SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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State of New York,	:	**VERIFIED COMPLAINT**
Plaintiff,	:	Index No.
-against-	:	
Strong Financial Corporation, Strong Capital Management, Inc., Strong Investor Services, Inc., Strong Investments, Inc., Richard S. Strong, Anthony J. D'Amato, and Thomas A. Hooker, Jr., Defendants.	: : : :	

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Plaintiff, by Eliot Spitzer, Attorney General of the State of New York (the "Attorney General"), on behalf of the People of the State of New York, complaining of the above-named defendants, alleges upon information and belief, that:

I. PRELIMINARY STATEMENT

1. The Attorney General brings this action against Richard S. Strong, against the mutual fund adviser company that bears his name, and against other persons and entities for fraud and deception in violation of New York State's Martin Act and other statutes. The Attorney General additionally brings this action against Richard S. Strong for common law fraud.

2. This case involves misconduct in the management of mutual funds. Mutual funds are investment vehicles that are designed for small investors who lack the time or expertise to study the intricacies of financial markets. Instead, these investors pool their money into a large fund -- a "mutual" fund -- and the fund hires a professional investment adviser firm to make investment decisions on its behalf. In short, the investment adviser manages the money for

thousands of individual investors, people who have entrusted the adviser with their retirement and college savings, their nest eggs, or their rainy-day funds. Legally, the investors -- also called shareholders -- are the owners of the mutual funds.

3. Strong Capital Management, Inc. ("SCM") is the adviser retained by the Strong family of mutual funds ("the Strong Funds"). Defendant Richard S. Strong ("Richard Strong"), through a holding company, owns at least 85% of SCM, and, until December 2003, was its Chairman and Chief Investment Officer ("CIO"). In addition, Richard Strong was Chairman of the Board of Directors of the 27 investment companies (consisting of 71 mutual funds) that constitute the Strong Funds. Richard Strong and SCM were fiduciaries to the thousands of shareholders of the Strong Funds, including shareholders who reside in New York State and purchased Strong Fund shares in New York State.

4. The obligations of a fiduciary are unique. Under New York law, a fiduciary owes its clients not "honesty alone, but the punctilio of an honor the most sensitive." A fiduciary may not put its own interest above its clients' interests, may not compete with its clients financially, and may not favor one client to the disadvantage of another. An investment adviser may not mislead the public -- through statements or omissions -- and must, of course, abide by regulatory requirements and comply with proper regulatory inquiries.

5. While professing to be the very personification of integrity, SCM -- at the very highest levels of the firm -- instead afforded preferential treatment to two wealthy investors. The first was Richard Strong himself who, despite unmistakable instructions from the company's lawyers, repeatedly employed a forbidden trading strategy that hurt fellow Strong Fund shareholders. The second was a wealthy private investor whom Anthony D'Amato (a member of

SCM's three-person office of CEO) also allowed to trade improperly, in a successful effort to lure other lucrative business from the investor.

6. When regulators began closing in, SCM engaged in additional misconduct. Its Director of Compliance, Thomas A. Hooker, Jr., failed to disclose Richard Strong's improper trades, and SCM withheld critical documents from regulators for months. Finally, as the scandal became public, Richard Strong misled shareholders by falsely assuring them of a full SCM internal investigation, even as he kept his own misconduct a secret.

7. The damages from this fraud include the fees that SCM collected from the unwitting long-term investors in the funds in which SCM permitted timers plus the dilution and other costs that the timing activity visited on these customers. In addition, the State seeks punitive damages.

II. PARTIES

8. Plaintiff is represented by Eliot Spitzer, Attorney General of the State of New York. Pursuant to Article 23-A of the General Business Law, the Attorney General oversees the offer, sale, issuance, promotion, advertisement, exchange, marketing, distribution and transfer of, or investment advice for, securities within and from the State of New York, and has authority to commence legal action when fraudulent activities have occurred or are about to occur. The Attorney General's principal office for oversight of the securities industry in New York State is located in New York County. Pursuant to sections 349 and 350-d of Article 22-A of the General Business Law, the Attorney General has the authority to obtain civil penalties for deceptive acts and practices in New York State. Pursuant to section 63(12) of the Executive Law, the Attorney

General has the authority to obtain injunctive relief, restitution, and damages for repeated or persistent fraud in the conduct of business in or from New York State.

9. Defendant Strong Financial Corporation ("SFC") is a privately held Wisconsin corporation that is the holding company of defendants Strong Capital Management, Inc., Strong Investor Services, Inc., and Strong Investments, Inc. SFC's corporate headquarters are located in Menomonee Falls, Wisconsin.

