UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding Corp. f/k/a Miller & Schroeder, Inc. and its subsidiaries, Debtor.	)	Chapter 7 Case BKY Case No. 02-40284 to 02-40286 Jointly Administered
Brian F. Leonard, Trustee, Plaintiff, vs. Executive Risk Indemnity, Inc., Defendant.	)	ADV Case No. 03-4284 **NON-CORE PROCEEDING**
The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden, and John M. Clarey, Kenneth E. Dawkins, and Joseph K. Halloran, Intervenors.	)	

NOTICE OF MOTION AND MOTION OF INTERVENORS THE MARSHALL GROUP, INC., JEROME A. TABOLICH, JAMES E. IVERSON, EDWARD J. HENTGES, KENNETH R. LARSEN, STEVEN W. ERICKSON, PAUL R. EKHOLM, AND MARY JO BRENDEN FOR PARTIAL SUMMARY JUDGMENT

1. Intervenors The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo

Brenden, by its undersigned counsel, moves the Court for partial summary judgment pursuant to Bankruptcy Rule 7056 and gives notice of hearing.

2. The Court will hold a hearing on Intervenors' motion at 10:30 a.m. on December 16, 2004, in Court Room 7 West, before The Honorable Nancy C. Dreher, Bankruptcy Judge, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered no later than December 9, 2004, which is seven (7) days before the hearing date or mailed and filed not later than December 6, 2004. Unless a response opposing this motion is timely filed, the Court may grant the motion without a hearing.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157(c)(1). This is a "non-core" proceeding within the meaning of 28 U.S.C. § 157(c)(1). All claims in this adversary proceeding are "related to" the underlying bankruptcy case of SRC Holding Corp., f/k/a Miller & Schroeder, Inc. and its subsidiaries ("Debtor"). The Debtor's underlying bankruptcy case (the "Bankruptcy Case") was commenced by the filing of a petition on January 22, 2002.

5. This motion arises under Bankruptcy Rule 7056 incorporating Rule 56 of the Federal Rules of Civil Procedure. This motion made on the basis of the attached memorandum of law, affidavit and exhibits, and all the records and proceedings herein. Specifically, Intervenors move for an order granting them partial summary judgment declaring coverage under the insurance policy that is the subject of this action.

6. In this motion, based upon the accompanying Memorandum of Law and Affidavits, Intervenors seek entry by the Court of an order granting partial summary judgment in their favor.

Based upon the foregoing, Intervenors respectively move the Court for entry of the accompanying order granting partial summary judgment and for such other relief as may be just and equitable.

Dated: October 29, 2004.

MASLON EDELMAN BORMAN & BRAND, LLP

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ATTORNEYS FOR INTERVENORS

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT OF INTERVENORS THE MARSHALL GROUP, INC., JEROME A. TABOLICH, JAMES E. IVERSON, EDWARD J. HENTGES, KENNETH R. LARSEN, STEVEN W. ERICKSON, PAUL R. EKHOLM, AND MARY JO BRENDEN

INTRODUCTION

Intervenors The Marshall Group, Inc., Jerome A. Tabolich, James Iverson, Edward Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Eckholm, and Mary Jo Brenden (hereinafter collectively "Intervenors") have brought this motion seeking an order from the Court for partial summary judgment declaring that there is coverage under an officers and directors' policy of insurance (hereinafter "Policy") issued by Defendant Executive Risk Indemnity Inc. (hereinafter "Executive Risk"). Executive Risk issued the Policy to Miller & Schroeder Inc, which insured that company and its subsidiaries (hereinafter collectively referred to as "Miller & Schroeder") and Miller & Schroeder's officers and directors for certain liabilities arising out of their status and activities as officers and directors. The individual Intervenors are all former officers and directors of Miller & Schroeder who have been sued in their capacity as such in various litigation, commonly referred to as the Heritage Bond Litigation. The Intervenors have all tendered, on various occasions, the defense and indemnity of the claims asserted against them to Executive Risk, and Executive Risk has uniformly denied coverage for these claims. In addition, Intervenor The Marshall Group, Inc., which currently employs a number of the individual Intervenors, has paid certain sums for legal fees, settlement amounts and other defense costs on behalf of the individual Intervenors arising out of the Heritage Bonds Litigation, and has received from the individual Intervenors assignments of rights to the extent of these payments.

Because Executive Risk has denied coverage under the Policy, the Intervenors originally commenced an action against Executive Risk in United States District Court for the District of Minnesota. The case was assigned to Judge Rosenbaum, who ordered that the action be stayed pending resolution of the instant case, which had been filed earlier and which presents a number of issues in common with those presented in the case filed in United States District Court.

Because of the existence of those common issues, Intervenors filed their Complaint in Intervention in this action.

The issue most fundamentally common to this case and the one assigned to Judge Rosenbaum is whether the terms of the Policy afford coverage to Miller & Schroeder and its former officers and directors for the claims being asserted in the Heritage Bond Litigation. Specifically, Executive Risk has taken the position that coverage is excluded by two endorsements under the Policy—Endorsement Number 3, which is a "Securities Exclusion"—and Endorsement Number 9, which is an "Errors and Omissions Exclusion" containing a "Management Carveback." Intervenors contend that as a matter of law these endorsements do not exclude coverage under the Policy for the claims made against them in the Heritage Bond Litigation. Accordingly, it is appropriate for this Court to rule as a matter of law that there is coverage under the Policy.

UNDISPUTED FACTS

A. The Underlying Litigation.

As set forth in the Complaint for Intervention, starting in 2001, numerous National Association of Securities Dealers, Inc. ("NASD") arbitrations and court actions were commenced against Intervenors Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden, in their capacity as former officers and/or directors of Miller & Schroeder or companies affiliated with Miller & Schroeder. The material facts pertaining to the background of the Heritage Bond Litigation for purposes of this motion for partial summary judgment are undisputed. The Heritage Bond Litigation asserts various claims arising from multiple separate municipal bond offerings made by Miller & Schroeder between December 1996 and March 1999. The proceeds of each bond issue were loaned to related borrowers for the purported purpose of financing the acquisition, operation and/or renovation of hospitals and other long-

term healthcare facilities. The Heritage Bond offerings raised approximately $140 million. All the Heritage Bonds went into default soon after the bonds were sold.

