UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF OAKLAND, A Municipal Corporation, Plaintiff-Appellee, v. WELLS FARGO & COMPANY; WELLS FARGO BANK, N.A., Defendants-Appellants.	No. 19-15169 D.C. No. 3:15-cv-04321-EMC Northern District of California, San Francisco MOTION TO FILE BRIEF AMICUS CURIAE WITH PARTIAL CONSENT

MOTION TO FILE BRIEF AMICUS CURIAE WITH PARTIAL CONSENT

PLEASE TAKE NOTICE that upon the annexed Affidavit of William Michael Cunningham, and the proposed brief amicus curiae annexed thereto, William Michael Cunningham shall move this Court for leave to file the proposed amicus brief following the grant of rehearing en banc as set forth in Ninth Circuit Rule 29-2. Movant endeavored to obtain the consent of all parties before moving the Court for permission to file the proposed brief, and believes the post-disposition deliberations involve novel or particularly complex issues. Two of the parties, Robert S. Peck, Counsel to the City of Oakland, acting of behalf of the City of Oakland and Neal K. Katyal, acting, we believe, on behalf of the Defendants-Appellants, have consented to this filing.

William Michael Cunningham, as pro se, further moves the Court to waive all defects in this filing.

Dated: Washington, DC

April 26, 2021

/S/

William Michael Cunningham, pro se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF OAKLAND, A Municipal Corporation, Plaintiff-Appellee, v. WELLS FARGO & COMPANY; WELLS FARGO BANK, N.A., Defendants-Appellants.	No. 19-15169 D.C. No. 3:15-cv-04321-EMC Northern District of California, San Francisco MOTION TO FILE BRIEF AMICUS CURIAE

I, William Michael Cunningham, hereby declare:

I am a private citizen of the United States of America.

I submit this Declaration to provide the Court with a copy of the brief I propose to file as amicus curiae and in the public interest, attached hereto as Exhibit A.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 2021.

/S/

William Michael Cunningham, pro se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF OAKLAND, A Municipal Corporation, Plaintiff-Appellee, v. WELLS FARGO & COMPANY; WELLS FARGO BANK, N.A., Defendants-Appellants.	No. 19-15169 D.C. No. 3:15-cv-04321-EMC Northern District of California, San Francisco MOTION TO FILE BRIEF AMICUS CURIAE

MOTION IN SUPPORT OF THE MEMORANDUM OF AMICUS CURIAE BY WILLIAM MICHAEL CUNNINGHAM

William Michael Cunningham

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Introduction

According to The Free Dictionary[1], an amicus curiae is:

"A person with strong interest in or views on the subject matter of an action, but not a party to the action, may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rationale consistent with its own views. Such amicus curiae briefs are commonly filed in appeals concerning matters of a broad public interest; e.g., civil rights cases. They may be filed by private persons or the government.

Whether participating by leave or by invitation, in an appearance or with a brief amicus curiae, a friend of the court is a resource person who has limited capacity to act."

William Michael Cunningham respectfully submits this memorandum in support of his motion for leave to file a brief amicus curiae in the above captioned matter. We provide proven or admitted facts upon which, we hope, the Court may exercise a degree of independent judgment.

Interest of the Proposed Amicus

Background

William Michael Cunningham (”WMC") registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990. He registered with the D.C. Public Service Commission as an Investment Advisor on January 28, 1994. Mr. Cunningham manages an impact research firm, Creative Investment Research. The firm creates impact investments and provides impact investing research services. Mr. Cunningham holds an MA in Economics and an MBA in Finance, both from the University of Chicago in Chicago, Illinois.

Mr. Cunningham's understanding of capital markets is based on firsthand knowledge obtained in a number of positions at a diverse set of major financial institutions. He served as Senior Investment Analyst for an insurance company. Mr. Cunningham was an Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm. Mr. Cunningham

[1] Online at: http://legal-dictionary.thefreedictionary.com/Friend-of-the-court+brief

also served as Director of Investor Relations for a New York Stock Exchange-traded firm. On November 16, 1995, he launched one of the first investment websites.

Mr. Cunningham has long been concerned with the integrity of lending and securities markets. We note the following:

- On July 3, 1993, Mr. Cunningham wrote to Mary Schapiro, the former Chair of the SEC, when she was a Commissioner to notify the Commission about a certain, specific investing "scam." A timely warning was not issued to the investing public. That letter to the SEC described correspondence to Mr. Cunningham dated July 2, 1993 from an “officer” of the Nigerian Ministry of Finance. The SEC acknowledged receiving this warning, in a letter to Mr. Cunningham dated October 29, 1993. Several American citizens were, in the interim, "taken" by these scam artists. At least one U.S. citizen was killed when they went to the country in an attempt to retrieve their funds. In response to these and other complaints, the SEC launched retaliatory regulatory actions *against Mr. Cunningham, culminating in the removal of his investment advisor registration*. See: https://www.creativeinvest.com/SECNigerianLetter.pdf

- Mr. Cunningham designed the first mortgage security backed by home mortgage loans to low and moderate income persons and originated by minority-owned institutions. (See: *Security Backed Exclusively by Minority Loans*, The American Banker. Friday, December 2, 1994. Online at https://www.creativeinvest.com/mbsarticle.html

- On November 16, 1995, Mr. Cunningham launched the first website devoted to minority economic education and empowerment. https://www.creativeinvest.com/images/be1996.jpg

- On April 30, 1997, in Case 97-1256 at the US Court of Appeals for the DC Circuit, Mr. Cunningham opposed the merger of Citigroup and Travelers and the elimination of the Glass–Steagall Act.[2]

[2] On July 25, 2012, “Former Citigroup Chairman & CEO Sanford I. Weill called for the return of the Glass–Steagall Act, which imposed banking reforms that split banks from other financial institutions such as insurance

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- On June 15, 2000, Mr. Cunningham testified before the House Financial Services Committee on H.R. 3703, the Housing Finance Regulatory Improvement Act. He testified on ways to improve the supervision and regulation of government sponsored enterprises, Fannie Mae and Freddie Mac, or GSE's.

- In 2001, he helped design a refinancing plan for victims of predatory lending that led to the creation of targeted community development investments. (See: https://www.creativeinvest.com/antipredatory.html)

- On December 22, 2003, statistical models created by Mr. Cunningham using the Fully Adjusted Return ® Methodology signaled the probability of system-wide economic and market failure. (See page 6: http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf)

- On Monday, April 11, 2005, Mr. Cunningham testified before Judge William H. Pauley III in the U.S. District Court for the Southern District of New York on behalf of the public and investors at a fairness hearing regarding the $1.4 billion dollar Global Research Analyst Settlement.

- In 2005, Mr. Cunningham served as an expert witness for homeowners in a case against PMI Group, Credit Suisse First Boston, Moody's, Standard and Poor's, Fairbanks Capital Corporation, Select Portfolio Servicing, US Bank National Association, as Trustee of CSFB ABS Series 2002-HEI, et. al., in the New Jersey Superior Court Law Division - Monmouth County. His testimony sought to establish that the corporate parties listed above were in fact responsible for facilitating unfair and predatory lending practices.

- On December 22, 2005, Mr. Cunningham met with Ms. Elaine M. Hartmann of the Division of Market Regulation at the U.S. Securities and Exchange Commission. At that meeting, he issued a strongly worded warning that system-wide economic and market failure was a growing possibility.

- On February 6, 2006, statistical models created by WMC using the Fully Adjusted Return ® Methodology confirmed that system-wide economic and

companies." Mr. Weill was the primary mover in the Citigroup and Travelers merger that led to the elimination of Glass Steagall.

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market failure was a growing possibility. (See page 2: http://www.sec.gov/rules/proposed/s71005/wcunningham5867.pdf)

- On April 7, 2006, Mr. Cunningham submitted a proposal to US Department of Housing and Urban Development (HUD) to create a collaborative, market-based approach to increase participation in HUD's Energy Efficient Mortgage (EEM) Program as an alternative to the predatory lending practices that Mr. Cunningham projected would damage the marketplace. The proposal, submitted to the Senior Energy Management Officer in the Office of Environment and Energy, identified a utility company willing to manage "the process of having energy ratings and evaluations done on properties," at no cost to the borrower. He identified a pension fund to purchase the resulting GNMA EEM pool. Rather than support the types of greed induced, faulty lending practices that are the subject of this case and that negatively impacted the mortgage market and the country, he proposed to develop green, socially responsible methods to enhance homeownership opportunities specifically benefiting minorities and women. This proposal was rejected by an incompetent, racially biased Agency in favor of the types of lending practices that severely damaged global and US markets.

- On June 18, 2009, he testified before the House Ways and Means Select Revenue Measures Subcommittee at a joint hearing with the Subcommittee on Domestic Monetary Policy and Technology of the Financial Services Committee: Testimony on the New Markets Tax Credit Program. He suggested ways to improve the program.

- On Wednesday, January 13, 2010 and Monday, June 14, 2010, Mr. Cunningham wrote to Mr. Phil Angelides, Chairman, Financial Crisis Inquiry Commission, to submit testimony and comments to the Commission. In addition, he noted that he was "disappointed that FCIC has not sought out or recognized a broader set of opinions and viewpoints and are further disappointed by FCIC's lack of ethnic diversity at both the Board and Staff level."

- On July 19, 2010, Mr. Cunningham testified on behalf of the public at the Joint Interagency Public Community Reinvestment Act (CRA) hearings:

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"The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency jointly held public hearings on modernizing the regulations that implement the Community Reinvestment Act (CRA)."

- On January 25, 2012, WMC submitted a "Friend of the Court" brief in a case before the United States Court of Appeals for the Second Circuit (Case 11-5227). The case concerned the rejection, by a Federal Judge, of a settlement agreed to by the United States Securities & Exchange Commission (SEC) and Citigroup Global Markets Inc. (Citigroup), the latter accused of securities fraud. As a friend to the Court, Mr. Cunningham provided an independent, objective and unbiased view in support of broad public interests. His education and experience have uniquely positioned him to provide opinions concerning the issues central to the case. The "Friend of the Court" brief concluded by noting that "markets have become less stable. Faulty regulatory practices and collusion have moved regulators and lawmakers..in the direction of supporting suppliers to the financial service marketplace. A decision by the (Appeals) Court in favor of the SEC and Citigroup will further strengthen this support, to the detriment of market institutions and the public. My economic models show the global economy remains at risk."