10. Defendant Strong Capital Management, Inc. ("SCM" or "Strong"), a Wisconsin corporation and a wholly owned subsidiary of SFC, is a registered investment adviser (under the federal Investment Advisers Act of 1940), and provides administrative and investment services to the mutual funds in the Strong Funds (each of which is a registered investment company under the federal Investment Company Act of 1940). In essence, pursuant to an investment advisory agreement with the Strong Funds, SCM employs and supervises a group of portfolio managers who buy and sell securities for particular mutual funds that comprise the Strong Funds.

11. Defendant Strong Investor Services, Inc., ("SIS") is a Wisconsin corporation and a wholly owned subsidiary of SFC that provides transfer agency services to SCM. SIS's corporate headquarters are located in Menomonee Falls, Wisconsin.

12. Defendant Strong Investments, Inc., ("SII") is a Wisconsin corporation and a wholly owned subsidiary of SFC. SII is registered with the New York State Department of Law as a securities broker-dealer and provides brokerage services to certain investors who purchased mutual funds from SCM. SII's corporate headquarters are located in Menomonee Falls, Wisconsin.

13. Defendant Richard Strong founded SFC, and was at relevant times the owner of at least 85 % of SFC, its Chairman, Chief Executive Officer and Chief Investment Officer; SCM's Chairman and Chief Investment Officer; and Chairman of the Board of Directors of the Strong Funds, except that his position as Chairman of the Strong Funds Board of Directors ended on or about November 2, 2003, his positions of Chairman, Chief Executive Officer, and Chief Investment Officer of SFC ended on or about December 2, 2003, and his membership on the Strong Funds Board of Directors ended on or about December 2, 2003.

14. Defendant Anthony J. D'Amato was at relevant times a member of the Office of Chief Executive Officer of SCM.

15. Defendant Thomas A. Hooker, Jr., ("Hooker") was at relevant times the director of compliance of SCM.

III. STATUTORY AND LEGAL FRAMEWORK

16. The Attorney General brings this action pursuant to his statutory and common law authority, and under the following provisions of law:

17. Article 23-A of the General Business Law of the State of New York, commonly referred to as the "Martin Act," and the regulations issued pursuant thereto regulate the offer and sale of securities within and from the State of New York and authorize the Attorney General to investigate the conduct of persons and entities engaged in, inter alia, the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice or distribution within or from the State of New York of any securities.

18. The Martin Act proscribes fraudulent practices in connection with the sale of securities. Among the provisions relevant to this action are the following:

(a) General Business Law §352(1), which prohibits fraud and fraudulent practices and provides, inter alia, that a violation of any section of Article 23-A of the General Business Law is a fraudulent practice and authorizes the Attorney General to investigate such practices;

(b) General Business Law §352-c, which prohibits any person, partnership, or corporation from making any false representations, engaging in deception or fraud, or concealing any material facts that the person knew, should have known, or made no reasonable effort to ascertain the truth;

(c) General Business Law §353, which authorizes the Attorney General to seek a permanent injunction enjoining any individual or entity who has taken part in, or has been concerned with, fraudulent practices from directly or indirectly engaging in the issue, sale, or offer of securities within or from the State of New York, and to seek restitution.

19. General Business Law § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New York. Pursuant to General Business Law §350-d, plaintiff is entitled to a civil penalty of up to $500 for each of the defendants' violations of General Business Law § 349.

20. Section 63(12) of the Executive Law authorizes the Attorney General to seek an injunction barring repeated fraudulent and/or illegal conduct in the carrying on, conducting or transaction of business, and to seek restitution and damages.

21. Finally, as the State of New York's chief legal officer, the Attorney General brings this action pursuant to his parens patriae authority. Where, as here, the interests and well-being of the people of the State of New York are implicated, the Attorney General possesses parens patriae authority to commence legal actions for violations of state law. The State of New York

has a quasi-sovereign interest in upholding the rule of law, in protecting the economic well-being of its residents and, with specific reference to the present action, in ensuring that the marketplace for the trading of securities functions fairly with respect to all persons who participate or consider participating therein.

IV. THE FRAUDULENT PRACTICES OF THE DEFENDANTS

Background

22. Through its parent, SFC, which was founded three decades ago in 1974, SCM positions itself as a solid, dependable investment adviser with unparalleled client service. Richard Strong, founder and majority owner of the firm, often told people he wanted Strong to be "the Nordstrom's of the financial industry," a store that he believed provided better customer service than any other.