The investors and bondholders of the Heritage Bonds filed numerous lawsuits and arbitration proceedings against Miller & Schroeder and its officers and directors, naming as defendants Intervenors Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden, among others, and seeking to recover their investment losses. On August 20, 2002, several of the court cases were consolidated into a class action under the caption *In Re Heritage Bond Litigation*, and filed in the United States District Court for the Central District of California. (Case No. 2:02-ml-01475-DT). The arbitration proceedings and court actions allege numerous causes of action, including breach of fiduciary duty, unfair and deceptive trade practices, negligence, misrepresentation, securities and common law fraud, and, most importantly for this dispute, negligent supervision and management. The complaints and statements of claim are very similar insofar as the type of allegations made against the individual Intervenors. Among the allegations are that the individual officers and directors are liable to the claimants or plaintiffs based on violations of their duties as officers and/or directors of Miller & Schroeder. A sampling of the relevant allegations are described below, with the underlying written statements of claims or complaints attached to the affidavit accompanying this motion.

In the NASD proceeding *Eldridge v. Talley, et al.*, (NASD No. 02-5426) Intervenors Tabolich, Iverson, Hentges, Larsen, Erickson and Ekholm, among others, were charged with being "negligent in failing to supervise properly the M&S agents, representative [sic] and employees involved in the sale of the defaulted bonds and the handling of the Eldridge accounts." *See Eldridge v. Talley, et al.*, Amended Statement of Claim at ¶ 54, attached as Exhibit A to the Affidavit of Kirk O. Kolbo ("Kolbo affidavit"). Claimants also allege "control

person" liability against all of the individual Intervenors other than Ms. Brenden. *See id.* at ¶¶ 16-20, 22, 28, 47-56 (Exhibit A to Kolbo affidavit).

In the Consolidated Class Action Complaint in *In re Heritage Bond Litigation*, (Case No. CV 01-5752DT) the Intervenors were charged with having "control person" liability by virtue of their role overseeing Miller & Schroeder's management and policies and supervising the sale of the Heritage Bonds, and in that role violating Section 25501 of the California Corporations Code. *See In re Heritage Bond Litigation*, Consolidated Class Action Complaint at ¶¶ 282-283 (Exhibit B to Kolbo affidavit).

In *Salley v. Miller & Schroeder Financial, Inc. et al.*, (NASD No. 01-03445) the Claimants alleged that Iverson, among others, breached his fiduciary duty by failing to supervise the Miller & Schroeder employees and agents and violated the NASD rules by failing to "establish a system to supervise it [sic] agents and employees in each of its offices, departments and/or business activities . . ." *See Salley v. Miller & Schroeder Financial, Inc. et al*., Claimant's First Amendment Statement of Claim to Add MM&S Financial, Inc. as a Respondent at ¶¶ 34, 39 (Exhibit C to Kolbo affidavit).

In *Edge v. Penwarden et al.*, (NASD No. 01-03099) the Claimants alleged that Iverson conspired to commit fraud because he supervised the personnel selling the disputed bonds, Larsen conspired to commit fraud by acting as Chief Financial Officer and "control person" during the selling of the bonds, Hentges conspired to commit fraud by acting as compliance officer, executive officer and "control person," and Tabolich, Erickson, Ekholm and Brenden conspired to commit fraud because they acted as members of the credit committee which had responsibility for reviewing the proposed bond underwritings, and were officers and "control

person[s]" in the organization. *See Edge v. Penwarden et al.*, Scott Penwarden's Third Party Claim at ¶¶ 22-30 (Exhibit D to Kolbo affidavit).

In *Talley v. Miller & Schroeder Financial, Inc*., (Case No. GIC 802187) former Miller & Schroeder employee brought third-party claims against various entities and a number of Miller & Schroeder's officers and directors, including Intervenors Tabolich, Iverson, Hentges, Larsen, and Ekholm. Among the allegations in the complaint are these individuals were liable to Talley because of the "control person" status and in their capacity as officers or directors of Miller & Schroeder. *See* Amended Complaint at ¶¶ 25, 27, 28, 29, 34 (Exhibit E to Kolbo affidavit). The complaint also included allegations with respect to fraudulent conveyance of assets in connection with the sale of the assets of Miller & Schroeder. *See* Complaint at ¶¶ 241-44. Talley also asserted third-party claims, making similar allegations against a number of the individual Intervenors in other actions in which was named as a respondent. *See, e.g., Talley Third-Party Claim in Timmerman v. Miller & Schroeder Financial, Inc*., (NASD No. 01-06518) at ¶¶ 5-6, 18-20, 22, 24-28 (Exhibit F to Kolbo affidavit); *Talley Third-Party Claim in Salley v. Miller & Schroeder Financial, Inc*., (NASD No. 01-03445) at ¶¶ 5-6, 18-20, 22, 24-28 (Exhibit G to Kolbo Affidavit); *Talley Third-Party Claim in Eldridge*, (NASD No. 02-5426) at ¶¶ 5-6, 18-20, 22, 24-27 (Exhibit H to Kolbo affidavit).

In *In re Fleshman v. Miller & Schroeder Financial Inc.*, (NASD No. 01-01444) the claimant alleged failure to exercise management supervision against a number of individuals, including all of the individual Intervenors. *See* Second Amended Statement of Claim at ¶ 24(C) (Exhibit I to Kolbo affidavit). The Second Amended Statement of Claim also includes allegations that the Intervenor had "control person" liability because of their status as officers

and directors, and allegations with respect to alleged fraudulent conveyance of assets. *See id*. at ¶¶ 40, 42, 43, 44, 45, 46, and 48.

