the same prospective investor who, after receiving the emails, invested $122,256 of his IRA money with the AJW Funds in early 2009.

64. In addition, Ribotsky sent the October 16, 2008 letter, described above, to existing investors asking them to invest in newly-created AJW funds. The first sentence of the October 16, 2008 letter states: "We [NIR] are . . . offering you interests in a newly-organized entity. . . ." NIR sent existing investors private placement memoranda and subscription agreements concerning the newly-created AJW funds. Existing investors who chose to invest in the newly-created AJW funds did so by executing subscription agreements that represented their portion of ownership in the new AJW funds.

Falsification of Investor Documents

65. Ribotsky further defrauded investors by instructing Dworkin, an NIR employee, to mislead investors by, among other things, falsifying certain documents that were sent to investors. In particular, in August 2007, Ribotsky instructed Dworkin to inflate the total amount of investor money that NIR had invested in 57 deals during the first seven months of 2007 (through July 31, 2007). Dworkin initially prepared the chart accurately showing that NIR had

invested a total of $31.4 million in the 57 deals for the relevant period. Dworkin then sent the chart by email to Ribotsky on August 13, 2007.

66. After Ribotsky reviewed the chart that Dworkin had prepared, Ribotksy stated "investors can't see this" and he instructed Dworkin to "change the number to something near $60 million" before sending it to investors, apparently because Ribotsky wanted investors to see an average investment of at least $1 million per deal. Dworkin followed Ribotsky's instructions and changed the figure to $58.6 million on the chart. The next day, August 14, 2007, Ribotsky sent the falsified chart by email to an investor. The falsified chart was also sent to at least one other investor on October 15, 2007.

The $43.2 Million Sale of Fund Assets

67. By the fourth quarter of 2008, Ribotsky knew that NIR's investment and trading strategy could not generate enough cash from selling stock to keep up with mounting investor redemption requests and that NIR was, in fact, starting to incur trading losses. The AJW Funds suffered nearly $3.9 million in realized trading losses in the month of October 2008 alone. Faced with the reality that his investment strategy would result in significant fourth quarter 2008 realized trading losses – and likely year-end realized trading losses as well – Ribotsky entered into a series of transactions in which he purported to sell some of the AJW Funds' assets (PIPE investments in the form of convertible debentures) that NIR valued at $43.2 million to the Purchaser and certain entities controlled by the Purchaser.

68. In November and December 2008, Ribotsky (on behalf of the AJW Funds) and the Purchaser (on behalf of his entities) entered into nine separate transactions in which the AJW Funds purportedly sold $43.2 million of convertible PIPE debentures to the Purchaser's entities. The debentures that Ribotsky purported to sell the Purchaser had a face value of $12.6 million, which represented the AJW Funds' principal investment in the companies that issued the

debentures. The Purchaser, however, did not pay cash for the debentures; rather, he signed a series of "promissory notes" agreeing to pay the full purchase price in cash within 3-6 months. The Purchaser also executed a "personal guarantee" promising to personally pay the full purchase price for the debentures in the event his entities could not do so.

69. These transactions, however, were not in the best interests of the AJW Funds and its investors, and Ribotsky did not perform any due diligence with respect to the Purchaser or his entities before entering into the transactions. Ribotsky entered into the transactions in the hopes of being able to hide the trading losses that the AJW Funds were incurring in the fourth quarter of 2008. In fact, by recording the proceeds from the debenture transactions as "sales" on the books and records of the AJW Funds, NIR recorded $18 million in net realized gains on the 2008 AJW Funds' books and records. Without the proceeds from the debenture transactions, however, the 2008 AJW Funds' books and records would have reflected net realized <u>losses</u> of $3.4 million.

70. The Purchaser defaulted on his payment obligations and to this date, he has not paid for the debentures. The Purchaser and his entities have control and possession of the debentures. Ribotsky has not commenced any legal action on behalf of the AJW Funds to seek payment for the debentures or their return to investors. Nor has Ribotsky disclosed to the investors that he arranged for the AJW Funds to sell $43.2 million of their assets, that the Purchaser defaulted on his payment obligations, and that the AJW Funds no longer have possession or control of the assets.