23. Richard Strong held himself out as the public persona of SCM, evoking an image of solid reliability. In his monthly column to Strong shareholders, titled "A Few Words From Dick Strong," he described himself as "a six-foot-three-inch farm boy from the wheat fields of Wahpeton, North Dakota." In the column, he wrote often of values, leadership, family, role models, and friendship. Likening SCM to a famous winning basketball team, Richard Strong told investors that SCM had learned the "secrets" of success from those champions, and that shareholders needed "a solid team of investment professionals on [their] side."

24. In addition to being majority owner, Richard Strong was the chairman of SCM and its Chief Investment Officer ("CIO"). He was also Chairman of the Board of the Directors of the Strong Funds. He thus owed a fiduciary duty to Strong Fund shareholders.

25. Because of Richard Strong's status as a fiduciary, SCM clients could expect that he would act with the highest degree of trustworthiness and honesty. And they could expect that he would not violate basic fiduciary obligations: that he would not put his financial interest ahead of theirs; that he would not compete with them with respect to their investments in his funds; that he would not favor any mutual fund investor over any other; that he would follow the rules set by his own firm; and that he would not mislead them in public statements.

26. SCM's Code of Employee Conduct, signed by Richard Strong and distributed to all employees, set forth these obligations. On the same page that bore his signature, Richard Strong summed up the "most important principles" for dealing with clients:

- *You must deal with our clients fairly and in good faith;*
- *You must never put the interests of our firm ahead of the interests of our clients; and*
- *You must never compromise your personal ethics or integrity, or give the appearance that you may have done so.*

(Italics in original.)

27. In the Code, Richard Strong stressed that technical compliance with rules was not enough: "At all times you are expected to comply with the letter and spirit of both the law and the firm's policies and procedures." And he made sure that his employees understood the importance of forthrightness when dealing with clients: "When communicating with the public, we must make full and fair disclosure of all material facts necessary for a reasonable person to make an informed evaluation/decision. . . ."

28. Richard Strong violated each of these precepts. Over the course of many years, he rapidly traded in and out of the Strong Funds in a way that was foreclosed to numerous other

smaller investors. He did this even though his firm was banning others for this practice, called "market timing," and contrary to the express instructions of SCM lawyers. Moreover, at the same time that the firm was urging Strong Fund clients to stay invested for the long term, Richard Strong was trading in and out and, at times, liquidating his positions in his own Strong Funds just before the markets dropped dramatically. In essence, using a trading strategy foreclosed to other investors, he bet against his own funds. Finally, in the midst of regulatory investigations into timing at Strong, he failed to disclose his own misconduct.

29. Others at Strong violated their duties as well. Anthony D'Amato, one of three members of Strong's Office of Chief Executive Officer, created an exception to Strong's rules so that a hedge fund could actively trade Strong Funds; D'Amato did so in an effort to win other lucrative business -- non-mutual fund business -- from that hedge fund. D'Amato stood to profit from this other business, but Strong Fund shareholders would lose. And Compliance Director Thomas A. Hooker, Jr., who had known of Richard Strong's trading activity for years, did not disclose it even when he was assigned to handle the response to regulatory demands about market timing.

Strong marketed mutual funds as long-term investments

30. SCM, like virtually every other mutual fund family, markets mutual funds as long term investment vehicles. SCM advised its clients, for example, as to "Suggested Minimum Holding Periods" for its mutual funds. The suggested "minimum" holding period for the Discovery, U.S. Emerging Growth, Enterprise, and many other funds is "5 years or more." In other literature, including the prospectus document for a fund that Richard Strong personally managed, Strong urged investors: "Maintain a long-term perspective."

31. Some SCM literature tried to persuade investors that market timing was a futile strategy. One Strong document discussing market volatility stated, "Market timing does not work." Instead, Strong advised, "The smart money stays invested."

32. Many Strong Fund shareholders did not credit this advice, and preferred to trade rapidly in and out of the funds. Some investors would buy a large block of shares on one day and then quickly sell them over the next few days, weeks, or months, a series of transactions known as a "round trip." Others would buy and sell rapidly, but more erratically.

33. The trading "models" that drove clients' rapid-fire buys and sells varied widely. Some investors were looking at broad market shifts and trying to figure out where the momentum of the market would take funds. They tried to be fully invested when they thought the market would go up, and out of the mutual funds when they thought the market would go down. Others used a more sophisticated model in which they bought or sold mutual fund shares depending on whether overseas markets had gone up or down overnight, a strategy called "time zone arbitrage."

Strong designed measures to exclude market timers.

34. Whatever model motivates it, rapid trading hurts the mutual funds. On the most basic level, rapid traders increase transaction costs for the fund as a whole. Those who constantly buy and sell cost the fund more money in processing trades than those who buy for the long term and let gains be steadily reinvested.