In *Bekter v. U.S. Trust Corporation*, (MDL No. 1475) plaintiffs alleged causes of action against various entities and individuals, including all of the individual Intervenors except for Ms. Brenden. Among other things, the allegations include "control person" liability against these individuals arising out of their capacity as officer or directors of Miller & Schroeder. *See* Complaint at ¶¶ 193-97 (Exhibit J to Kolbo affidavit).

In *Augusta Third Party Claim in Fleshman v. Miller-Schroeder Financial, Inc.*, (NASD No. 01-14444) a former employee of Miller & Schroeder made several claims against Miller & Schroeder and its former officers an directors, including all of the individual Intervenors. The allegations include failure to supervise; control person liability; and allegations of fraudulent conveyance of assets. *See* Complaint at ¶¶ 22, 24, 25, 26-28. (Exhibit K to Kolbo affidavit)

In *Herrmann v. Miller & Schroeder Financial Inc*., (Case No. GIC 778499) claimant alleges failure to supervise; fraudulent conveyance of assets, and liability predicated on the Intervenors status as officers or directors of Miller & Schroeder. *See* Class Action Complaint at ¶¶ 106-09, 111, 113-117. (Exhibit L to Kolbo affidavit).

In *Shustak v. Clarey, et al.*, (NASD) claimants alleged "control person" liability of Intervenor Hentges on the basis of his status as Vice President and Chief Compliance officer for Miller & Schroeder. *See* Statement of Claim at ¶ 9 (Exhibit M to Kolbo affidavit).

In *Moreland v. Miller & Schroeder Financial, Inc*., (NASD) claimants alleged "control person" liability against several of the individual Intervenors (Hentges, Iverson, and Erickson) because of their capacity as officers or directors of Miller & Schroeder. *See* Statement of Claim

at ¶ 4. The allegations also include failure to supervise. *See id*. at ¶¶ 34-36 (Exhibit N to Kolbo affidavit).

In *English v Miller & Schroeder Financial, Inc*., (NASD 01-01056) claimants made allegations of supervisory negligence against individual Intervenors Hentges and Larsen. *See* Amended Statement of Claims at ¶¶ 8-9 (Exhibit O to Kolbo affidavit).

In *McCauley v. Miller & Schroeder Financial, Inc*., (NASD No. 01-01348) claimants allege control person and supervisory liability against all of the individual Intervenors. *See* Claimant's Amended Statement of Claim at ¶¶ 9, 25, 27-31, 33 (Exhibit P to Kolbo affidavit).

In *In re Heritage Bond Litigation (Class Action)*, (02 ML Docket No. 1475 DT (RCx)) plaintiffs allege, inter alia, "control person" liability against the individual Intervenors other than Ms. Brenden. *See* Fourth Amended Consolidated Class Action Complaint at ¶¶ 441-451 (Exhibit Q to Kolbo affidavit).

In *Lenser v. Augusta*, (NASD No. 01-00113) former Miller & Schroeder employee Mark Augusta has asserted claims against all of the individual defendants other than Ms. Brenden. Among the allegations, supervisory negligence; "control person" liability; and fraudulent conveyance of assets. *See* Respondent Mark Augusta's Cross Claim at ¶¶ 6-11, 59, 61-65 (Exhibit R to Kolbo affidavit).

In *Onderwyzer v. Miller & Schroeder Financial, Inc*., (NASD No. 01-05301) claimants allege claims based on supervisory liability against all of the individual Intervenors. *See* Second Amended Statement of Claim at ¶¶ 40-43 (Exhibit S to Kolbo affidavit).

In *Formica v. Miller & Schroeder Financial Inc.*, (NASD No. 01-05467) claimants allege negligence, vicarious liability, and failure to supervise against Intervenor Larsen. *See* Amended Statement of Claim at Counts I, IV, and VI (Exhibit T to Kolbo affidavit).

As a result of these underlying claims and others substantially similar to them, Intervenors have been required to pay costs of defense, and in some instances, indemnity payments to settle certain actions. *See* Affidavit of Kenneth Larsen at ¶ 6 (Exhibit U to Kolbo affidavit).

In addition, Intervenor The Marshall Group, Inc. ("Marshall Group") which currently employs Intervenors Hentges, Larsen, Erickson, Ekholm, and Brenden, and formerly employed Intervenors Tabolich and Iverson, has made certain defense and indemnity payments on behalf of the individual Intervenors and has taken assignments of right to the extent of these payments.[1] *See id.* (Exhibit U to Kolbo affidavit). Because many of the underlying claims remain pending, the Intervenors continue to be exposed to liability for defense costs and potential indemnity payments, for which Executive Risk has denied any coverage responsibility.

B. The Insurance Policy

Executive Risk issued Policy No. 8166-6027 ("Policy") to Miller & Schroeder, Inc. for the policy period July 31, 2000, to July 31, 2003. *See* "Declarations," p. 1 (Exhibit V to Kolbo affidavit). The Policy provides for a $5 million maximum aggregate limit of liability, inclusive of defense costs. *Id.* It is a "claims made" Policy, meaning that it provides coverage if the claim is first made during the Policy period. *Id.*

The Policy's "Insuring Agreement" provides, in relevant part:

> **B.** The Underwriter will pay on behalf of the Company:
>
> > **1.** **Loss** from **Claims** first made against the **Insured Persons** during the **Policy Period** for **Wrongful Acts**, . . . if the **Company** pays

[1] In 2001, Intervenor Marshall Group purchased certain assets of Miller & Schroeder, which is now in bankruptcy. *See* Larsen affidavit at ¶ 5 (Exhibit U to Kolbo affidavit). The assignments are attached as exhibits to the Complaint in Intervention.

such **Loss** to or on behalf of the **Insured Persons** as indemnification; and

2. (OPTIONAL COVERAGE) if it is stated in the Declarations that coverage has been made available under this INSURING AGREEMENT (B)(2), **Loss** from **Claims** first made against the **Company** during the **Policy Period** for **Wrongful Acts** . . .