  WMCs December 26, 2016 forecast stated that: "Under any conceivable scenario, the current situation is very bad, and I mean toxic, for **democratic institutions** in general and for **people of color** specifically. Bottom line: our Fully Adjusted Return Forecast** indicates that, over time, **things will get much, much worse**....." From: Trumpism: https://www.linkedin.com/pulse/trumpism-william-michael-cunningham-am-mba/

As this record clearly shows, over the past 30 years, Mr. Cunningham has sought to protect the public by working with Federal regulatory agencies, including the Department of Housing and Urban Development (HUD) , Federal Reserve Board (FRB), the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Financial Crisis Inquiry Commission (FCIC), the U.S. Department of Justice (DOJ), the Consumer Financial Protection Bureau

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(CFPB), the Federal Housing Finance Agency (FHFA), the Department of Commerce (Minority Business Development Agency) and the U.S. Department of the Treasury, as an employee or as a contractor. Despite his education and experience, all offers to provide consulting services and all employment applications have been denied (due to age, racial and class discrimination.) In addition, Mr. Cunningham suffered economic retaliation at the hands of these agencies and from private sector actors, in violation of common and civil law, due to his testimony on behalf of the public interest in Federal Court. Further attempts to work with these institutions would be a futile gesture.

This leaves Mr. Cunningham no option but to appeal to this Court in order to have his knowledge, experience and analysis given proper consideration. Mr. Cunningham's interest in this matter stems from his role as an economist and citizen of the United States. He has no connection with any of the parties in this case and no one paid him to submit this brief.

Argument

As noted by Charles R. Nesson, William F. Weld Professor of Law at Harvard Law School and Director of the Berkman Center for Internet & Society in a motion to support the filing of an amicus curiae brief in Case No.: 00 Civ. 0277 (LAK):

"'Federal courts have discretion to permit participation of amici where such participation will not prejudice any party and may be of assistance to the court.' Strougo v. Scudder, Stevens & Clark, Inc., 1997 WL 473566 (S.D.N.Y. Aug. 18, 1997) (citing Vulcan Society of New York City Fire Dep't, Inc. v. Civil Service Comm'n, 490 F.2d 387, 391 (2d Cir. 1973)). *See also:* Zell/Merrill Lynch Real Estate Opportunity Partners Limited Partnership III v. Rockefeller Center Properties, Inc., 1996 WL 120672 (S.D.N.Y. March 19, 1996) (granting amicus leave to appear and argue, citing cases 'uniform in support of a district court's broad discretion to permit or deny amici appearances'); United States v. Gotti, 755 F.Supp. 1157, 1158 (E.D.N.Y 1991) (amici can 'provide supplementary assistance to existing counsel and insur[e]a complete and plenary presentation of difficult issues so that the court may reach a proper decision')."

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Conclusion

The fact that the Defendant has prevailed in dismissing injunctive and declaratory relief is particularly relevant and supports Mr. Cunningham's motion: neither the Defendant nor the Plaintiff can fully speak to the public interest. Hopefully, this highlights the need for independent and objective viewpoints in the public interest on this matter, which the movant, based on his education and experience, attempts to provide.

For the reasons above, I respectfully submit that the Court should grant leave to file the proposed brief amicus curiae.

Dated: April 26, 2021

Respectfully submitted,

/S/

/William Michael Cunningham/

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FOR THE NINTH CIRCUIT

APPENDIX A

19-15169

United States Court of Appeals for the Ninth Circuit

CITY OF OAKLAND, A Municipal
Corporation,
Plaintiff-Appellee,
v.
WELLS FARGO & COMPANY; WELLS
FARGO BANK, N.A.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. 1:15-cv-04321-EMC
The Honorable Edward M. Chen

BRIEF FOR WILLIAM MICHAEL CUNNINGHAM AS AMICUS CURIAE IN SUPPORT OF THE PUBLIC INTEREST

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CORPORATE DISCLOSURE STATEMENT

William Michael Cunningham is filing as an individual, has no parent company, nor has he issued any stock. He has no connection with any of the parties in this case and no one paid him to submit this brief.

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TABLE OF AUTHORITIES

CASES:

Supreme Court of the United States. No. 97–5066. William Michael Cunningham, Petitioner v. Board of Governors of the Federal Reserve System. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit.

United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT. No. 97-1256 William Michael Cunningham, APPELLANT v. Board of Governors of the Federal Reserve System, Appellee. Decided April 30, 1997.

United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT. No. 98-1459 William Michael Cunningham, APPELLANT v. Board of Governors of the Federal Reserve System, Appellee. October, 1998.

Document 45, filed 09/24/2013. Opinion and Order, US v. Wells Fargo. 12 Civ, 7527 (JMF)

STATUTES:

Article VI, Paragraph 2 of the U.S. Constitution

42 U.S.C. §§ 3604, 3605

Other:

"50 years after the Kerner Commission..." Economic Policy Institute. Janelle Jones, John Schmitt, and Valerie Wilson. February 26, 2018. https://www.epi.org/publication/50-years-after-the-kerner-commission/

Goldman Sachs to pay $3bn over 1MDB corruption scandal. BBC News. 22 October 2020. https://www.bbc.com/news/business-54597256

Financial Crisis Response in Charts. US Dept. of Treasury. April 13 2012. Online at: http://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf

George Stigler, "The Theory of Economic Regulation," Bell Journal of Economics, 2, 1971:3-21.

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Gary S. Becker (1957, 1971, 2nd ed.). The Economics of Discrimination. Chicago, University of Chicago Press.

Transcript from the Global Research Analyst Settlement Fairness Hearing. April 11, 2005. Before Judge William H. Pauley. In the U.S. District Court for the District of New York. http://www.creativeinvest.com/sri/fairness.html

This Week in Socially Responsible Investing, August 16, 2011. (Published August 15, 2011) http://eepurl.com/fd3BE

Transaction Cost Theory of the Crisis http://www.prlog.org/10746429-firm-releases-transaction-cost-theory-of-the-financial-crisis.html

Racial Bias in Securitization and Community Lending http://twisri.blogspot.com/2009/08/wells-fargo-sued-for-racially-biased.html

The relationship between investment banks and the economy http://twisri.blogspot.com/2009/03/why-market-failed.html

Mortgage GSE's, Predatory Lending and Minority Banks (2007 Prediction: Bear Stearns Will Fail.) http://twisri.blogspot.com/2007/08/morgage-gses-predatory-lending-and.html

Adam Smith on the Current Financial Crisis. http://twisri.blogspot.com/2009/04/adam-smith-on-current-financial-crisis.html

Property Flipping Remediation Yields Investment-grade Security https://www.creativeinvest.com/antipredatory.html

Comments dated 12/22/2003 - Warning the SEC of the 2008 Crisis http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf

Letter to US Senator Richard Shelby. See: http://www.ethicalmarkets.com//wp-content/uploads/2008/12/financialbailoutcomment1.pdf

Cunningham, William M. "The New Center of Power: China Overtakes the U.S. as the Globe's Biggest Energy Consumer." (2010): n. pag. Creative Investment Research, Inc. Creative Investment Research, Inc., 1 Aug. 2010. Web.

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Cunningham, William M. *US Economic and Market Forecast: 2014 to 2020. Fully Adjusted Return® Analysis.* Washington, DC: Creative Investment Research, 2013. Print.

Global Market Turmoil Graphic and Financial Crisis Calendar Graphic, Creative Investment Research, Inc., November, 2009.

Former Wells Fargo Subprime Loan Officer: Bank Targeted Black Churches as Part of Predatory Subprime Lending Scheme. Online at DemocracyNow.org: https://www.democracynow.org/2009/8/28/former_wells_fargo_subprime_loan_officer

Time to clean house at Wells Fargo. The American Banker Newspaper. November 20, 2018.https://www.americanbanker.com/opinion/time-to-clean-house-at-wells-fargo

To Stop Next Crisis, Make S&P Own Up to Fraud in Settlement. The American Banker Newspaper. February 09, 2015. https://www.americanbanker.com/opinion/to-stop-next-crisis-make-s-amp-p-own-up-to-fraud-in-settlement

Blockchain, Cryptocurrency and the Future of Monetary Policy. WASHINGTON - Aug. 24, 2019 - PRLog https://www.prlog.org/12785779-blockchain-cryptocurrency-and-the-future-of-monetary-policy.html

"Why Trump Will Win" June 11, 2016. https://www.linkedin.com/pulse/why-trump-win-william-michael-cunningham-am-mba

The Johns Hopkins Coronavirus Resource Center (CRC). Online at: https://coronavirus.jhu.edu/

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ARGUMENT

Repeatedly over the past thirty years, signal market participants, operating in the most materially advantaged country ever to exist, abandoned ethical principles in the pursuit of material well-being.[3] By 2013, marketplace ethics reached a new low. The simple facts supporting this statement are listed as Appendix B in this document.

Appendix B is no trivial list. It exposes a multi-decade, multi-firm set of unethical business practices spanning every major firm in the domestic financial services industry, and this list is abbreviated: for each successfully prosecuted incident, nine others either go undetected or do not make it to the prosecution and settlement phase. Thus, within the financial services industry, unethical behavior has become standard.

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[3] We refer to the following, abbreviated list of market related ethical lapses:

- The National Association of Security Dealers was found by the U.S. Securities and Exchange Commission to be "failing to police wrongdoing the NASDAQ Stock market, the second largest stock market in the world." The Washington Post (August 8, 1996. Page A1.)
- The failure of Long-Term Capital, an investment partnership started in 1994, was "laid on the kind of capitalism .. where a closed, secretive and incestuous elite held absolute sway over politics, the economy and finance, where banks lent to cronies and crooks, and the state miraculously came to the rescue when the time came to balance (or cook) the books." From "LTCM, a Hedge Fund Above Suspicion," by Ibrahim Warde, *Le Monde Diplomatique*, November 1998.

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Envy[4], hatred[5], and greed[6] have flourished in capital market institutions, propelling ethical standards of behavior downward. Without meaningful reform there remains a risk that our economic system will simply cease functioning.[7] With the introduction and potential of new digital currency-based technologies[8] to replace the US dollar (in large part due to the behavior of the Defendant and others in the industry), it is no exaggeration to say that the future of American democratic capitalism is at stake.