71. Ribotsky and NIR defrauded investors by failing to conduct any due diligence with respect to the Purchaser and his entities before entering into the multi-million dollar transaction with them. Ribotsky and NIR failed to conduct any due diligence despite the fact

that NIR's offering materials and investor communications touted the "extensive" due diligence that NIR would conduct before making investment decisions on behalf of the AJW Funds.

72. For example, Ribotsky and NIR made the following disclosures to investors relating to NIR's due diligence protocols:

(a) **NIR Quarterly Newsletter signed by Ribotsky to investors, October 2008**
"NIR does extensive due diligence and credit work on all transactions."

(b) **AJW Qualified Partners II, LLP Private Placement Memorandum, October 2008**
"The Investment Manager believes that the first and most essential step to successful investing is the identification and uncovering of as much information as possible about an investment opportunity. This process is facilitated by the extensive primary research conducted by the Investment Manager on businesses and industries."

(c) **NIR Investor Presentation, (undated)**
"Extensive due diligence is performed before any investment is made. . . . [t]he process entails detailed descriptions and analysis of all pertinent financial, legal, and accounting information both past and present."

73. Despite these, and other similar, due diligence related representations made to investors, Ribotsky and NIR did not conduct any due diligence with respect to the Purchaser or his entities before entering into the transactions with them in November and December 2008. Ribotsky and NIR did not request or receive any documentation to assess the creditworthiness of the Purchaser and his entities, or to verify that the Purchaser and his entities had any meaningful assets or the financial means to pay for the debentures.

74. Ribotsky's prior business dealings with the Purchaser should have placed Ribotsky on notice, if he was not already, that entering into the multi-million dollar transaction with the Purchaser was not in the best interest of the AJW Funds. Prior to entering into the debenture transactions in November and December 2008, Ribotsky knew, and in fact he had told others, that the Purchaser's character and reputation for honesty were suspect. For example, in

an email to a co-worker, dated April 30, 2008, Ribotsky wrote: "[The Purchaser] is a thief [sic] and crook." In another email, dated February 19, 2008, Ribotsky wrote: "[The Purchaser] has a checkered past and now his reputation preceeds [sic] him." Ribotsky also knew, prior to November and December 2008, that the Purchaser paid bribes to an NIR employee in order to secure investments from the AJW Funds in start-up companies that the Purchaser was representing. Ribotsky learned about these bribes in September 2008, which was two months before Ribotsky entered into the transactions to sell AJW Fund assets to the Purchaser.

75. Had Ribotsky or NIR performed any meaningful due diligence with respect to the Purchaser and his entities, as Ribotsky told investors NIR would do, Ribotsky would have known that entering into a multi-million dollar transaction on behalf of the AJW Funds with the Purchaser and his entities clearly was not in the best interest of the AJW Funds. In particular, Ribotsky would have known that the Purchaser had a long history of personal and business credit problems and outstanding judgments and that neither the Purchaser nor his entities had any meaningful assets or the financial means to pay for the debentures.

76. In fact, the Purchaser had less than $30,000 in the bank account of his entities at the time of the transactions in November and December 2008. Although at one point the Purchaser gave Ribotsky a $700,000 check towards the debenture purchases, the Purchaser subsequently stopped payment on the check before it was cashed. As of the date on the check, April 12, 2009, there was less than $500 in the bank account on which the check was written. The Purchaser was also personally in debt and had limited financial means and credit. At the time, there were multiple collection matters and judgments against the Purchaser for over $270,000 in unpaid telephone, credit card, and department store bills. Even a cursory review of publicly available records would have shown that the collectability of the $43.2 million from the

Purchaser and his entities was highly unlikely within the 3-6 month payment period under the terms promissory notes, if ever.