C. As a part of and subject to the limit of liability stated in ITEM 3 of the Declarations, the Underwriter will have the right and duty to defend any Claim as described in INSURING AGREEMENTS (A) and (B)(1)(and, if it is stated in the Declarations that coverage has been made available thereunder, INSURING AGREEMENT (B)(2)), even if such Claim is groundless, false or fraudulent.

Id. at I(B) and (C), p. 3.

The terms in bold above are defined terms in the Policy. The Policy also contains the following pertinent definitions:

"**Claim**" means written notice received by an Insured that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**. A Claim will be deemed to have been made when such written notice is first received by any **Insured**.

"**Company"** is defined as Miller & Schroeder, Inc. and its subsidiaries. *Id*. at II(C), p.4.

"**Defense Expenses**" is defined to mean "reasonable legal fees and expenses incurred by or on behalf of the **Insured Persons** (or, if coverage has been made available under INSURING AGREEMENT (B)(2), the **Company**) in the defense or appeal of a Claim . . ." *Id.* at II(D), p. 4.

"**Insured"** means the **Company** and any "**Insured Person**." *Id.* at II(F), p.4.

"Insured Person" is, for purposes of the subject claims, "any past, present or future director or officer of the **Company** . . ." *Id*. at II(G)(1), p. 4-5.

"**Loss**" is defined as any defense expenses and any "damages, judgments, settlements or other amounts" that the insured has to pay as a result of a **Claim**. *Id*. at II(H), p.5.

"**Wrongful Act**" is defined to include "actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as a director or officer of the **Company** . . ." *and* "any matter asserted against an **Insured Person** solely by reason of his or her status as a director or officer of the Company . . ." *Id.* at II(M), p. 5.

The Policy also contains certain exclusions, two of which Executive Risk has relied upon in denying coverage to Intervenors. The first of these is Endorsement No. 3 to the Policy, the "Securities Exclusion," which provides as follows:

> In consideration of the premium charge, this Policy does not apply to any Claim based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of:
>
> (1) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any other federal law, rule or regulation with respect to the regulation of securities, any rules or regulations of the United States Securities and Exchange Commission, or any amendment of such laws, rule or regulations; or
>
> (2) any state securities or "Blue Sky" laws or rules or regulations or any amendment of such laws, rules or regulations; or
>
> (3) any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.
>
> All other terms, conditions and limitations of this Policy shall remain unchanged.

Id. at Endorsement No. 3, p. 33.

In the course of denying coverage to Intervenors, Executive Risk has also relied on Endorsement No. 9 of the Policy, a "General E & O Exclusion (with Management Carveback)," which provides as follows:

> In consideration of the premium charged:
>
> (1) No coverage will be available under the Policy for Loss including Defense Expenses for any Claim made against any Insured based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an Insured's actual or alleged rendering or failure to render the following services:
>
> Investment Banking Services
> Security Broker/Dealer Services
> Securities Underwriting
>
> *(2) Paragraph (1) above is not intended, however, nor shall it be construed, to apply to Loss, including Defense Expenses, in connection with any Claim against an Insured to the extent that such Claim is for a Wrongful Act by Insured Person in connection with the management or supervision of any division, Subsidiary or group of the Parent Corporation offering any of the aforementioned services.*
>
> All other terms, conditions and limitations of this Policy shall remain unchanged.

Id. at Endorsement No. 9, p. 40 (emphasis added).

C. The Coverage Dispute

Executive Risk denied coverage of both the NASD and court claims. There have been many tenders to Executive Risk, all of which have been denied on the basis of the purported Policy exclusions pursuant to Endorsements Numbers 3 and 9. Representative samples of these denials are provided with this motion. *See*, e.g., letter dated August 22, 2003 from Chubb Group of Insurance Companies to James F. Dlugosch, et al. (Exhibit W to Kolbo Affidavit); letter dated October 2, 2003 from Chubb Group of Insurance Companies to Mary Jo Brenden (Exhibit X to

Kolbo affidavit); letter dated October 6, 2003 from Chubb Group of Insurance Companies to Kevin Eukel of Hays Companies (Exhibit Y to Kolbo affidavit).

In the denials of coverage, Executive Risk has not disputed that the individual Intervenors are former officers or directors of Miller & Schroeder and, as such, are Insureds under the Policy. Moreover, Executive Risk has acknowledged in various of the denial letters that the allegations against the individual Intervenors at least appear to constitute a "Claim" as that term is defined under the Policy, *i.e.* written notice of an intent by another to hold the individual officers and directors responsible for a Wrongful Act. *See* Policy, p. 2 (Exhibit V to Kolbo affidavit).

Executive Risk has, however, maintained its denial of coverage on the basis of Endorsement Numbers 3 and 9. It has done so even though claims notes produced in discovery reveal that Executive Risk has internally acknowledge the problems with its coverage position. The claim notes indicate, for example, that Executive Risk understands that the management carveback of Endorsement Number 9 is designed for cases of "vicarious liability" of officers and directors, which is at the heart of the allegations against the former officers and directors. *See* claim notes dated November 5, 2001 (Exhibit Z to Kolbo affidavit). Other claim notes confirm that Executive Risk understood that the management carveback could "possibly trigger the duty to defend." *See* claim notes dated November 30, 2001 (Exhibit AA to Kolbo affidavit). It apparently even made an initial decision that "it would be appointing defense counsel." *Id.* (claim notes dated December 6, 2001 (Exhibit AA to Kolbo affidavit). Moreover, its internal records establish that Executive Risk understood and anticipated one of the central arguments for coverage under the Policy—that there is an inconsistency between Endorsement Number 3 and the management carveback provision of Endorsement Number 9. *See* claim notes dated

December 27, 2001 (Exhibit AA to Kolbo affidavit) ("[I]t appears that it [Endorsement Number 3] might be inconsistent with the management carveback in the E&O Exclusion."). Nonetheless, perhaps because Executive Risk understood that the Heritage Bond claims "could hit fairly hard," it has never acknowledged or accepted it coverage responsibilities. *See* claim notes dated December 18, 2001 (Exhibit AA to Kolbo affidavit).