Fully identifiable entities engaged in illegal activities. They have, for the most part, evaded prosecution of any consequence. We note that Goldman Sachs, cited

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[4] The relationship between investment banks and the economy http://twisri.blogspot.com/2009/03/why-market-failed.html

[5] Racial Bias in Securitization and Community Lending http://twisri.blogspot.com/2009/08/wells-fargo-sued-for-racially-biased.html

[6] Mortgage GSE's, Predatory Lending and Minority Banks (2007 Prediction: Bear Stearns Will Fail.) http://twisri.blogspot.com/2007/08/morgage-gses-predatory-lending-and.html and
Adam Smith on the Current Financial Crisis.
http://twisri.blogspot.com/2009/04/adam-smith-on-current-financial-crisis.html

[7] My Proportional hazard models, reflecting the probability of system wide market failure, first spiked in September, 1998. The models spiked again in January and August, 2001. They have continued, in general, to increase. On December 22, 2005, we met with Ms. Elaine M. Hartmann and others from the Division of Market Regulation, U.S. Securities and Exchange Commission and specifically noted our model findings.

6 "It is critical to understand that bitcoin was created in direct response to the failure of global regulators to protect the public in the years leading up to the financial crisis of 2007/2008. Thus, the social and monetary functionality of cryptocurrency is superior to that of paper money. Eventually, cryptocurrency is going to dominate." https://www.prlog.org/12785779-blockchain-cryptocurrency-and-the-future-of-monetary-policy.html

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below, was fined $3 billion[9] by various regulators for multiple efforts to defraud the public. The firm continues to receive Federal Government tax credits.[10]

We have described several cases where corporate management unfairly transferred value from outsider to insider shareholders.[11] These abuses have been linked to the abandonment of ethical principles noted earlier. Faulty market practices mask a company's true value and misallocate capital by moving investment dollars from deserving companies to unworthy companies. Market institutions cannot survive continuously elevated levels of fraud.

Our brief focuses on one question: where the public interest lies.

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[9] Goldman Sachs to pay $3bn over 1MDB corruption scandal. BBC News. https://www.bbc.com/news/business-54597256

[10] The tax credits were awarded under the U.S. Department of the Treasury New Markets Tax Credit (NMTC) Program. (See: http://www.cdfifund.gov/programs/nmtc/).

[11] Including, but not limited to, Adlephia Communications, the aforementioned Alliance Capital Management, American Express Financial, American Funds, AXA Advisors, Bank of America’s Nations Funds, Bank One, Canadian Imperial Bank of Commerce, Canary Capital, Charles Schwab, Cresap, Inc., Empire Financial Holdings, Enron, Federated Investors, FleetBoston, Franklin Templeton, Fred Alger Management, Freemont Investment Advisors, Gateway, Inc., Global Crossing, H.D. Vest Investment Securities, Heartland Advisors, Homestore, Inc., ImClone, Interactive Data Corp., Invesco Funds Group Inc., Janus Capital Group Inc., Legg Mason, Limsco Private Ledger, Massachusetts Financial Services Co., Millennium Partners, Mutuals.com, PBHG Funds, Pilgrim Baxter, PIMCO, Prudential Securities, Putnam Investment Management LLC, Raymond James Financial, Samaritan Asset Management, Security Trust Company, N.A., State Street Research, Strong Mutual Funds, Tyco, UBS AG, Veras Investment Partners, Wachovia Corp., and WorldCom. Accounting firms, including Arthur Andersen and Ernst & Young aided and abetted efforts to do so. We believe there are hundreds of other cases.

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POINT I – Racially biased, incompetent Federal regulators damaged the public. The Plaintiff was powerless to stop this, given the Supremacy Clause of the US Constitution.

The economic crisis[12] of 2006 to 2016 resulted in the loss of millions of jobs, cost thousands of lives and imposed trillions[13] of dollars in actual losses. It led[14] to the election, in 2016, of a true demagogue as president and the imposition of additional[15] social costs. The 2008 and 2020 downturns were entirely predictable[16] and preventable. The Defendant exercised a racially biased, incompetent[17] product development and distribution strategy that insured the public would be damaged. They did so, in part, because they were allowed to do so by federal regulators captured by the financial services industry[18] and incapable of competently

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[12] Global Market Turmoil Graphic and Financial Crisis Calendar Graphic, Creative Investment Research, November, 2009.
[13] Financial Crisis Response in Charts. US Dept. of Treasury. April 13 2012. Online at: http://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf
12 "Why Trump Will Win" June 11, 2016. https://www.linkedin.com/pulse/why-trump-win-william-michael-cunningham-am-mba
13 U.S. COVID deaths as of April 22, 2021: 570,300. https://coronavirus.jhu.edu/us-map
[16] *See:* Supreme Court of the United States. No. 97–5066. William Michael Cunningham, Petitioner v. Board of Governors of the Federal Reserve System. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit.
United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT. No. 97-1256 William Michael Cunningham, APPELLANT v. Board of Governors of the Federal Reserve System, Appellee. Decided April 30, 1997.
United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT. No. 98-1459 William Michael Cunningham, APPELLANT v. Board of Governors of the Federal Reserve System, Appellee. October, 1998. Also, see: This Week in Socially Responsible Investing, October 3, 2011. (Published October 2, 2011) http://eepurl.com/gage9
[17] Document 45, filed 09/24/2013. Opinion and Order, US v. Wells Fargo. 12 Civ, 7527 (JMF)
[18] George Stigler, "The Theory of Economic Regulation," Bell Journal of Economics, 2, 1971:3-21.

protecting the public interest. Further, under current practices, federal banking regulators settle with corporate violators, and do not seek jail time in financial fraud cases involving large, non-minority corporations. This protects the monetary interest of a narrow set of non-minority persons, short circuits the justice process, fails to protect the interest of both the amicus and the general public, does little to protect victims of this and other financial crimes, and damages the Country's long term economic prospects. It also limits any opportunity for interested parties to appear as Amicus Curiae, since these settlements are rarely reviewed by an Appeals Court. Finally, this strategy leads to recidivism.

Were this matter pursued in a manner that protects the public, we believe the Defendant's status as a regulated financial institution would have been suspended. This legal right, granted by regulators supposedly in the public interest, is at the center of the damage caused. It cannot occur without it. Plaintiff has not requested a temporary suspension, much less a permanent suspension, of either the Defendant's status as an FDIC-insured depository or its corporate charter within the City of Oakland or the State of California. This implies these are not likely to be revoked, even though doing so would clearly be in the public interest.

If the Defendant is required to suspend or forfeit regulated bank status, not only would there be room for additional financial institutions, but the renewed commitment to the rule of law this signals would reduce the probability of recidivism, protecting the public interest.

Impact of Information Asymmetries

The vast majority of borrowers do not take loans they know are going to generate significant personal losses, despite popular acceptance of the view that borrowers caused the 2008 financial crisis. *This cannot be the truth*: the final responsibility for any lending decision rests with the financial institution making that decision. The Defendant knew and purposely obscured the true nature of the loans at issue. Under relevant fair housing laws, this is completely contrary to ethical market practices.

In order to prevent future market failures, information asymmetries must be reduced. If the defendant neither admits or denies wrongdoing, asymmetries are not disclosed in any legally meaningful way. They continue, leading once again, to market failure. Thus, in order to highlight exactly where the asymmetries are, a Court must transparently impose judgment when wrongdoing is clear.

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The Public Interest

The overriding public interest is in fair, efficient, fully functioning housing markets. Fully functioning markets minimize informational asymmetries. Indeed, free, clear, and fully functioning markets operate as price discovery mechanisms via "the process of determining the price of an asset in the marketplace through the interactions of informed, rational buyers and sellers." The actions of defendant Wells Fargo, intentional or not, prevented accurate valuation. Borrowers were not informed: they paid too much for the loans at issue, given the undisclosed and elevated risk of loss.

The Defendant's business model depends upon the continuation of the informational asymmetry. Borrowers use information on regulatory compliance and legal standing to determine, in part, with whom to conduct business. Without a formal determination, buyers are likely to continue to be at the mercy of powerful, unethical lenders. The informational asymmetry at the center of this case reasserts itself. Market failure, at some point, results.

POINT II – Plaintiff should conduct a census of all relevant transaction data

The development of impact investing suggests there is no need to rely on proximate cause. Recent advancements in information technology allow the calculation of the exact dollar amount of damage at issue in this case.

We note the lack of a public database showing the transaction impact chain (borrower, lender, community, housing value impact, community value impact, intermediary) for each and every loan at issue. We first suggested this in 2008[19]. Data also showing all commission and bonus payments made that were based on the loans at issue is the only way to get highly relevant information on all transactions.

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[19] Letter to US Senator Richard Shelby commenting on the financial rescue plan under consideration. In the appendix to that letter, we provided a four-step plan for dealing with the crisis. See: http://www.ethicalmarkets.com//wp-content/uploads/2008/12/financialbailoutcomment1.pdf

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Given advancements in information processing, this is not an impossible task.[20] Further, we suggest that the Federal Deposit Insurance Corporation, the FDIC, be tasked with this job. The FDIC, through its Division of Supervision, has a great deal of experience in this area. In closing down failed banks, the FDIC conducts the type of loan data review we highlight here. Specifically, we suggest that the Court engage the Director, Division of Risk Management Supervision, FDIC, to manage this data collection and analysis task.[21]

Those responsible for creating the loans at issue received compensation based on an assumption that the loans at issue performed in a manner consistent with industry standards. That is, they were paid as if prospectus and other documents were true and accurate. Compensation was calculated as if these loans performed well to maturity. As we know, they did not and could not.

In addition, to trace the impact this behavior had on the general public, data detailing the exact identity and standing (profit and/or loss) of each and every borrower AND investor should be compiled.

In addition, should the defendant be found guilty, we believe any penalty should incorporate the following:

1. All net income for the three years preceding the date of the first action alleged in this matter should be confiscated from Defendant Wells Fargo.
2. All bonuses and commissions paid to any Wells Fargo employees involved in the transaction chain should be specifically recaptured or clawed back[22]
3. The bank's charter should be removed. The institutions should be rechartered as a Public Interest Bank. Individuals damaged should be given all or partial ownership in the new entity.