77. Moreover, after Ribotsky and the Purchaser entered into the last of the transactions on December 30, 2008, Ribotsky retained a private investigator to conduct a background check into the Purchaser. The investigator sent Ribotsky a detailed report on January 4, 2009 that, among other things, raised multiple red-flags about the Purchaser and his entities. In particular, the report listed the Purchaser's poor financial condition and the several outstanding collection matters and judgments against him and his entities. In fact, the very first page of the report cautioned Ribotsky as follows:

> This memorandum provides a rather disturbing background report on [the Purchaser]. . . . The information on [the Purchaser] was so disturbing to us that we went to extra measures to verify these data and to assure ourselves that all this negative information was indeed applicable to the subject and not the result of a confused identity. We are comfortable with the accuracy of this report but leave it to you to decide on how to proceed in any business dealings here.

78. The report is dated January 4, 2009 – just days after Ribotsky closed the last debenture transactions with the Purchaser on December 30, 2008.

Ribotsky Misled Investors When Forming the Master Fund

79. By 2007, NIR's investment and trading strategy was not generating enough cash income (realized gains) to pay mounting investor redemption requests. Faced with a lack of cash to pay all of the outstanding investor redemption requests, Ribotsky paid the redemptions using other investors' money.

80. In June 2007, Ribotsky combined an AJW off-shore fund with an AJW on-shore fund by creating a new "master/feeder" fund – the Master Fund. The AJW on-shore fund and the AJW off-shore fund were the only shareholders in the Master Fund. Pursuant to the

reorganization, all or substantially all of the assets of both the on-shore and the off-shore funds were transferred to the Master Fund in exchange for shares of the Master Fund.

81. At the time Ribotsky merged the on-shore and off-shore funds, there was $39 million in outstanding investor redemption requests in the on-shore fund that were payable in June and September 2007. However, there was only $13 million in cash in the on-shore fund to meet these pending redemption requests. During that same period, there was $124 million in cash in the off-shore fund, but only $28 million in outstanding investor redemption requests in that fund. Faced with a lack of available cash and the inability to generate sufficient cash by converting and selling out of the PIPE investments, Ribotsky decided to merge the on-shore and off-shore funds so that he could use the cash in the off-shore fund to pay the outstanding redemptions in the on-shore fund.

82. Ribotsky, however, did not disclose to investors in the on-shore and off-shore funds the real reason why he was merging the funds to create the Master Fund. Rather, Ribotsky misleadingly told investors that the reason he was merging the funds was because a master feeder fund structure was in the best interest of the investors in both funds. In a letter to investors, dated May 7, 2007, Ribotsky stated that the transition by merger to a "master-feeder fund structure" was "in the best interest of the [funds]." He further stated that the merger will provide for a "larger pool of assets from which to draw," "will be better able to take advantage of available investment opportunities and provide increased liquidity," and will "ease the administrative burden on the [funds]." At a minimum, in order to make his statements to investors not misleading, Ribotsky should have disclosed the fact that he was merging the two funds so that he could use the cash in the off-shore fund to pay the outstanding investor redemptions in the on-shore fund.

FIRST CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act
(NIR and Ribotsky)

83. Paragraphs 1 through 82 are re-alleged and incorporated by reference as if fully set forth herein.

84. NIR and Ribotsky, directly or indirectly, singly or in concert, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact, or omitted to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

85. NIR's and Ribotsky's false and misleading statements and omissions were material because, among other reasons, the misrepresented and omitted facts were important to prospective and existing investors when making investment decisions concerning the AJW Funds.

86. By reason of the activities described herein, and in particular the false and misleading statements and omissions alleged above, NIR and Ribotsky violated Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)].

SECOND CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5
(NIR and Ribotsky)

87. Paragraphs 1 through 86 are re-alleged and incorporated by reference as if fully set forth herein.

88. NIR and Ribotsky, directly or indirectly, singly or in concert, in connection with

the purchase or sale of securities by use of means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, with scienter: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon other persons.

89. NIR's and Ribotsky's false and misleading statements and omissions were material because, among other reasons, the misrepresented and omitted facts were important to prospective and existing investors when making investment decisions concerning the AJW Funds.