Due to Executive Risk's continued denial of coverage, Intervenors filed their action in United States District Court in November 2003,[2] which Judge Rosenbaum has stayed pending resolution of this action, commenced by the Trustee in Bankruptcy against Executive Risk. Intervenors filed their Complaint in Intervention because of the existence of issues common to the two cases and because a decision by this Court without the participation by Intervenors could adversely affect their interests in the Policy. As the most fundamental of those common issues can be resolved on the basis of the Policy language and as a matter of law, Intervenors have brought this motion for partial summary judgment to obtain a declaration that there is coverage under the Policy.[3]

ARGUMENT

I. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

Under Bankruptcy Rule 7056, incorporating Rule 56 of the Federal Rules of Civil Procedure, summary judgment may be granted if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Summary judgment is

[2] Civil Action No. 03-6339.

[3] The present motion does not seek an accounting of what amounts are owed or how they should be allocated under the Policy, which are issues more readily left for determination after the Court has resolved the legal issues presented by Executive Risk's denial of coverage on the basis of the Policy exclusions.

proper if, taking all facts and reasonable inferences from those facts in the light most favorable to the non-moving party, there is no genuine issue of material fact, and the movant is entitled to summary judgment as a matter of law. *Lang v. Star Herald*, 107 F.3d 1308, 1311 (8th Cir. 1997). Interpretation of an insurance contract, which this case concerns, presents a legal question that is appropriate for summary judgment. *See Iowa Kemper Ins. Co. v. Stone*, 269 N.W.2d 885, 886 (Minn. 1978).

II. THE INDIVIDUAL INTERVENORS ARE ALL "INSUREDS" UNDER POLICY WHO HAVE SUSTAINED A "LOSS" ARISING OUT OF A COVERED "CLAIM"

In its many written denials of coverage, Executive Risk has never asserted the position that the individual Intervenors are not "Insured Persons" within the meaning of the Policy, or that the allegations against them arising out of the Heritage Bond Litigation do not constitute a "Claim" under the Policy. The facts establishing those matters are not in dispute, and the plain terms of the Policy compel the conclusion as a matter of law that the Intervenors are Insureds against whom Claims have been made under the Policy. An "Insured Person" means "any past, present, or future director or officer of the Company," *i.e.*, Miller & Schroeder. *See* Policy at p. 2 (Exhibit V to Kolbo affidavit). As shown from the affidavit of Kenneth Larsen (Exhibit U to Kolbo affidavit), all of the individual Intervenors were officers and/or directors of Miller & Schroeder during the Policy period (July 31, 2000 to July 31, 2003). Moreover, all of the various statements of claim and complaints are clear in alleging that the individual Intervenors were at the material times officers and or directors of Miller & Schroeder.

The grant of coverage is very broad with respect to what constitutes a Claim under the Policy against an Insured. It encompasses allegations made by third persons against an Insured with respect to "Wrongful Acts," a term that the Policy gives an extremely expansive definition. Among other things, a Wrongful Act includes "any . . . actual or alleged act, error, omission,

misstatement, misleading statement or breach of duty by an Insured Person in his or her capacity as a director or officer of the Company." *See* Policy at p. 3 (Exhibit V to Kolbo affidavit). Moreover, although alleged "act[s], error[s], and "omission[s]" of Insureds are among the matters constituting a Wrongful Act, the Policy requires even less to establish coverage: A Wrongful Act can encompass matters alleged against an Insured "solely by reason of his or her *status* as a director or officer of the Company." *Id*. (emphasis added). It is easy to see, from even a cursory review of the many statements of claim and complaints attached hereto and described above (*see supra* at 4-8) that the allegations made against the individual Intervenors fall within these very broad definitions of a Wrongful Act under the Policy. The allegations relate to acts, errors and omissions, including negligent management and supervision, and they also extend to claims made solely on the basis of the status of the individual Intervenors as officers and directors. For example, many of the statements of claim or complaints allege that the individual Intervenors are liable under certain securities laws due to their "control person" status, arising from their position as officers and/or directors.

Accordingly, there is no genuine issue as to any material fact with respect to whether the individual Intervenors are Insureds against whom Claims under the Policy have been asserted in the various Heritage Bond Litigation, and from these undisputed facts the Court should rule as a matter of law that the individual Intervenors are covered under the Policy as Insureds for the Claims made against them in that litigation. Such a ruling would mean that Executive Risk is liable for "all reasonable legal fees and expenses incurred by or on behalf of the" Insureds. *See* Policy at p. 2 (defining "Defense Expenses") (Exhibit V to Kolbo affidavit); *id.* at p. 3 (defining "Loss" under the Policy to include "Defense Expenses"). For the purpose of determining liability for defense expenses, moreover, it would not be necessary to ascertain whether some of

the allegations in the various statements of claim and complaints are outside the terms of coverage of the Policy. The reason is the well-settled rule that if *any* of the allegations in a suit are even *arguably* covered, the insurer is obligated to defend all of them. *See, e.g., Meadowbrook, Inc. v. Tower Ins. Co.*, 559 N.W.2d 411, 415 (Minn. 1997); *Brown v. State Auto. & Cas. Underwriters*, 293 N.W.2d 822 (Minn. 1980). *See also U.S. Fidelity & Guaranty Co. v. Louis A. Roser Co., Inc.*, 585 F.2d 932 (8th Cir. 1978). Executive Risk would also be obligated to pay judgments or settlements made for claims covered under the Policy. *See* Policy at p. 3 (Exhibit V to Kolbo affidavit).