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[20] If a foreign country can use Facebook to interfere with an election, we can use it to calculate the impact of the Defendant's behavior.
[21] Should the Government prefer an outside contractor, we suggest they contact Google.
[22] We first suggested this in 2005. See: Partial Revised Transcript from the Global Research Analyst Settlement Fairness Hearing. April 11, 2005. Before Judge William H. Pauley. In the U.S. District Court for the District of New York. http://www.creativeinvest.com/sri/fairness.html

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POINT III – Public Interest Bank

“Fair housing” and “community development” efforts[23] have not increased Black homeownership rates or lowered Black unemployment. These “programs” serve the economic interests of a small group of non-minority individuals and institutions. These facts call for a new approach. We believe the Court can, in this case, mandate the use of a new type of financial institution, a *Public Interest Bank*, created to represent the financial interests and well-being of individuals and communities damaged by the behavior at issue.[24]

The bank operates using blockchain technology to transparently detail social impact in real time. All transactions of the entity would be posted. (Note that this excludes account holder transactions, but includes all transactions at the corporate (bank) level.)

A key part of this oversight would be the creation of a database containing all electronic mail messages from all regulatory agencies and all financial institutions subject to regulatory oversight. Advances in information technology make this a feasible proposition, since computer storage costs have fallen. Indeed, the entirety of Defendant emails could be stored on a single 120 petabyte drive. That same drive could hold all email messages sent by all institutions responsible for oversight, including the OCC, SEC, FDIC and FRB.

The data would be collected in real time, stored at a Financial Institution Court. Should there be a need to review the data, we have developed a procedure to allow access in a manner fair to all.

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[23] We include fair housing, community reinvestment (CRA), New Markets Tax Credit and Opportunity Zone initiatives. “ In 2017 the black unemployment rate was 7.5 percent, up from 6.7 percent in 1968, and is still roughly twice the white unemployment rate. In 2015, the black homeownership rate was just over 40 percent, virtually unchanged since 1968..” See “ 50 years after the Kerner Commission.” Economic Policy Institute. https://www.epi.org/publication/50-years-after-the-kerner-commission/

[24] Note that this is not a public bank, a financial institution in which a state, municipality, or public actors are the owners. A public interest bank is an enterprise under private control, albeit with significant government involvement. It uses new technology to ensure that the public interest is maximized.

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When industry participants, despite continual enforcement actions, act repeatedly and with impunity in a manner that clearly damages the industry, the country and the global economy, a Court must step in to protect the public.

Role of Transaction Costs

Our research shows that as marketplace ethics decreased, transaction costs[25] increased. Eventually, transaction costs rose to a level that caused general market failure, or the financial crisis. General market failure is defined as an inefficient allocation of liquidity in the global financial marketplace. This liquidity crisis was caused, at core, by an inability to either independently determine or believe (trust) the value of securities pledged as collateral for short-term (repo) loans.

Declining trust increased transaction costs in three ways:

- First, opportunistic behavior on the part of key financial market participants, commercial and investment banks, including the Defendant, led to higher prices. They simply gouged customers.
- Second, these same institutions developed a set of racially biased[26], low added value, high cost financial practices and products, designed solely to maximize firm revenue and profit. The Defendants actions in this case were part of this process. They concealed the fact that these products had limited value from investors and customers, but not, apparently, regulators.
- Financial market participants attempted to use imagination to deal with the ethics/trust/ transaction cost issue. They did so via swaps, derivatives and

[25] See: The Transaction Cost Theory of the Financial Crisis
http://www.prlog.org/10746429-firm-releases-transaction-cost-theory-of-the-financial-crisis.html

[26] "Bank accused of predatory practices. Lawsuit alleges black neighborhood, churches targeted." Gazette.net. Online at:
http://www.gazette.net/stories/06182009/collnew182411_32521.shtml and Racial Bias in Securitization and Community Lending
http://twisri.blogspot.com/2009/08/wells-fargo-sued-for-racially-biased.html

other financial market "innovations" designed as “safe-guards” to protect parties vulnerable to opportunistic behavior in financial transactions. These contracts were supposed to eliminate the need to be concerned about the behavior of unscrupulous actors and the impact that behavior might have on one’s financial standing. Ratings on securities served as another type of insurance policy. These "insurance policies" proved ineffective, however, serving only to increase transaction costs.

These significantly increased transaction costs precipitated and caused global market failure in 2007 and 2008.

Practices and policies that increase trust and thereby reduce transaction costs will restore functionality to the financial and economic marketplace. These will also help prevent a reoccurrence of the financial crisis.

Calculation of Total Loss or Proximate Cause

In an effort to help the Court, below we outline (but do not disclose) the Total Loss calculation using proprietary Fully Adjusted Return® (FAR) Methodology.[27]

The total loss consists of the following:

a. Monetary losses: $P_b - P_s$ where P_b = Price investment bought; P_s=Price sold. (In all cases, *sold* refers to the price at which ownership can be changed if desired. A transaction need not take place.)

b. Opportunity costs. These are gains (or losses) from alternative loans that would have been created if the loans at issue had not. $P_{aib} - P_{ais}$, where P_{aib} = Price at which alternative loans/investment bought; P_{ais} = Price at which alternative sold.

c. Transaction Related Social Returns. (TRSR) These include the social gains or costs of global market failure that can be attributed to this specific

[27] The Methodology provides a full description of the economic/monetary and social return of an investment. Data is collected and evaluated. Once collected, the information is summarized. The Fully Adjusted Return® Methodology is trade secret protected and proprietary, so we have provided a limited outline.

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financial institution, impacts on ethical standards of marketplace behavior, informational asymmetry impacts (demand and supply side bargaining power impacts).

d. Market Related Social Returns (MRSR). These include non-transaction specific secondary and tertiary impacts on society as a whole. In this category we include the impact changes in final product supply (housing) and all attendant final market factors have. These include the municipal level costs detailed, in part, by the Plaintiff.

To the maximum initial total monetary loss, we add the monetary value of societal impacts. We estimate the final monetary loss at, according to FAR, to be greater than $12.5 billion. Thus, the Court's dismissal of injunctive and declaratory relief fails to fully comprehend the true scope of the damage.

Summary

The Defendant's greed helped cost the nation $19.2 trillion, increased the speed with which China will overtake the U.S.[28] and set the stage for the eventual replacement of the U.S. dollar as global reserve currency.[29] These events tend not to be in the public interest.

Defendant's preference for discrimination contributed to this outcome. People and institutions discriminate because they have a preference (taste) for it.[30] They understand there is a cost, and are willing to pay it.

Until the generalized level of fraud and malfeasance in the financial marketplace is lowered and trust is increased, aggregate economic activity will remain at lower than normal levels. Our models indicate a successful (for the Plaintiff) outcome in

[28] Cunningham, William M. "The New Center of Power: China Overtakes the U.S. as the Globe's Biggest Energy Consumer." (2010): 88pp. Creative Investment Research, Inc. Creative Investment Research, Inc., 1 Aug. 2010. Web.
[29] Cunningham, William M. *U.S. Economic and Market Forecast: 2014 to 2020. Fully Adjusted Return® Analysis.* Washington, DC: Creative Investment Research, 2013. Print.
[30] Gary S. Becker (1957, 1971, 2nd ed.). The Economics of Discrimination. Chicago, University of Chicago Press.

this lawsuit is one of several critically important steps along the path to the restoration of normalcy.

Unfortunately, we see little chance the public interest will prevail.

Dated: April 26, 2021

Respectfully submitted, /S/

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), the typeface requirement of Fed. R. App. P. 32(a)(5), and the typestyle requirements of Fed. R. App. P. 32(a)(6). This brief contains 2,934 words, excluding Appendix B, other parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and is prepared in a proportionally spaced typeface (14- point Times New Roman).

/s/ William Michael Cunningham

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit via email to prose-pleadings@ca9.uscourts.gov

I seek to distribute to all parties using the appellate CM/ECF system on April 26, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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Appendix B – Financial Institution Marketplace Behavior

- On April 28, 2003, every major US investment bank, including Merrill Lynch, Goldman Sachs, Morgan Stanley, Citigroup, Credit Suisse First Boston, Lehman Brothers Holdings, J.P. Morgan Chase, UBS Warburg, and U.S. Bancorp Piper Jaffray, were found to have aided and abetted efforts to defraud investors. The firms were fined a total of $1.4 billion dollars by the SEC, triggering the creation of a Global Research Analyst Settlement Fund.

- In May, 2003, the SEC disclosed that several "brokerage firms paid rivals that agreed to publish positive reports on companies whose shares..they issued to the public. This practice made it appear that a throng of believers were recommending these companies' shares." This was false. "From 1999 through 2001, for example, one firm paid about $2.7 million to approximately 25 other investment banks for these so-called research guarantees, regulators said. Nevertheless, the same firm boasted in its annual report to shareholders that it had come through investigations of analyst conflicts of interest with its 'reputation for integrity' maintained."

- On September 3, 2003, the New York State Attorney General announced he has "obtained evidence of widespread illegal trading schemes, 'late trading' and 'market timing,' that potentially cost mutual fund shareholders billions of dollars annually. This, according to the Attorney General, "is like allowing betting on a horse race after the horses have crossed the finish line."

- On September 4, 2003, a major investment bank, Goldman Sachs[31], admitted that it had violated anti-fraud laws. Specifically, the firm misused material, nonpublic information that the US Treasury would suspend issuance of the 30-year bond. The firm agreed to "pay over $9.3 million in penalties." On April 28, 2003, the same firm was found to have "issued research reports that were not based on principles of fair dealing and good faith .. contained exaggerated or unwarranted claims.. and/or contained opinions for which there were no reasonable bases." The firm was fined $110 million dollars,

[31] "On December 4, 1928, Goldman Sachs launched the Goldman Sachs Trading Corp. a closed-end fund." The funds failure was one factor leading to the Stock Market Crash of 1929. "In 1970,..the Penn Central Transportation Company went bankrupt with over $80 million in commercial paper outstanding, most of it issued by Goldman Sachs. It was this bankruptcy that resulted in credit ratings being created for every issuer of commercial paper today by several credit rating services."

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for a total of $119.3 million dollars in fines in six months.

- On December 18, 2003, the Securities and Exchange Commission "announced an enforcement action against Alliance Capital Management L.P. (Alliance Capital) for defrauding mutual fund investors. The Commission ordered Alliance Capital to pay $250 million. The Commission also ordered Alliance Capital to undertake certain compliance and fund governance reforms designed to prevent a recurrence of the kind of conduct described in the Commission's Order. Finally, the Commission found that "Alliance Capital breached its fiduciary duty to (it's) funds and misled those who invested in them."