35. Market timing also allows frequent traders to profit at the expense of long-term investors, a phenomenon known as "dilution." A portfolio manager must always have sufficient cash available to redeem shares of selling clients. The more rapid trading, the more cash he must

have on hand. But for the excessive trading, that cash could otherwise be invested, thus earning money for all the other investors. Active traders, therefore, water down -- or dilute -- the effectiveness of the funds for others. Even worse, if more people redeem than the portfolio manager expects, the portfolio manager must sell some of the fund's investments, losing the investment potential of those securities and incurring additional brokerage commissions and tax costs for the fund and thereby harming the steadfast shareholders. The forced sales frequently also produce capital losses for the fund.

36. Moreover, the market timer is capturing profit in a way that comes dollar-for-dollar out of the pockets of the long term investors. The market timer steps in at the last moment and takes part of the buy-and-hold investor's upside, but contributes nothing to it; the timer's investment is still in cash because there has been no opportunity to invest it. When the active trader realizes this gain, the resulting profit is money that would have otherwise gone to buy-and-hold investors. Thus, when timers invest prior to increases in security prices, they reduce long-term investors' gains. When they sell prior to price decreases, they increase the funds' losses.

37. To prevent these different types of damage to the funds, Strong adopted measures to bar rapid trading. Among these measures was increasingly strict language in its fund prospectuses. Beginning in 1997, Strong began warning clients that frequent traders could be banned: "Since an excessive number of exchanges may be detrimental to the Funds, each Fund reserves the right to discontinue the exchange privilege of any shareholder who makes more than five exchanges in a year or three exchanges in a calendar quarter."

38. The prospectus language evolved until, for most funds, by late 2000 it read:

> The fund will consider the following factors to identify market timers: shareholders who have (i) requested an exchange out of the fund within two weeks of an earlier exchange request, or (ii) exchanged shares out of a fund more than twice in a calendar quarter, or (iii) exchanged shares equal to at least $5 million, or more than 1% of the fund's assets, or (iv) otherwise seem to follow a timing pattern. Shares under common ownership or control are combined for purposes of these limits.

Strong expressly reserved the right to: "Reject any purchase request for any reason including exchanges from other Strong Funds. Generally, we do this if the purchase or exchange is disruptive to the efficient management of a fund (due to the timing of the investment or an investor's history of excessive trading)."

39. Excluding customers for timing, however, depended on first catching them. Over the years, Strong's internal controls evolved, and did so in a way that corresponded to its business lines. For example, Strong sold mutual fund shares through a number of outlets: (1) through its "retail" operation; (2) through its own brokerage firm; and (3) through other brokerage firms. Each outlet had different operational requirements for processing trades, so Strong used different techniques to catch timers, and it allocated its limited policing resources to where it perceived the greatest abuse. More funds were monitored, for example, in the intermediary outlet (i.e., Strong Funds sold through other brokerage firms) than in the retail one. Indeed, in March 2003, Strong stopped aggressively monitoring trades for any funds in retail accounts after concluding that less than 1% of market timing was attributable to retail customers. The locations of these market-timing speed-traps were not disclosed to the public. Nor was the trade size that would trip the monitors' radar.

40. From 1998 through 2003, hundreds of Strong mutual fund shareholders were identified as market timers and banned from investing in funds. Many of those excluded had come to Strong from other brokers. To exclude them, Strong would send a letter to the broker forbidding it to allow the customer to buy Strong funds henceforth. A typical banishment letter read: "We understand that the client's investment management process includes some tactical and short-term trading activity. In our experience, because we pride ourselves in delivering consistent long-term superior investment results, short-term trading activity is disruptive to the management and operations of our portfolios." After directing that no future trades be taken from the client, the letter emphasized: "At Strong Capital Management we take our fiduciary responsibility to our investors very seriously. We trust that you understand and appreciate our perspective on this matter." Strong sent out scores of letters using this or similar language.

41. Retail customers received more hands-on treatment, getting warning telephone calls from Strong employees if they were detected market timing. In those calls, which Strong recorded and preserved, Strong employees persistently warned small traders that they were hurting other investors and would be barred from trading if they continued. For example, in late 2001, a Strong employee told a husband that his wife's trading was hurting one Strong mutual fund: "This frequent in and out of mutual funds really hurts all of the other investors in that fund, so we have to ask that that pattern of trading not take place." Strong repeatedly emphasized the buy-and-hold nature of mutual funds, with telephone representatives telling one customer, for example, "when mutual funds are purchased, they're usually for long term investments," and another, "Mutual funds really aren't meant to . . . be day traded at all."