Under Minnesota law, when a policyholder establishes a prima facie case of coverage it has met its burden and is entitled to coverage. The Intervenors have met their burden of establishing coverage under the Policy, and the burden now shifts to Executive Risk to demonstrate that any exclusions contained in the Policy defeat coverage. *See, e.g., SCSC Corp. v. Allied Mut. Ins. Co.*, 536 N.W.2d 305, 313 (Minn.1995) *Smith v. State Farm Fire & Cas. Co.*, 656 N.W.2d 432, 436 (Minn. Ct. App. 2003). Intervenors anticipate that Executive Risk will assert certain exclusions as a basis for denying coverage in its motion for summary judgment filed contemporaneously with Intervenors' motion. While Intervenors will respond in detail to the motion and arguments of Executive Risk when they are eventually made, the discussion below begins to address these anticipated arguments. For the reasons discussed below, Executive Risk cannot defeat coverage on the basis of the exclusions it is expected to rely upon.

III. EXECUTIVE RISK IS NOT RELIEVED FROM LIABILITY BY ENDORSEMENT NUMBERS 3 AND 9 TO THE POLICY

On the basis of past denials of coverage, Intervenors expect that Executive Risk will argue that it is relieved from liability under the Policy on the basis of two endorsements to the Policy: Endorsement Number 9, titled the "General E & O Exclusion (With Management

Carveback"); and Endorsement Number 3, titled "Securities Exclusion." Exclusionary clauses are narrowly interpreted and strictly interpreted against an insurer. *See Bob Useldinger & Sons v. Hangsleben*, 505 N.W.2d 323, 327 (Minn 1993); *Hennings v. State Farm Fire & Cas. Co*., 438 N.W.2d 680, 683 (Minn. Ct. App. 1989). It is an axiomatic principle of insurance law in Minnesota that when interpreting the terms of coverage in an insurance policy, the policy must be construed as a whole, and any doubts about the meaning of its language must be resolved in favor of the insured. *Hubred v. Control Data Corp*., 442 N.W.2d 308 (Minn. 1989); *Republic Nat'l Life Ins. Co. v. Lorraine Realty Corp.*, 279 N.W.2d 349, 354 (Minn. 1979) (stating that provisions must be given a meaning in accordance with the obvious purpose of the contract as a whole); *Landico, Inc. v. American Family Mut. Ins. Co*., 559 N.W.2d 438, 440 (Minn. Ct. App. 1997) ("In order to effectuate the parties' intent, '[t]he policy must be read as a whole, and unambiguous language must be accorded its plain and ordinary meaning.'") Under these rules of construction and a reasonable interpretation of the endorsements at issue, it is plain that they do not operate to exclude coverage.

A. Endorsement Number 9 Does Not Exclude Coverage

Endorsement Number 9 excludes coverage for an Insured's "actual or alleged rendering or failure to render the following services: Investment Banking Services; Security Broker Dealer Services; and Securities Underwriting." *See* Policy Endorsement No. 9 (Exhibit V to Kolbo affidavit). Significantly, the endorsement also goes on to provide, however, that the foregoing "shall not be construed, to apply to Loss, including Defense Expenses, in connection with any Claim against an Insured to the extent that such Claim is for a Wrongful Act by Insured Person in connection with the management or supervision of any division, Subsidiary or group of the Parent Corporation offering any of the aforementioned services." *See id.*

While Endorsement Number 9 is designed to exclude coverage for some specifically identified types of "error and omission" claims, it is, on its face, limited in application and explicitly does not preclude coverage for claims against officers and directors for alleged improper "management or supervision." This makes perfect sense. While a directors' and officers' liability policy might be expected to include an exclusion for rendering professional services, such a policy would naturally be expected to protect officers and directors from claims by third persons relating to their management or supervision *as officers and directors of the company*. Moreover, there is no reason to believe—certainly not from the language of the endorsement in this case—that coverage for management or supervisory liability excludes such claims when asserted by customers of the company instead of, for example, shareholders. If Executive Risk had intended otherwise, it could easily have written the endorsement in a way that excluded coverage for claims of management or supervisory liability when such claims were made by customers. It did not do so, and the plain terms of the endorsement extend coverage to any officer and director against whom claims are made for management or supervisory liability.

There cannot be any genuine dispute that the various statements of claim and complaints in the Heritage Bond Litigation include allegations of management and supervisory liability against the individual Intervenors. In many instances the allegations of negligent supervision are explicit. In all instances, it is clear that the individual Intervenors are being sued at least in part because of their status as officers and directors, and not solely (and in most instances, not at all) because of the rendering or failure to render professional services in one of the specified areas. *See* generally statements of claim and complaints described *supra* at 4-8 and attached as Exhibits A through T to Kolbo affidavit). To the extent, therefore, that Heritage Bond Litigation presents claims against the individual Intervenors based on their management or supervisory liability,

Executive Risk is obligated to pay for the defense of these claims, including any possibly uncovered claims that are part of the same action. *See supra* at 16-17 (discussing and citing cases establishing a broad obligation to defend entire case when any allegations are arguably within coverage). Moreover, Executive Risk is obligated to pay for judgments and settlement amounts arising from these covered claims.

No court has had occasion to construe the specific "management carveback" provision that is at issue here. However, a similar exception for management lapses was construed in *Piper Jaffray Companies, Inc. v. National Union Fire Ins. Co.*, 967 F. Supp. 1148, 1158 (D. Minn. 1997). In that case, Piper Jaffray sought coverage from its liability insurer for claims brought against its directors and officers by clients whose mutual fund investments suffered diminution in value. Despite the fact that the policy at issue contained an endorsement excluding coverage for claims arising from the sale of mutual funds, Piper Jaffray argued that a broader professional services exclusion, which contained a failure to supervise exception, applied. The court noted that there was "little textual support" for a failure to supervise claim in the underlying complaints, but nonetheless that it would give Piper Jaffray "the benefit of every ounce of doubt." *Id.* As such, it declined to dismiss the action, stating:

> …the Court cannot say for certain that none of the claims fall within the scope of the corporate officer liability recognized under Minnesota law. The facts alleged in the complaints do not preclude the possibility that some officers may have negligently failed to prevent torts allegedly committed by less senior officers or other employees.