- On October 8, 2004, the Securities and Exchange Commission "announced..enforcement actions against Invesco Funds Group, Inc. (IFG), AIM Advisors, Inc. (AIM Advisors), and AIM Distributors, Inc. (ADI). The Commission issued an order finding that IFG, AIM Advisors, and ADI violated the federal securities laws by facilitating widespread market timing trading in mutual funds with which each entity was affiliated. The settlements require IFG to pay $215 million in disgorgement and $110 million in civil penalties, and require AIM Advisors and ADI to pay, jointly and severally, $20 million in disgorgement and an aggregate $30 million in civil penalties."

- On November 4, 2004, the Securities and Exchange Commission "filed a settled civil action in the United States District Court for the District of Columbia against Wachovia Corporation (Wachovia) for violations of proxy disclosure and other reporting requirements in connection with the 2001 merger between First Union Corporation (First Union) and Old Wachovia Corporation (Old Wachovia). Under the settlement, Wachovia must pay a $37 million penalty and is to be enjoined from future violations of the federal securities laws."

- On November 17, 2004, the Securities and Exchange Commission announced "charges concerning undisclosed market timing against Harold J. Baxter and Gary L. Pilgrim in the Commissions' pending action in federal district court in Philadelphia." Based on these charges, Baxter and Pilgrim agreed to "pay $80 million – $60 million in disgorgement and $20 million in civil penalties."

- On November 30, 2004, the Securities and Exchange Commission announced “the filing..of charges against American International Group, Inc. (AIG) arising out of AIG’s offer and sale of an earnings management product.” The company “agreed to pay a total of $126 million, consisting of a penalty of $80 million, and disgorgement and prejudgment interest of $46 million.”

- On December 22, 2004, “the Securities and Exchange Commission, NASD and the New York Stock Exchange announced..enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri.” According to the announcement, “Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers.” The company agreed to “pay $75 million in disgorgement and civil penalties. All of that money will be placed in a Fair Fund for distribution to Edward Jones customers.”

- On January 25, 2005, “the Securities and Exchange Commission announced the filing in federal district court of separate settled civil injunctive actions against Morgan Stanley & Co. Incorporated (Morgan Stanley) and Goldman, Sachs & Co. (Goldman Sachs) relating to the firms' allocations of stock to institutional customers in initial public offerings (IPOs) underwritten by the firms during 1999 and 2000.”

- According to the Associated Press, on January 31, 2005, “the nation’s largest insurance brokerage company, Marsh & McLennan Companies Inc., based in New York, will pay $850 million to policyholders hurt by” corporate practices that included “bid rigging, price fixing and the use of hidden incentive fees.” The company will issue a public apology calling its conduct "unlawful" and "shameful," according to New York State Attorney General Elliott Spitzer. In addition, “the company will publicly promise to adopt reforms.”

- On Feb. 9, 2005, the Securities and Exchange Commission “announced the settlement of an enforcement action against Columbia Management Advisors, Inc. (Columbia Advisors), Columbia Funds Distributor, Inc. (Columbia Distributor), and three former Columbia executives in connection

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with undisclosed market timing arrangements in the Columbia funds. In settling the matter, the Columbia entities will pay $140 million, all of which will be distributed to investors harmed by the conduct. The SEC also brought fraud charges against two additional former Columbia senior executives in federal court in Boston."

- On March 23, 2005, the Securities and Exchange Commission "announced that Putnam Investment Management, LLC (Putnam) will pay $40 million. The Commission issued an order that finds Putnam failed to adequately disclose to the Putnam Funds' Board of Trustees and the Putnam Funds' shareholders the conflicts of interest that arose from..arrangements for increased visibility within the broker-dealers' distribution systems."

- On March 23, 2005, the Securities and Exchange Commission (Commission) "announced that it instituted and simultaneously settled an enforcement action against Citigroup Global Markets, Inc. (CGMI) for failing to provide customers with important information relating to their purchases of mutual fund shares."

- On April 19, 2005, the Securities and Exchange Commission "announced that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000." As part of the settlement, KPMG paid a fine totaling $22.475 million.

- On April 12, 2005, the Securities and Exchange Commission "instituted and simultaneously settled an enforcement action against the New York Stock Exchange, Inc., finding that the NYSE, over the course of nearly four years, failed to police specialists, who engaged in widespread and unlawful proprietary trading on the floor of the NYSE." As part of the settlement, the "NYSE agreed to an undertaking of $20 million to fund regulatory audits of the NYSE's regulatory program every two years through the year 2011." On that same date, the Commission "instituted administrative and cease-and-desist proceedings against 20 former New York Stock Exchange specialists for fraudulent and other improper trading practices."

- On April 19, 2005, the Securities and Exchange Commission announced "that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000. As part

of the settlement, KPMG consented to the entry of a final judgment in the SEC's civil litigation against it pending in the U.S. District Court for the Southern District of New York. The final judgment..orders KPMG to pay disgorgement of $9,800,000 (representing its audit fees for the 1997-2000 Xerox audits), prejudgment interest thereon in the amount of $2,675,000, and a $10,000,000 civil penalty, for a total payment of $22.475 million."

- On April 28, 2005, the Securities and Exchange Commission announced "that it has instituted settled enforcement proceedings against Tyson Foods, Inc. and its former Chairman and CEO Donald "Don" Tyson. The SEC charged that in proxy statements filed with the Commission from 1997 to 2003, Tyson Foods made misleading disclosures of perquisites and personal benefits provided to Don Tyson both prior to and after his retirement as senior chairman in October 2001."

- On May 31, 2005, the Securities and Exchange Commission "announced settled fraud charges against two subsidiaries of Citigroup, Inc. relating to the creation and operation of an affiliated transfer agent that has served the Smith Barney family of mutual funds since 1999. Under the settlement, the respondents are ordered to pay $208 million in disgorgement and penalties and to comply with substantial remedial measures, including an undertaking to put out for competitive bidding certain contracts for transfer agency services for the mutual funds."

- On June 2, 2005, the Securities and Exchange Commission "filed securities fraud charges against Amerindo Investment Advisors, Inc., Alberto William Vilar and Gary Alan Tanaka, Amerindo's co-founders and principals, for misappropriating at least $5 million from an Amerindo client."

- On June 9, 2005, the Commission announced that "Roys Poyiadjis, a former CEO of AremisSoft Corporation, which was a software company with offices in New Jersey, London, Cyprus, and India, agreed to final resolution of fraud charges brought against him by the Securities and Exchange Commission in October 2001. In documents filed with the federal district court in Manhattan, Poyiadjis consented to disgorge approximately $200 million of unlawful profit from his trading in AremisSoft stock -- among the largest recoveries the SEC has obtained from an individual."

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- On July 20, 2005, the Securities and Exchange Commission "announced a settled administrative proceeding against Canadian Imperial Bank of Commerce's (CIBC) broker-dealer and financing subsidiaries for their role in facilitating deceptive market timing and late trading of mutual funds by certain customers. The Commission ordered the subsidiaries, CIBC World Markets Corp. (World Markets), a New York based broker-dealer, and Canadian Imperial Holdings Inc. (CIHI), to pay $125 million, consisting of $100 million in disgorgement and $25 million in penalties."

- On August 15, 2005, the Securities and Exchange Commission "charged four brokers and a day trader with cheating investors through a fraudulent scheme that used squawk boxes to eavesdrop on the confidential order flow of major brokerages so they could 'trade ahead' of large orders at better prices."

- On August 22, 2005, the Securities and Exchange Commission "filed civil fraud charges against two former officers of Bristol-Myers Squibb Company for orchestrating a fraudulent earnings management scheme that deceived investors about the true performance, profitability and growth trends of the company and its U.S. medicines business."

- On August 23, 2005, the Securities and Exchange Commission "filed charges against two former top Kmart executives for misleading investors about Kmart's financial condition in the months preceding the company's bankruptcy."

- On November 2, 2005, the Securities and Exchange Commission "filed enforcement actions against seven individuals alleging they aided and abetted a massive financial fraud by signing and returning materially false audit confirmations sent to them by the auditors of the U.S. Foodservice, Inc. subsidiary of Royal Ahold (Koninklijke Ahold N.V.)."

- On November 28, 2005, the Securities and Exchange Commission announced "that three affiliates of one of the country's largest mutual fund managers have agreed to pay $72 million to settle charges they harmed long-term mutual fund shareholders by allowing undisclosed market timing and late trading by favored clients and an employee."

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- On December 1, 2005, the Securities and Exchange Commission "announced settled enforcement proceedings against American Express Financial Advisors Inc., now known as Ameriprise Financial Services, Inc. (AEFA), a registered broker-dealer headquartered in Minneapolis, Minn., related to allegations that AEFA failed to adequately disclose millions of dollars in revenue sharing payments that it received from a select group of mutual fund companies. As part of its settlement with the Commission, AEFA will pay $30 million in disgorgement and civil penalties, all of which will be placed in a Fair Fund for distribution to certain of AEFA's customers."

- On December 1, 2005, the Securities and Exchange Commission "announced a settled administrative proceeding against Millennium Partners, L.P., Millennium Management, L.L.C., Millennium International Management, L.L.C., Israel Englander, Terence Feeney, Fred Stone, and Kovan Pillai for their participation in a fraudulent scheme to market time mutual funds. The respondents will pay over $180 million in disgorgement and penalties and undertake various compliance reforms to prevent recurrence of similar conduct."

- On December 19, 2005, the Securities and Exchange Commission "announced that it filed and settled insider trading charges both against an accountant and a former executive of Sirius Satellite Radio, Inc. who illegally profited from advance knowledge of radio personality Howard Stern's $500 million contract with Sirius."

- On December 21, 2005, the Securities and Exchange Commission "sued top executives of National Century Financial Enterprises, Inc. (NCFE), alleging that they participated in a scheme to defraud investors in securities issued by the subsidiaries of the failed Dublin, Ohio company. NCFE, a private corporation, suddenly collapsed along with its subsidiaries in October 2002 when investors discovered that the companies had hidden massive cash and collateral shortfalls from investors and auditors. The collapse caused investor losses exceeding $2.6 billion and approximately 275 health-care providers were forced to file for bankruptcy protection."

- On January 3, 2006, the Securities and Exchange Commission announced "that it filed charges against six former officers of Putnam Fiduciary Trust

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Company (PFTC), a Boston-based registered transfer agent, for engaging in a scheme beginning in January 2001 by which the defendants defrauded a defined contribution plan client and group of Putnam mutual funds of approximately $4 million."