42. Customers who protested were assured that anti-timing enforcement was even-handed ("we do treat clients very fairly on this issue, as far as client-to-client") and that no one got special treatment ("we do have some pretty specific objecti[ve] criteria we use so that we do, I feel, consistently contact people regardless of who they are . . . .").

43. Call center personnel explained that even small trades could be disruptive because of the aggregate effect of many customers trading. In the mutual fund version of the golden rule, a Strong call center employee explained to a customer, "if everybody did that, it would be hard to have any holdings for the fund." As a consequence, SCM did, indeed, reject relatively small trades. One investor was barred, for example, from making a $30,000 purchase in the Strong Value Fund in 2001 due to "excessive trading" in a fund that had assets under management of more than $50 million.

44. Finally, investors were told that the rules applied to Strong employees (who are known as "associates") as well as to the general public: "our firm looks at this not only with respect to clients in general, but definitely to our associates as well, so it is not something that -- I can tell you definitely -- it is not something that our associates are allowed to do any more than anybody else."

45. As far as he knew, that Strong associate correctly described the firm's policy. Strong employees were strictly forbidden from actively trading funds. This rule was memorialized as far back as February 1999 when then-General Counsel Thomas Lemke issued a clear instruction in an e-mail ("the Lemke Directive") to all Strong associates: "I wanted to remind all associates that the Strong Funds are not to be used as short-term trading vehicles." The Lemke Directive explained to employees that the firm had detected employees actively trading Strong

Funds in their 401(k) pension accounts. “Should this activity continue,” wrote Lemke, “we may have to take further action, such as restricting trading privileges for any associates involved in short-term trading.”

Richard Strong market-timed Strong Funds over a five-year period, stopping only after regulators issued subpoenas to Strong relating to timing.

46. Notwithstanding how Strong was treating shareholders, Richard Strong actively pursued a market timing strategy for years. Trading on behalf of himself, his family, and his friends, Richard Strong was responsible for more than 1,400 redemptions between 1998 and 2003. Aggregated across Strong funds, his redemptions were:

Year	1998	1999	2000	2001	2002	2003
Number of Redemptions	52	229	413	510	56	197

47. In addition to being far more frequent than Strong tolerated when made by many other customers, some of Richard Strong’s trades were particularly notable. For example, Strong had long viewed international funds as particularly vulnerable to disruption by timers, and banned a number of customers for a single round-trip transaction involving only thousands of dollars. Yet in 2000, Richard Strong executed a round-trip transaction in an international fund that totaled over one million dollars. That year, Strong banned nearly 150 customers from that same fund for timing.

48. Richard Strong also timed a fund for which he served as Portfolio Manager. In 1998, Richard Strong was co-portfolio manager of the Strong Discovery Fund. Nonetheless, he made 22 rapid-fire redemptions in the first three quarters of the year. By doing so, he realized a

far higher rate of return than those Strong shareholders who, as Strong advised, stayed the course. In essence, Richard Strong bet against his own fund and won. This differential was a recurring theme. By timing, Richard Strong repeatedly made more money in Strong mutual funds (and, in bear markets, lost less money) than his customers who bought and held.

49. Richard Strong knew full well that this trading activity was impermissible. First, even before the issuance of the Lemke Directive in 1999, Thomas Lemke had personally briefed Richard Strong about his discovery that certain Strong associates had been timing Strong Funds they held in their pension plan accounts. Lemke explained to Richard Strong that, because the firm was throwing customers out for timing, allowing employees to market time would be a breach of Strong's fiduciary duty and a potential violation of federal securities law. During the discussion, Richard Strong did not disclose to Lemke that he had been timing Strong Funds himself. (Lemke did not know of Richard Strong's active trading because Strong was executing his trades through the retail outlet, where the internal timing police had not yet begun monitoring trades.)

50. By the fall of 2000, Strong's improving compliance mechanisms detected Richard Strong's trading. Head of compliance Thomas Hooker learned of the market timing, and brought it to the attention of the new general counsel Elizabeth Cohernour. Hooker reported to Cohernour that, by his calculation, Richard Strong had profited approximately $300,000 from his trades to that point. Cohernour spoke to Richard Strong and directed him to stop, noting that his trading was inconsistent with the minimum investment time horizons that Strong was recommending to its clients. Richard Strong expressed his unhappiness at having to stop, but said

that he would. Cohernour apprised Hooker of her conversation with Richard Strong, and told Hooker to continue to monitor the activity.