Id. at 1158. In the subsequent proceeding, the court did grant summary judgment to the insurer, but it was based on the Court's finding that the underlying complaints did not sufficiently allege supervisory lapses tantamount to a failure to supervise. *Piper Jaffray Companies, Inc. v. National Union Fire Ins. Co.*, 38 F. Supp. 2d 771, 782 (D. Minn. 1999).

In this case, unlike *Piper Jaffray*, there is ample textual support for failure to supervise claims in the underlying actions. The Heritage Bond Litigation is replete with failure to supervise claims, as well as other tort claims such as negligence and breach of fiduciary duty brought against the directors and officers in their role as managers and supervisors at Miller & Schroeder. Executive Risk's internal claim notes produced in this case reveal that it too understands that the management carveback is intended to apply to claims of "vicarious liability" like those alleged in this case, (*see* claim notes dated November 5, 2001 (Exhibit Z to Kolbo affidavit)), and the company at one point even made a decision to appoint defense counsel (*see* claim notes dated December 6, 2001 (Exhibit AA to Kolbo affidavit)). Yet inexplicably, Executive Risk has left its insureds abandoned and without the insurance resources for which they bargained to defend and indemnify against precisely the kind of claims contemplated by the management carveback. The clear allegations of supervisory and management liability are more than sufficient to defeat as a matter of law any contention that Endorsement Number 9 operates to exclude coverage in this case.

B. Endorsement Number 3 Does Not Exclude Coverage.

Executive Risk has also based its denials of coverage on Endorsement Number 3 to the Policy, which excludes coverage for certain securities-related claims. To give the endorsement the effect that Executive Risk seeks, however, the Policy would necessarily be rendered an illusory one. This is so because under Executive Risk's interpretation of Endorsement Number 3, the "management carveback" in Endorsement Number 9 for claims based on "Security Broker/Dealer Services" and "Securities Underwriting" could *never* be operative. It is well-established in Minnesota and elsewhere that liability insurance coverage should, if possible, be construed so that it is not to be a delusion to the insured. *Jostens, Inc. v. Northfield Ins. Co.*, 527 N.W.2d 116, 118 (Minn. Ct. App. 1995). In *Piper Jaffray*, the Court relied on this principle in

broadly construing coverage for "failure to supervise," because if such coverage only included the tort of negligent supervision, there would never be coverage for the insured, and the Court "doubt[ed] the parties intended this . . . to be a practical nullity." *Piper Jaffray*, 967 F. Supp. at 1157.

The illusoriness of coverage under Executive Risk's interpretation of Endorsement Number 3 is all the more apparent in light of the undisputed fact that securities underwriting and securities-related services were the core business activities of Miller & Schroeder. Indeed, James Dlugosch, Chief Executive Officer of Miller & Schroeder, who negotiated and obtained the directors' and officers' coverage at issue in this case, understood and expected that management-related claims against the officers and directors of the Company would be covered under the Policy, with particular reliance on the management carveback. Specifically, Mr. Dlugosch testified that he understood that "Endorsement Number 9 was a clarification to ensure that Endorsement Number 3 was not going to be, would not expose the directors and officers to claims." *See* Exhibit BB to Kolbo affidavit at 48. *See also id.* at 20-21 (describing the nature of Miller & Schroeder's business with respect to securities).

In addition to the problem of illusoriness, the language of the two endorsements, when read together, suggests at least ambiguity and confusion in the relationship between them. Internally, Executive Risk has acknowledged as much. *See* claim notes dated December 19, 2001 (Exhibit AA to Kolbo affidavit). Yet in dealings with its insureds, the insurer has renounced its obligations to defend and indemnify. It is well settled that ambiguities in an policy of insurance are construed against the insurer. *See, e.g.*, *Gareis v. Benefit Ass'n of Ry Employees Ins. Co.*, 169 N.W.2d 730, 732 (Minn. 1969); *Rusthoven v. Commercial Standard Ins. Co.*, 387 N.W.2d 642, 644 (Minn. 1986).

Avoiding an interpretation that results in only the illusion of coverage under the management carveback, and resolving the ambiguity in the relationship between the two endorsements, is simply a matter of acknowledging that the securities exclusion contained in Endorsement Number 3 must be read together and in conformity with the management carveback contained in Endorsement Number 9. Under such an interpretation, Endorsement Number 3 would not operate to exclude coverage for securities claims that are brought within coverage by the management carveback provision of Endorsement Number 9. This result is consistent with the subjective intent of the insured, as shown from Mr. Dlugosch's testimony, and it is a reasonable—indeed the only reasonable—interpretation of the Policy. This interpretation would give effect to the reasonable expectations of the insured and to Minnesota's "strong policy of extending coverage rather than allowing coverage to be restricted by confusing or ambiguous language." *Columbia Heights Motors v. Allstate Ins. Co*, 275 N.W.2d 32, 36 (Minn. 1979). *See also, e.g., Atwater Creamery Co. v. Western Nat'l Mut. Ins.*, 366 N.W.2d 271, 276-77 (Minn. 1985).

Even if Endorsement Number 3 excluded coverage for certain types of securities claims, by its plain terms it does not exclude coverage for alleged violations of NASD Conduct Rules, which are alleged in many of the arbitration proceedings against the Plaintiffs. The endorsement specifies the types of securities claims that are excluded—those arising under the federal and state securities laws and common law claims. However, the Endorsement conspicuously excludes the NASD Conduct Rules and NASD arbitration proceedings, suggesting that if the insurer had intended to exclude them, it would have known how to do so.

The National Association of Securities Dealers is a private, non-profit organization. It develops its own rules and regulations governing securities dealers and provides for mandatory

arbitration of claims in which a NASD rule violation is alleged. Consequently, the NASD Statements of Claim against the Plaintiffs allege numerous violations of the NASD Conduct Rules. For example, the *Eldridge* and *Salley* actions referenced above allege a violation of NASD Rule 2110, which governs "Standards of Commercial Honor and Principles of Trade," a violation of NASD Rule 2210, which governs "Communications with Customers and the Public," a violation of NASD Rule 2310, which governs "Recommendations to Customers (Suitability)," and a failure to supervise claim under NASD Rule 3010, which governs supervisory responsibilities. These claims have nothing to do with the laws or rules listed in Endorsement No. 3. Consequently, the exclusion does not apply to the NASD claims that have been brought against the individual Intervenors.