- On January 4, 2006, the Securities and Exchange Commission "filed securities fraud charges against McAfee, Inc., formerly known as Network Associates, Inc., a Santa Clara, California-based manufacturer and supplier of computer security and antivirus tools. McAfee consented, without admitting or denying the allegations of the complaint, to the entry of a Court order enjoining it from violating the antifraud, books and records, internal controls, and periodic reporting provisions of the federal securities laws. The order also requires that McAfee pay a $50 million civil penalty, which the Commission will seek to distribute to harmed investors pursuant to the Fair Funds provision of the Sarbanes-Oxley Act of 2002."

- On January 9, 2006, the Securities and Exchange Commission "announced that Daniel Calugar and his former registered broker-dealer, Security Brokerage, Inc. (SBI), agreed to settle the SEC's charges alleging that they defrauded mutual fund investors through improper late trading and market timing. As part of the settlement, Calugar will disgorge $103 million in ill-gotten gains and pay a civil penalty of $50 million."

- On February 2, 2006, the Securities and Exchange Commission "announced that it filed an enforcement action against five former senior executives of General Re Corporation (Gen Re) and American International Group, Inc. (AIG) for helping AIG mislead investors through the use of fraudulent reinsurance transactions."

- On February 9, 2006, the Commission announced "the filing and settlement of charges that American International Group, Inc. (AIG) committed securities fraud. The settlement is part of a global resolution of federal and state actions under which AIG will pay in excess of $1.6 billion to resolve claims related to improper accounting, bid rigging and practices involving workers' compensation funds."

- On March 9, 2006, the Securities and Exchange Commission filed a lawsuit "against registered investment adviser BMA Ventures, Inc. and its president,

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William Robert Kepler, 35, of Dallas, Texas, alleging that they illegally obtained approximately $1.9 million in a fraudulent 'scalping' scheme from January 2004 through March 2005. Scalping is the illegal practice of recommending that others purchase a security and secretly selling the same security contrary to the recommendation."

- On March 16, 2006, the Securities and Exchange Commission "announced a settled enforcement action against Bear, Stearns & Co., Inc. (BS&Co.) and Bear, Stearns Securities Corp. (BSSC) (collectively, Bear Stearns), charging Bear Stearns with securities fraud for facilitating unlawful late trading and deceptive market timing of mutual funds by its customers and customers of its introducing brokers. The Commission issued an Order finding that from 1999 through September 2003, Bear Stearns provided technology, advice and deceptive devices that enabled its market timing customers and introducing brokers to late trade and to evade detection by mutual funds. Pursuant to the Order, Bear Stearns will pay $250 million, consisting of $160 million in disgorgement and a $90 million penalty."

- On April 11, 2006, the Securities and Exchange Commission announced "charges against individuals involved in widespread and brazen international schemes of serial insider trading that yielded at least $6.7 million of illicit gains. The schemes were orchestrated by..a research analyst in the Fixed Income division of Goldman Sachs, and a former employee of Goldman Sachs."

- On April 17, 2006 , the Securities and Exchange Commission brought "Settled Charges Against Tyco International Ltd. Alleging (a) Billion Dollar Accounting Fraud."

- On May 10, 2006, the Securities and Exchange Commission ordered "Former Chairman and CEO of Gemstar-TV Guide International, Inc. .. to Pay Over $22 Million For Role in Accounting Fraud."

- On May 10, 2006, the Securities and Exchange Commission sued "Morgan Stanley..for Repeated E-Mail Production Failures."

- "On May 23, 2006, the (Securities and Exchange) Commission filed a settled enforcement proceeding charging the Federal National Mortgage Association ('Fannie Mae'), a shareholder-owned government-sponsored

enterprise, with fraudulent accounting in violation of the anti-fraud, books and records, internal controls and reporting provisions of the Securities Exchange Act of 1934 (the 'Exchange Act') and the anti-fraud provisions of the Securities Act of 1933 (the 'Securities Act')."

- On May 30, 2006, the Securities and Exchange Commission brought "Settled Charges Against Tribune Company for Reporting Inflated Circulation Figures and Misstating Circulation Revenues."

- On May 31, 2006, Bear, Stearns & CO. Inc.; Citigroup Global Markets, Inc.; Goldman, Sachs & Co.; J.P. Morgan Securities, Inc.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc.; RBC Dain Rauscher Inc.; Banc of America Securities LLC; A.G. Edwards & Sons, Inc.; Morgan Keegan & Company, Inc.; Piper Jaffray & Co.; Suntrust Capital Markets inc.; and Wachovia Capital Markets, LLC, settled "SEC Charges Involving Violative Practices in the Auction Rate Securities Market."

- On June 27, 2006, the Securities and Exchange Commission charged "Morgan Stanley With Failure To Maintain And Enforce Policies To Prevent Misuse of Inside Information."

- On June 28, 2006, the Securities and Exchange Commission settled "With Raytheon Company, Former CEO, and Subsidiary Controller for Improper Disclosure and Accounting Practices."

- On June 30, 2006, a jury found "Former PIMCO Equity Funds Chairman Defrauded Investors in Market Timing Case."

- On August 7, 2006, "Martha Stewart and Peter Bacanovic Settle(d) SEC's Insider Trading Charges."

- On August 28, 2006, Prudential Securities Inc. (APSI), now known as Prudential Equity Group, LLC ("PEG"), was ordered "to Pay $600 Million in Global Settlement of Fraud Charges in Connection With Deceptive Market Timing of Mutual Funds."

- On September 27, 2006, the Securities and Exchange Commission charged "Former CEO and Two Former Executives Affiliated with RenaissanceRe

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Holdings Ltd. with Securities Fraud."

- On October 30, 2006, the Securities and Exchange Commission charged "Delphi Corporation and Nine Individuals, Including Former CEO, CFO, Treasurer and Controller, in Wide-Ranging Financial Fraud; Four Others Charged With Aiding and Abetting Related Violations."

- On November 2, 2006, the Securities and Exchange Commission settled "Charges Against Eight Former Officers and Directors of Spiegel, Inc."

- On November 14, 2006 the Securities and Exchange Commission sanctioned "the City Of San Diego for Fraudulent Municipal Bond Offerings and Order(ed) the City to Retain an Independent Consultant."

- On December 4, 2006, "Jefferies & Co., Inc. (Jefferies) Settle(d) SEC Charges Involving Illegal Gifts and Entertainment."

- On January 18, 2007, "Fred Alger Management and Fred Alger & Company (agreed) to Pay $40 Million to Settle Market Timing and Late Trading Violations."

- On January 29, 2007, "MBIA Settle(d) Securities Fraud Charges for Misuse of Reinsurance Contracts."

- On March 1, 2007, "The Securities and Exchange Commission announced insider trading charges against fourteen defendants in connection with two related insider trading schemes in which Wall Street professionals serially traded on material, nonpublic information tipped, in exchange for cash kickbacks, by insiders at UBS Securities LLC and Morgan Stanley & Co., Inc."

- On March 12, 2007, the Securities and Exchange Commission charged "Four Former Senior Executives of Nortel Networks Corporation in Wide-Ranging Financial Fraud Scheme."

- On March 14, 2007, the Securities and Exchange Commission and the NYSE settled "Enforcement Actions Against (a) Goldman Sachs Unit for Role in Customers' Illegal Trading Scheme."

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- On March 14, 2007, the Securities and Exchange Commission brought an enforcement action "Against Banc of America Securities for Failing to Safeguard Nonpublic Research Information and Publishing Fraudulent Research." The firm agreed to pay $26 Million.

- On March 15, 2007, the Securities and Exchange Commission settled "With Former Raytheon Officers For Improper Disclosure and Accounting Practices."

- On March 15, 2007, the Securities and Exchange Commission announced a "$28.7 Million Settlement of Fraud Charges Against F. David Radler, Former COO of Hollinger International, Inc."

- On March 22, 2007, the Securities and Exchange Commission charged "American Stock Exchange and Former Chairman and CEO Salvatore Sodano with Failing to Exercise Regulatory Oversight Responsibilities."

- On March 29, 2007, Nicor paid "$10 Million to Settle Fraud Charges."

- On April 2, 2007, the Securities and Exchange Commission charged "Tenet Healthcare Corporation and Four Former Senior Executives With Concealing Scheme to Meet Earnings Targets by Exploiting Medicare System."

- On April 24, 2007, the Securities and Exchange Commission charged the "Former Apple General Counsel for Illegal Stock Option Backdating."

- On April 26, 2007, the Securities and Exchange Commission charged "Baker Hughes With Foreign Bribery and With Violating 2001 Commission Cease-and-Desist Order."

- On May 9, 2007, "Morgan Stanley (agreed) to Pay $7.9 Million to Settle Best Execution Case."

- On May 14, 2007, the Securities and Exchange Commission charged "Former Oracle Vice President With Illegal Insider Trading in Stocks of Oracle Acquisition Targets."

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- "On May 23, 2007, the Securities and Exchange Commission filed a civil injunctive action in United States District Court for the Southern District of New York charging The BISYS Group, Inc., a leading provider of financial products and support services, with violating the financial reporting, books-and-records, and internal control provisions of the Securities Exchange Act of 1934. BISYS has agreed to settle the case, without admitting or denying the Commission's allegations, and has agreed pay approximately $25 million in disgorgement and prejudgment interest."

- On May 31, 2007, "The Securities and Exchange Commission..filed civil fraud charges in federal district court for the Northern District of California against California-based software maker Mercury Interactive, LLC (formerly known as Mercury Interactive Corporation) and four former senior officers of Mercury -- former Chairman and Chief Executive Officer Amnon Landan, former Chief Financial Officers Sharlene Abrams and Douglas Smith, and former General Counsel Susan Skaer. The SEC alleges that the former senior officers perpetrated a fraudulent and deceptive scheme from 1997 to 2005 to award themselves and other employees undisclosed, secret compensation by backdating stock option grants and failing to record hundreds of millions of dollars of compensation expense."

- On July 25, 2007, "The Securities and Exchange Commission..filed civil charges against ConAgra Foods, Inc., a diversified international food company headquartered in Omaha, Nebraska, alleging that it engaged in improper, and in certain instances fraudulent, accounting practices during its fiscal years 1999 through 2001."