51. Richard Strong still did not stop trading. Indeed, the following year, his trading accelerated to his all-time high of over 500 transactions. A Strong associate familiar with Richard Strong's trades brought the continued activity to Hooker's attention. Hooker, however, failed to apprise either Cohernour or her successor, Richard W. Smirl (Smirl is currently Chief Legal Officer of SCM). Consequently, Richard Strong continued market timing up until July 2003. He finally stopped the day after the New York State Attorney General served a subpoena on Strong in connection with an investigation into a different Strong market-timing arrangement, an arrangement with a hedge fund known as Canary.

Strong entered into a timing arrangement with Canary

52. In late 2002, in a deal worked out by Anthony D'Amato, Strong began allowing Canary to market time select mutual funds, conduct forbidden to other investors. D'Amato was trying to entice Canary into giving Strong additional lucrative business in non-mutual fund deals.

53. D'Amato was a member of Strong's three-member office of CEO, one level below Richard Strong. He had worked at Strong for over a decade, and was responsible for Strong's retirement, institutional, and intermediary business. D'Amato has a personal financial stake in Strong. As a consequence, when any part of the business makes money, he profits personally.

54. In a series of interviews conducted in the course of the investigation into Strong, D'Amato repeatedly admitted his role as the first point of contact between Strong and Canary and the person who approved the deal. In October 2002, representatives from Canary visited Strong's headquarters and met with D'Amato and another Strong associate. In the meeting,

Canary asked whether Strong would allow it to actively trade Strong mutual funds, and raised the possibility of other investments: (1) having Strong manage a large amount of private money and (2) making investments in Strong's own hedge fund.

55. After the meeting, Canary sent D'Amato a list of Strong mutual funds that it wished to time. When he got it, D'Amato -- without consulting SCM's legal or compliance departments -- assigned a subordinate to survey the portfolio managers on Canary's list to elicit their views. The subordinate objected, saying, as D'Amato remembers it, "we don't want to encourage things like that here at Strong." Nonetheless, D'Amato forged ahead. A portfolio manager agreed, and D'Amato allowed Canary to time that manager's funds.

56. D'Amato's decision meant that Strong needed to suspend its usual anti-timer controls, including those put in place by the clearing broker that would process Canary's trades. Strong operational people were directed to make the necessary telephone calls. Strong's clearing broker internally memorialized the unusual request in an e-mail: "They [Strong] are bringing in a client who will be worth 3 billion over all to them . . . . He will be actively trading Strong Funds." The e-mail continued: "Normally, we would recognize this as market timing. . . ."

57. As Strong was arranging the logistics of Canary's special treatment, it was also assigning employees specific roles in cultivating Canary's future business. A late November 2002 e-mail set forth who would be responsible for selling which of Strong's other product lines to Canary. D'Amato -- who had blessed the deal -- had the most important role. He was to manage the relationship with Canary's principal and be the "conduit for additional opportunity."

58. The "additional opportunity" soon became more concrete. In February, Canary wrote to D'Amato: "Tony: We are prepared to make an investment in your hedge fund. We will

also step up our allocation to your mutual funds to our full $18 MM if that is still ok." True to its word, Canary invested a half-million dollars in Strong's hedge fund on March 1, 2003. A few months later, Canary wrote Strong again: "Hey, we are going to be doubling up our mutual fund positions in a week or two. Some time shortly thereafter, we will double up on our hedge fund position."

59. Strong and D'Amato did not afford this special treatment to small investors. Quite the contrary, at the same time that Canary was repeatedly moving millions of dollars in and out of funds, Strong was barring other investors because of a single "round trip."

60. From December 2002 when the account was opened until May 2003, Canary actively traded over $18 million in Strong mutual funds. This trading -- all due to D'Amato's preferential treatment of Canary -- cost other, less privileged Strong Fund investors approximately $2.5 million, plus transaction and tax costs. Moreover, the Strong Funds were paying SCM advisory and other fees during this period believing, incorrectly, that SCM was acting as a faithful fiduciary.

61. All told, D'Amato violated two bedrock principles of a fiduciary: he put his own financial interests ahead of those of his clients, and he advanced one client's interest to the detriment of the others.

Strong responded late and selectively to regulatory inquiries

62. Richard Strong's market timing ended in July 2003, shortly after the New York State Attorney General's office served a subpoena on Strong while investigating market timing by Canary. Through July and August, the Attorney General made additional requests for documents. On September 3, 2003, the Attorney General announced a settlement with Canary, and also that

the settlement was leading to the expansion of his ongoing investigation into the mutual fund industry, including into Strong. On September 5, 2003, the United States Securities and Exchange Commission ("SEC") began an on-site examination into market timing at Strong. Despite repeated requests about timers and timing from both agencies, Strong did not disclose the fact of Richard Strong's timing until October 10, 2003. Moreover, Strong withheld unquestionably relevant documents relating to Richard Strong's timing until as late as January 2004.