90. By reason of the activities described herein, and in particular the false and misleading statements and omissions alleged above, NIR and Ribotsky violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

THIRD CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act
(NIR and Ribotsky)

91. Paragraphs 1 through 90 are re-alleged and incorporated by reference as if fully set forth herein.

92. NIR and Ribotsky at all relevant times were acting as investment advisers to the AJW Funds within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

93. NIR and Ribotsky, directly or indirectly, singularly or in concert, by use of the mails or means and instrumentalities of interstate commerce, while acting as investment advisers: (a) with scienter employed devices, schemes or artifices to defraud any client or

prospective client; and/or (b) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon any client or prospective client.

94. As investment advisers to the AJW Funds, NIR and Ribotsky owed the AJW Funds fiduciary duties of utmost good faith, fidelity, and care to make full and fair disclosure to them of all material facts concerning the AJW Funds – including any conflicts or potential conflicts of interests – as well as the duty to act in the AJW Funds' best interests, and not to act in their own interests to the detriment of the AJW Funds.

95. NIR and Ribotsky breached their fiduciary duties to the AJW Funds, engaged in fraudulent conduct and engaged in a scheme to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)] by misappropriating approximately $1 million from the AJW Qualified Fund, as described above.

96. By reason of the activities described herein, NIR and Ribotsky violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

FOURTH CLAIM FOR RELIEF
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8
(NIR and Ribotsky)

97. Paragraphs 1 through 96 are re-alleged and incorporated by reference as if fully set forth herein.

98. NIR and Ribotsky, while acting as investment advisers to pooled investment vehicles, the AJW Funds, directly or indirectly, by use of the mails or means or instrumentalities of interstate commerce: (a) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading to any investor or prospective investor in the pooled investment vehicles; and/or (b) engaged in any acts, practices, or courses of business that were fraudulent,

deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicles.

99. NIR's and Ribotsky's false and misleading statements and omissions alleged above were material because, among other reasons, the misrepresented and omitted facts were important to prospective and exiting investors when making investment decisions concerning the pooled investment vehicles.

100. NIR and Ribotsky violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] by knowingly, recklessly or negligently making the material misrepresentations and omissions alleged above.

101. By reason of the activities described herein, NIR and Ribotsky violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

FIFTH CLAIM FOR RELIEF
Aiding and Abetting Violations of
Section 10(b) of the Exchange Act and Rule 10b-5
(Dworkin)

102. Paragraphs 1 through 101 are re-alleged and incorporated by reference as if fully set forth herein.

103. NIR and Ribotsky, in connection with the purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails, knowingly or recklessly (a) have employed devices, schemes and artifices to defraud; (b) have made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; (c) and/or have engaged in acts, practices and courses of business which operate as a fraud and deceit upon investors.

104. Dworkin knowingly provided substantial assistance to NIR and Ribotsky in the commission of these violations.

105. By reason of the activities described, Dworkin aided and abetted NIR's and Ribotsky's violations of Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

SIXTH CLAIM FOR RELIEF
Aiding and Abetting Violations of
Section 206(4) of the Advisers Act and Rule 206(4)-8
(Dworkin)

106. Paragraphs 1 through 105 are re-alleged and incorporated by reference as if fully set forth herein.

107. NIR and Ribotsky, as investment advisers, made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in pooled investment vehicles; and NIR and Ribotsky otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

108. Dworkin knowingly provided substantial assistance to NIR and Ribotsky in the commission of these violations.

109. By reason of the activities described herein, Dworkin aided and abetted NIR's and Ribotsky's violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests a Final Judgment:

I.

Permanently enjoining NIR and Ribotsky, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, Sections 206(1), 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)] and Rules 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

II.

Permanently enjoining Dworkin, his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating and aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

III.

Ordering NIR and Ribotsky, on a joint and several basis, and Dworkin to disgorge any ill-gotten gains received from their violative conduct alleged in this complaint, and to pay prejudgment interest thereon.

IV.

Ordering NIR and Ribotsky to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9]; and ordering Dworkin to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80-9(e)].

V.

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, NY
September 28, 2011

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