- On July 26, 2007, "The Securities and Exchange Commission..filed a civil action against Cardinal Health, Inc. (Cardinal), a pharmaceutical distribution company based in Dublin, Ohio, in which Cardinal agreed to pay $35 million to settle charges that it engaged in a nearly four-year long fraudulent revenue and earnings management scheme, as well as other improper accounting and disclosure practices."

- On September 5, 2007, the Securities and Exchange Commission charged "26 Defendants in $428 Million Securities Fraud That Targeted Senior Citizens and Retirement Savings."

- On September 19, 2007, "Evergreen Investment Management Company and

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Affiliates (agreed) to Pay $32.5 Million to Settle Market Timing Violations."

- On September 19, 2007, "HSBC Bank Settle(d) SEC Charges and Agree(d) to Pay $10.5 Million."

- "On September 20, 2007, the Securities and Exchange Commission filed a civil injunctive action in the United States District Court for the Eastern District of New York charging 28 defendants in a series of fraudulent schemes involving phony finder fees and illegal kickbacks in the "stock loan" industry. The defendants include 13 current and former "stock loan" traders employed at several major Wall Street brokerage firms, including Van der Moolen ("VDM"), Janney Montgomery, A.G. Edwards, Oppenheimer, and Nomura Securities. These traders conspired in various schemes with 15 purported stock loan "finders" to skim profits on stock loan transactions."

- "On September 27, 2007, the Securities and Exchange Commission filed a settled enforcement action charging the Federal Home Loan Mortgage Corporation ('Freddie Mac'), a shareholder-owned government-sponsored enterprise, with securities fraud in connection with improper earnings management that occurred from at least the second quarter of 1998 through and including the third quarter of 2002."

- On October 25, 2007, "The Securities and Exchange Commission.. announced the filing of securities fraud charges against David H. Brooks, the former Chief Executive Officer and Chairman of the Board at DHB Industries, Inc., a major supplier of body armor to the U.S. military and law enforcement agencies. The SEC alleges that Brooks engaged in a pervasive accounting fraud at DHB between 2003 and 2005, violated insider trading laws in 2004, and used millions of dollars in corporate funds to pay personal expenses."

- On November 14, 2007, "The Securities and Exchange Commission.. filed Foreign Corrupt Practices Act books and records and internal controls charges against Chevron Corporation ('Chevron'), a California-based oil company, in the U.S. District Court for the Southern District of New York. The Commission's complaint alleges that from approximately April 2001 through May 2002, third parties with which Chevron contracted paid

approximately $20 million in illegal kickback payments in connection with Chevron's purchases of crude oil under the U.N. Oil for Food Program."

- On February 5, 2008, "The Securities and Exchange Commission..announced settled insider trading charges against four Hong Kong residents for illegal tipping and trading in the securities of Dow Jones & Company, Inc. ('Dow Jones') in the weeks before the public disclosure on May 1, 2007 of an unsolicited $60 per share acquisition offer for Dow Jones (the 'Offer') by News Corporation. The alleged tip originated with David Li Kwok Po ('David Li'), who served on the Dow Jones board of directors."

- On May 1, 2008, "The Securities and Exchange Commission..filed a civil injunctive action against McCann-Erickson Worldwide, Inc. ('McCann') and the Interpublic Group of Companies, Inc. ('IPG'). The Commission alleged that McCann committed securities fraud when it misstated its financial results by failing to expense properly intercompany charges. IPG negligently failed to address the intercompany problems at its largest subsidiary, McCann."

- On May 1, 2008, the Securities and Exchange Commission charged "Banc of America Investment Services With Failing to Disclose It Favored Affiliated Mutual Funds."

- On July 30, 2008, "The Securities and Exchange Commission..charged New Hampshire-based Pax World Management Corp. with violating investment restrictions in socially responsible mutual funds that investors were told would not contain securities issued by companies involved with producing weapons, alcohol, tobacco or gambling products."

- On August 11, 2008, "The Securities and Exchange Commission..filed charges against Wextrust Capital, LLC (Wextrust), its principals, and four affiliated Wextrust entities, alleging that defendants conducted a massive Ponzi-type scheme from 2005 or earlier that raised approximately $255 million from approximately 1,200 investors. The targets of the fraudulent offerings are primarily members of the Orthodox Jewish community."

- On September 3, 2008, the "Securities and Exchange Commission..charged two Wall Street brokers (at Credit Suisse Securities (USA) LLC) with defrauding their customers when making more than $1 billion in

unauthorized purchases of subprime-related auction rate securities."

- On September 3, 2008, The "Securities and Exchange Commission charged former Kellogg, Brown & Root, Inc. (KBR) executive Albert Jackson Stanley with violating the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and related provisions of the federal securities laws."

- On September 14, 2008, the Securities and Exchange Commission "announced..that, together with the Treasury and the Federal Reserve, it is working with Lehman Brothers to address the issues that it faces."

- On September 15, 2008, the Securities and Exchange Commission "charged the former chairman and CEO of Los Angeles-based home builder KB Home, Inc., for his participation in a multi-year scheme to backdate stock options to himself and other company officers and employees, depriving investors of accurate information about executive compensation at the company."

- On October 7, 2008, the "Securities and Exchange Commission..charged a former vice president at national home furnishing retailer Restoration Hardware with insider trading for tipping three friends that the company was about to be acquired, enabling them to make more than $900,000 in unlawful profits when public announcement of the subsequent merger caused the stock price to soar."

- On November 18, 2008, the Securities and Exchange Commission "charged four individuals for engaging in a fraudulent scheme to overvalue the commodity derivatives trading portfolio at Bank of Montreal (BMO), and thereby inflate BMO's publicly reported financial results."

- On December 11, 2008, the Securities and Exchange Commission "finalized settlements with Citigroup Global Markets, Inc. (Citi) and UBS Securities LLC and UBS Financial Services, Inc. (UBS) that will provide nearly $30 billion to tens of thousands of customers who invested in auction rate securities before the market for those securities froze in February, 2008."

- On December 11, 2008, the Securities and Exchange Commission "charged Bernard L. Madoff and his investment firm, Bernard L. Madoff Investment Securities LLC, with securities fraud for a multi-billion dollar Ponzi scheme

that he perpetrated on advisory clients of his firm."

- On December 18, 2008, the Securities and Exchange Commission "charged seven individuals and two companies involved in an insider trading ring, alleging that Matthew Devlin, a former registered representative at Lehman Brothers, Inc. in New York City, traded on and tipped his clients and friends with confidential, nonpublic information about 13 impending corporate transactions."

- On December 22, 2008, the Securities and Exchange Commission "filed a civil injunctive action against UnitedHealth Group Inc., a Minnetonka, Minn., health insurance company, alleging that it engaged in a scheme to backdate stock options. The Commission alleged that between 1994 and 2005, UnitedHealth concealed more than $1 billion in stock option compensation by providing senior executives and other employees with 'in-the-money' options while secretly backdating the grants to avoid reporting the expenses to investors."

- On February 5, 2009, the Securities and Exchange Commission "charged seven individuals involved in an insider trading ring that generated more than $11.6 million in illegal profits and avoided losses.
The SEC allege(d) that two mergers and acquisitions professionals, at UBS Investment Bank and at Blackstone Advisory Services, L.P., tipped five individuals including a portfolio manager for a Jefferies Group, Inc. hedge fund, with material nonpublic information about three impending corporate acquisitions."

- On February 5, 2009, the Securities and Exchange Commission "filed an enforcement action against UBS AG, charging the firm with acting as an unregistered broker-dealer and investment adviser."

- On February 17, 2009, the Securities and Exchange Commission "charged Robert Allen Stanford and three of his companies for orchestrating a fraudulent, multi-billion dollar investment scheme centering on an $8 billion CD program."

- On March 2, 2009, the Securities and Exchange Commission "charged

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Oregon-based Sunwest Management Inc. with securities fraud and is seeking an emergency court order freezing its assets. The SEC alleged that Sunwest, which operates hundreds of retirement homes across the United States, lied to investors about its operations and concealed the risks of the investments, exposing investors to massive losses when the economic downturn triggered Sunwest's collapse."

- On February 25, 2009, the Securities and Exchange Commission "took emergency action and obtained an asset freeze against two New York residents and their three affiliated entities, who orchestrated a brazen investment fraud involving the misappropriation of as much as $554 million in investor assets."

- On March 4, 2009, the Securities and Exchange Commission "brought enforcement actions against 14 specialist firms for unlawful proprietary trading on several regional and options exchanges. The firms agreed to settle the SEC's charges by collectively paying nearly $70 million in disgorgement and penalties."

- On March 11, 2009, the Securities and Exchange Commission "charged Merrill Lynch, Pierce, Fenner & Smith Inc. with securities laws violations for having inadequate policies and procedures for controlling access to institutional customer order flow. Merrill Lynch agreed to settle the SEC's charges and pay a $7 million penalty, among other remedies."

- On May 12, 2009, the Securities and Exchange Commission "charged Julio Ramirez, Jr., who was formerly affiliated with Los Angeles-based broker-dealers DAV/Wetherly Financial L.P. and Park Hill Group LLC, in connection with a multi-million dollar kickback scheme involving New York's largest pension fund."

- On June 24, 2009, the Securities and Exchange Commission "charged a money manager who lives in Wayland, Mass., for conducting a multi-million dollar Ponzi scheme in which he promised investors lofty returns as high as 20 percent but instead often stole their money for his personal use."

- On July 22, 2009, the Securities and Exchange Commission "asked a court to order the former chief executive officer of CSK Auto Corporation to reimburse the company and its shareholders more than $4 million that he

received in bonuses and stock sale profits while CSK was committing accounting fraud."

- On July 28, 2009, the Securities and Exchange Commission "obtained a court order to halt an alleged offering fraud and Ponzi scheme being conducted in the Detroit area by two individuals and two companies they control."

- On August 3, 2009, the Securities and Exchange Commission "charged Bank of America Corporation for misleading investors about billions of dollars in bonuses that were being paid to Merrill Lynch & Co. executives at the time of its acquisition of the firm. Bank of America agreed to settle the SEC's charges and pay a penalty of $33 million."

- On September 28, 2009, the Securities and Exchange Commission "charged (a) Detroit-area stock broker..with fraud, alleging that he lured elderly investors into a $250 million Ponzi scheme after convincing many of them to refinance their home mortgages."