63. Strong's head of compliance, Thomas Hooker, was intimately involved in responding to the regulatory inquiries. Hooker had led the compliance department for years, serving under three different general counsels and an acting general counsel. In that capacity, Hooker had repeatedly been involved in efforts to police active trading by Strong employees. For example, as early as 1999 he had worked on the issuance of the Lemke Directive, and, as set forth above, he had learned of and reported Richard Strong's improper trading in 2000.

64. In July 2003, SCM received a subpoena duces tecum from the Attorney General. SCM's Chief Legal Officer Richard Smirl assigned Hooker to locate responsive documents. The subpoena called for, among other things, documents relating to "timing capacity." It was followed up in August by telephone calls and voice mail messages to Strong's external counsel requesting production of documents relating to "timing," telling counsel that the Attorney General was investigating the "phenomenon of market timing," and raising the question as to "whether market timing in a mutual fund would be violative of the Martin Act . . . as a violation of a fund's fiduciary duty to other investors in that fund." External counsel transmitted all these requests to Hooker by e-mail or telephone. Hooker's notes of one such call on August 4, 2003, reflect the

name of the Assistant Attorney General making the call, followed by the phrases: "Strong target?" and "Investigating market timing."

65. Hooker gathered a number of documents and provided them to counsel for examination and, as appropriate, production to the Attorney General. These documents were produced to the Attorney General, along with additional oral information, up through September 2, 2003. Hooker, however, did not disclose the fact of Richard Strong's market timing to anyone at SCM, and provided none of Richard Strong's trading records. Nor did he apprise either the Strong Funds' board of directors or regulators.

66. The Attorney General's complaint against Canary, filed September 3, 2003, publicly identified Strong as a mutual fund adviser that had allowed Canary to market time. The announcement was the subject of great concern at Strong. Richard Strong and high ranking Strong officials consulted throughout that day and the next as to what steps Strong should take, and how to respond to regulators, to Strong's clients, and to the media.

67. At no time during these critical discussions on September 3rd or 4th did Richard Strong disclose to internal or external counsel or to his top executives that he had personally market-timed his own funds for many years. At no time on September 3rd did Thomas Hooker disclose that he knew that Richard Strong had market-timed his own funds for many years.

68. On September 4, 2003, Strong sent a letter to its clients addressing the Attorney General's investigation. Richard Strong personally approved the letter, which bore his signature. He wrote: "We can assure you that we are turning over every rock at our firm as part of our own comprehensive review . . . ." At the time, however, Richard Strong was still withholding the fact of his own trading. Shareholders were materially misled by Richard Strong's statement that a

"comprehensive review" was underway. Indeed, the opposite was true: Richard Strong was thwarting that very internal review by withholding crucial information about his own malfeasance.

69. After the Canary announcement, a Strong associate brought records of Richard Strong's trades to the Legal Department, where the associate met first with Hooker and then with Hooker and Chief Legal Officer Smirl. Smirl instructed the associate to print out more detailed trade records.

70. On Friday, September 5, 2003, SEC staff members arrived at Strong to begin an on-site examination of the matters disclosed in the complaint, including, explicitly, market timing. The SEC promptly demanded the identity of all market timers.

71. That Saturday, September 6th, Smirl examined the records that the accountant had produced, quickly grasped Richard Strong's vast amount of trading, and summoned Hooker to look at the records. Hooker expressed surprise, and, when asked if he had known of Richard Strong's trading, denied that he had.

72. Before the end of the week of September 8th, Strong had retained additional outside counsel, and Smirl had delivered the records to them. Smirl did not discuss his newfound knowledge with Richard Strong, who was still keeping his trades secret.

73. On September 9th, a special telephonic meeting of the independent members of the board of directors of the Strong Funds was held. The purpose of the meeting was for Strong to update the directors as to the regulatory investigations. Richard Strong participated in the telephone call. He did not disclose that he had been timing his own funds.

74. On Monday, September 15th, Richard Strong and Smirl participated from Strong's headquarters in Wisconsin in a telephone conference with external counsel in Manhattan. In the

call, Richard Strong was told for the first time that internal and external lawyers knew of his market timing, and that his trades would have to be disclosed to regulators. When the call ended, Richard Strong forcefully demanded that Smirl reveal who had told the lawyers, and violently insisted that he was not a "market timer."

75. After September 15th, Smirl and members of the office of CEO (including D'Amato) repeatedly urged that Richard Strong's trades be promptly disclosed to regulators.

76. SCM did not disclose the fact of Richard Strong's trades to the Attorney General and the SEC until October 10th, more than three months after the Attorney General's first demand.

77. Even after the disclosure of Richard Strong's trades, SCM continued to withhold critical documents from regulators. For example, SCM withheld the Lemke Directive -- setting forth the internal policy that Richard Strong had so flagrantly violated -- until regulators independently learned of it in an interview in December 2003. Until that time, SCM had neither produced the Directive nor claimed privilege of any kind for it. The Lemke Directive was finally produced only in January 2004.

V. CONCLUSION

78. In sum, Richard Strong, Chairman, CIO, and majority owner; Anthony D'Amato, member of the office of CEO; and Thomas A. Hooker, Jr., director of compliance have, through their acts and omissions, violated the law on their own behalf and that of the corporate defendants as follows:

1. Richard Strong, for his own enrichment, market-timed his own mutual funds to the detriment of his clients, using a trading strategy for which shareholders were banned and that was forbidden to employees.

2. D'Amato, to entice unrelated lucrative business from a hedge fund, let the hedge fund trade in Strong mutual funds in a way forbidden to other shareholders and to the detriment of other shareholders.

3. Hooker, in the face of repeated regulatory inquiries, suppressed, concealed and failed to disclose material information and documents, namely information and documents relating to Richard Strong's market timing in Strong Funds.

4. SCM, through employees and agents known and unknown, withheld relevant documents from the Attorney General and other regulators.

5. Richard Strong materially misled shareholders on September 4, 2004, when he stated that SCM was conducting a "comprehensive review" while keeping his own misconduct a secret.

FIRST CAUSE OF ACTION

79. The acts and practices of the Defendants alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of a fraud, deception, concealment, suppression, or false pretense, engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of securities or commodities.

SECOND CAUSE OF ACTION

80. The acts and practices of the Defendants alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of a representation or statement which was false, where the person who made such representation or statement: (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation made, and where such acts or practices were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of securities or commodities.

THIRD CAUSE OF ACTION

81. The acts and practices of the Defendants alleged herein violated Article 23-A of the General Business Law, in that Defendants engaged in an artifice, agreement, device or scheme to obtain money, profit or property by a means prohibited by section 352-c of the General Business Law.

FOURTH CAUSE OF ACTION

82. The acts and practices of the Defendants alleged herein violated Article 22-A of the General Business Law in that Defendants engaged in deceptive acts and practices prohibited by section 349 of the General Business Law.

FIFTH CAUSE OF ACTION

83. The acts and practices of the Defendants alleged herein constitute conduct proscribed by section 63(12) of the Executive Law, in that Defendants engaged in repeated

fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of a business.

SIXTH CAUSE OF ACTION
(As to Richard S. Strong only)

84. The acts and practices of Richard S. Strong alleged herein constitute fraud under the common law of the State of New York.

85. Plaintiff has been irreparably harmed and has no other adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. That Defendants be permanently restrained and enjoined from engaging in any fraudulent practices in violation of Article 23-A of the General Business Law and Section 349 of the General Business Law or proscribed by section 63(12) of the Executive Law;

B. That Defendants Richard S. Strong, Anthony D'Amato, and Thomas A. Hooker, Jr., be permanently restrained and enjoined from directly or indirectly engaging in the sale, offer to sell, purchase, offer to purchase, promotion, negotiation or distribution of any securities;

C. That Defendants and any of their agents or others acting on their behalf be restrained and enjoined permanently from allowing market timing in any mutual funds;

D. That Defendants, pursuant to General Business Law § 353(3), General Business Law § 349 and Executive Law § 63(12), pay restitution of monies obtained directly or indirectly by means of, and damages caused directly or indirectly by, the fraudulent acts complained of herein;

E. That Defendants, pursuant to General Business Law § 353(3), General Business Law § 349 and Executive Law § 63(12), disgorge all fees received for financial management services during that period of time in which Defendants were acting as faithless fiduciaries;

F. That Defendants pay civil penalties pursuant to General Business Law § 350-d;

G. That each of the Defendants pay plaintiff costs and additional allowances in the maximum amount allowable under General Business Law § 353(1) and CPLR § 8303(a)(6);

H. That Defendant Richard S. Strong pay punitive damages in an amount of to be determined at trial; and

I. That the Court award such other and further relief to plaintiff as the Court may deem just and proper in the circumstances.

Dated: New York, New York
May , 2004

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