- On October 16, 2009 — the Securities and Exchange Commission "charged billionaire Raj Rajaratnam and his New York-based hedge fund advisory firm Galleon Management LP with engaging in a massive insider trading scheme that generated more than $25 million in illicit gains."

- On November 4, 2009, the Securities and Exchange Commission "charged J.P. Morgan Securities Inc. and two of its former managing directors for their roles in an unlawful payment scheme that enabled them to win business involving municipal bond offerings and swap agreement transactions with Jefferson County, Ala."

- On November 4, 2009, the Securities and Exchange Commission "charged Milwaukee-based Merge Healthcare Incorporated and two former senior executives for their roles in an accounting fraud that ultimately caused the company's stock price to drop by two-thirds during a seven-month period."

- On November 4, 2009, the Securities and Exchange Commission "charged New York City-based investment adviser Value Line Inc., its CEO, its former Chief Compliance Officer and its affiliated broker-dealer with defrauding the Value Line family of mutual funds by charging over $24

million in bogus brokerage commissions on mutual fund trades funneled through Value Line's affiliated broker-dealer, Value Line Securities, Inc. (VLS)."

- On November 5, 2009, the Securities and Exchange Commission "charged a pair of lawyers for tipping inside information in exchange for kickbacks as well as six Wall Street traders and a proprietary trading firm involved in a $20 million insider trading scheme."

- On November 16, 2009, the Securities and Exchange Commission "charged four individuals and two companies involved in perpetrating a $30 million Ponzi scheme in which they persuaded more than 300 investors nationwide to participate in purported environmentally-friendly investment opportunities."

- On December 7, 2009, the Securities and Exchange Commission "charged three former top officers of New Century Financial Corporation with securities fraud for misleading investors as New Century's subprime mortgage business was collapsing in 2006. At the time of the fraud, New Century was one of the largest subprime lenders in the nation."

- On January 5, 2010, the Securities and Exchange Commission "announced that a former Perot family companies employee it charged with insider trading in September has agreed to return all of his illicit profits — a total of more than $8.6 million."

- On January 20, 2010, the Securities and Exchange Commission "charged General Re Corporation for its involvement in separate schemes by American International Group (AIG) and Prudential Financial, Inc. to manipulate and falsify their reported financial results."

- On February 4, 2010, the Securities and Exchange Commission "charged Boston-based State Street Bank and Trust Company with misleading its investors about their exposure to subprime investments while selectively disclosing more complete information to specific investors."

- On March 4, 2010, the Securities and Exchange Commission "charged a self-proclaimed psychic who fraudulently raised $6 million after telling investors he could predict stock market highs and lows."

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- On March 5, 2010, the Securities and Exchange Commission "charged a San Diego-based broker-dealer with failing to reasonably supervise one of its registered representatives who engaged in unauthorized fraudulent trading in the accounts of two Florida municipalities."

- Om March 24, 2010, the Securities and Exchange Commission "filed fraud charges against a prominent New Mexico realtor and obtained an emergency court order to halt his $80 million Ponzi scheme."

- On March 29, 2010, the Securities and Exchange Commission "charged an Ohio-based investment adviser with fraud for lying about his investment strategy, fabricating account statements to hide losses, and using investor money to buy property and pay unrelated business expenses."

- On April 1, 2010, the Securities and Exchange Commission "announced a settlement with Daimler AG for violations of the Foreign Corrupt Practices Act (FCPA), alleging that the Stuttgart, Germany-based automobile manufacturer engaged in a repeated and systematic practice of paying bribes to foreign government officials to secure business in Asia, Africa, Eastern Europe and the Middle East."

- On April 7, 2010, the Securities and Exchange Commission charged "Morgan Keegan and Two Employees With Fraud Related to Subprime Mortgages."

- On April 15, 2010, the Securities and Exchange Commission "charged a private investment firm and one of its affiliated entities for participating in a widespread kickback scheme to obtain investments from New York's largest pension fund."

- On April 16, 2010, the Securities and Exchange Commission "charged Goldman, Sachs & Co. and one of its vice presidents for defrauding investors by misstating and omitting key facts about a financial product tied to subprime mortgages as the U.S. housing market was beginning to falter."

- On April 22, 2010, the Securities and Exchange Commission "charged a private equity firm, a money manager and his friend with participating in a fraudulent scheme through which they stole more than $3 million invested

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by three Detroit-area public pension funds."

- On May 7, 2010, Jerry Brown, then California's attorney general, announced a lawsuit targeting "two former officials from Calpers, the nation's largest public pension fund, alleging that they took kickbacks in exchange for a piece of the fund's lucrative investment portfolio." The lawsuit alleges "that former chief executive Federico Buenrostro Jr. accepted tens of thousands of dollars in gifts and promises of a future employment from Alfred Villalobos, a former Calpers board member who is now a placement agent. Brown's office secured a court order to freeze the assets of Villalobos's firm and to recover more than $40 million in commissions. Brown also said the court will take control of Villalobos's 20 bank accounts and all of his assets, including two Bentleys, art worth more than $2.7 million and 14 properties."

- On June 16, 2010, the Securities and Exchange Commission "charged the former chairman and majority owner of what was once the nation's largest non-depository mortgage lender with orchestrating a large-scale securities fraud scheme and attempting to scam the U.S. Treasury's Troubled Asset Relief Program (TARP)."

- On June 21, 2010, the Securities and Exchange Commission "charged a New York-based investment adviser and three of his affiliated firms with fraudulently managing investment products tied to the mortgage markets as they came under pressure in 2007."

- On July 15, 2010, the Securities and Exchange Commission "announced that Goldman, Sachs & Co. will pay $550 million and reform its business practices to settle SEC charges that Goldman misled investors in a subprime mortgage product just as the U.S. housing market was starting to collapse."

- On July 22, 2010, the Securities and Exchange Commission "charged Dell Inc. with failing to disclose material information to investors and using fraudulent accounting to make it falsely appear that the company was consistently meeting Wall Street earnings targets and reducing its operating expenses. Dell Inc. agreed to pay a $100 million penalty to settle the SEC's charges."

- On July 29, 2010, the Securities and Exchange Commission "charged Citigroup Inc. with misleading investors about the company's exposure to

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subprime mortgage-related assets. Between July and mid-October 2007, Citigroup represented that subprime exposure in its investment banking unit was $13 billion or less, when in fact it was more than $50 billion."

- On August 4, 2010, the Securities and Exchange Commission "charged a former Deloitte and Touche LLP partner and his son with insider trading in the securities of several of the firm's audit clients."

- On August 6, 2010, the Securities and Exchange Commission "charged two global tobacco companies with violations of the Foreign Corrupt Practices Act (FCPA) for paying more than $5 million in bribes to government officials in Thailand and other countries to illicitly obtain tobacco sales contracts. The SEC alleges that Richmond, Va.-based Universal Corporation Inc. and two competitors who have since merged to form Alliance One International Inc. engaged in a coordinated bribery scheme in Thailand."

- On August 18, 2010, the Securities and Exchange Commission "charged the State of New Jersey with securities fraud for misrepresenting and failing to disclose to investors in billions of dollars worth of municipal bond offerings that it was underfunding the state's two largest pension plans."

- On September 29, 2010, the Securities and Exchange Commission "charged ABB Ltd with violations of the Foreign Corrupt Practices Act (FCPA) for using subsidiaries to pay bribes to Mexican officials to obtain business with government-owned power companies, and to pay kickbacks to Iraq to obtain contracts under the U.N. Oil for Food Program."

- On October 15, 2010, the Securities and Exchange Commission "announced that former Countrywide Financial CEO Angelo Mozilo will pay a record $22.5 million penalty to settle SEC charges that he and two other former Countrywide executives misled investors as the subprime mortgage crisis emerged."

- On November 4, 2010, the Securities and Exchange Commission "announced sweeping settlements with global freight forwarding company Panalpina, Inc., Pride International, Inc., Tidewater Inc., Transocean, Inc., GlobalSantaFe Corp., and Noble Corporation, all companies in the oil services industry who, according to the SEC, violated the Foreign Corrupt Practices Act (FCPA) by paying millions of dollars in bribes to foreign

officials to receive preferential treatment and improper benefits during the customs process."

- On December 27, 2010, the Securities and Exchange Commission "charged Paris-based telecommunications company Alcatel-Lucent, S.A. with violating the Foreign Corrupt Practices Act (FCPA) by paying bribes to foreign government officials to illicitly win business in Latin America and Asia."

- On January 25, 2011, the Securities and Exchange Commission "charged Merrill Lynch, Pierce, Fenner & Smith Incorporated with securities fraud for misusing customer order information to place proprietary trades for the firm and for charging customers undisclosed trading fees. To settle the SEC's charges, Merrill..agreed to pay a $10 million penalty and consent to a cease-and-desist order."

- On February 3, 2011, the Securities and Exchange Commission "charged three AXA Rosenberg entities with securities fraud for concealing a significant error in the computer code of the quantitative investment model that they use to manage client assets. The error caused $217 million in investor losses."

- On March 1, 2011, the Securities and Exchange Commission "announced insider trading charges against a Westport, Conn.-based business consultant who has served on the boards of directors at Goldman Sachs and Procter & Gamble for illegally tipping Galleon Management founder and hedge fund manager Raj Rajaratnam with inside information about the quarterly earnings at both firms as well as an impending $5 billion investment by Berkshire Hathaway in Goldman."

- On April 6, 2011, the Securities and Exchange Commission "charged a corporate attorney and a Wall Street trader with insider trading in advance of at least 11 merger and acquisition announcements involving clients of the law firm where the attorney worked. The SEC alleges that Matthew H. Kluger, who formerly worked at Wilson Sonsini Goodrich & Rosati, and Garrett D. Bauer did not have a direct relationship with each other, but were linked only through a mutual friend who acted as a middleman to facilitate the illegal scheme."

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- On June 21, 2011, the Securities and Exchange Commission "announced that J.P. Morgan Securities LLC will pay $153.6 million to settle SEC charges that it misled investors in a complex mortgage securities transaction just as the housing market was starting to plummet. Under the settlement, harmed investors will receive all of their money back."

- On June 22, 2011, the Securities and Exchange Commission, state regulators, and the Financial Industry Regulatory Authority (FINRA) announced..that Morgan Keegan & Company and Morgan Asset Management have agreed to pay $200 million to settle fraud charges related to subprime mortgage-backed securities."