There are additional reasons for concluding that Endorsement Number 3 does not exclude coverage, including arguments previously made by the Trustee in successfully opposing Executive Risk's motion to dismiss filed at the outset of the this action. *See* Plaintiffs' Memorandum in Response to Defendants' Motion to Dismiss, at 9-10, dated January 15, 2004. Moreover, as a review of the statements of claim and complaints attached to this memorandum reveals, the allegations extend to many claims other than securities-related claims. There are, for example, claims based on fraudulent conveyance of assets and employment-related claims, which would not be excluded by the securities exclusion. On the basis of authorities discussed above with respect to the duty to defend (*see supra* at 16-17), to the extent that any proceeding includes such claims outside the scope of the securities exclusion, Executive Risk has an obligation to provide a complete defense for both covered and uncovered claims in those proceedings.

CONCLUSION

For the foregoing reasons, Intervenors respectfully request the Court to grant its motion for partial summary judgment by ruling that there are no genuine issues as to any material fact and that as a matter of law there is coverage under the Executive Risk Policy for the claims made against the individual Intervenors in the Heritage Bond Litigation.

Dated: October 29, 2004.

MASLON EDELMAN BORMAN & BRAND, LLP

By e/Kirk O. Kolbo

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90 South Seventh Street
Minneapolis, MN 55402
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ATTORNEYS FOR INTERVENORS

#359902 v1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding Corp. f/k/a Miller & Schroeder, Inc. and its subsidiaries, Debtor.	)	Chapter 7 Case BKY Case No. 02-40284 to 02-40286 Jointly Administered
Brian F. Leonard, Trustee, Plaintiff, vs. Executive Risk Indemnity, Inc., Defendant.	)	ADV Case No. 03-4284 **NON-CORE PROCEEDING**
The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden, and John M. Clarey, Kenneth E. Dawkins, and Joseph K. Halloran, Intervenors.	)	

AFFIDAVIT OF KIRK O. KOLBO IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Kirk O. Kolbo, being first duly sworn upon oath, state and allege the following:

1. I am an attorney in the law firm of Maslon Edelman Borman & Brand, LLP licensed to practice law in the State of Minnesota, and I am one of the attorneys representing Intervenors in this matter.

2. Attached hereto as Exhibit A is a true and correct copy of *Eldridge v. Talley, et al.*, Amended Statement of Claim dated July 29, 2003.

3. Attached hereto as Exhibit B is a true and correct copy of selected pages of *In re Heritage Bond Litigation*, Consolidated Class Action Complaint.

4. Attached hereto as Exhibit C is a true and correct copy of *Salley v. Miller & Schroeder Financial, Inc. et al*., Claimant's First Amendment Statement of Claim to Add MM&S Financial, Inc. as a dated October 2, 2001.

5. Attached hereto as Exhibit D is a true and correct copy of *Scott Penwarden's Third Party Claim in Edge v. Penwarden et al.* dated June 6, 2002.

6. Attached hereto as Exhibit E is a true and correct copy of selected pages of *Talley v. Miller & Schroeder Financial, Inc*., Amended Complaint at ¶¶ 25, 27, 28, 29, 34, 241-44.

7. Attached hereto as Exhibit F is a true and correct copy of *Talley's Third-Party Claim in Timmerman v. Miller & Schroeder Financial, Inc*. dated June 6, 2002.

8. Attached hereto as Exhibit G is a true and correct copy of selected pages of *Talley's Third-Party Claim in Salley v. Miller & Schroeder Financial, Inc*.

9. Attached hereto as Exhibit H is a true and correct copy of *Talley Third-Party Claim in Eldridge* dated November 21, 2002.

10. Attached hereto as Exhibit I is a true and correct copy of *In re Fleshman v. Miller & Schroeder Financial Inc.*, Second Amended Statement of Claim dated January 16, 2003.

11. Attached hereto as Exhibit J is a true and correct copy of selected pages of *Bekter v. U.S. Trust Corporation*, Consolidated Fifth Amended Complaint.

12. Attached hereto as Exhibit K is a true and correct copy of *Augusta's Third Party Claim in Fleshman v. Miller-Schroeder Financial, Inc.* dated June 6, 2002.

13. Attached hereto as Exhibit L is a true and correct copy of *Herrmann v. Miller & Schroeder Financial Inc*., Class Action Complaint dated November 20, 2001.

14. Attached hereto as Exhibit M is a true and correct copy of *Shustak v. Clarey*, et al., Statement of Claim dated January 16, 2002.

15. Attached hereto as Exhibit N is a true and correct copy of *Moreland v. Miller & Schroeder Financial, Inc*., Statement of Claim.

16. Attached hereto as Exhibit O is a true and correct copy of *English v. Miller & Schroeder Financial, Inc*., Amended Statement of Claims dated May 28, 2002.

17. Attached hereto as Exhibit P is a true and correct copy of *McCauley v. Miller & Schroeder Financial, Inc*., Claimant's Amended Statement of Claim dated July 31, 2002.

18. Attached hereto as Exhibit Q is a true and correct copy of *In re Heritage Bond Litigation (Class Action)*, (02 ML Docket No. 1475 DT (RCx), Fourth Amended Consolidated Class Action Complaint.

19. Attached hereto as Exhibit R is a true and correct copy of *Respondent Mark Augusta's Cross Claim in Lenser v. Augusta* dated January 15, 2002.

20. Attached hereto as Exhibit S is a true and correct copy of *Onderwyzer v. Miller & Schroeder Financial, Inc*., Second Amended Statement of Claim dated October 1, 2001.

21. Attached hereto as Exhibit T is a true and correct copy of *Formica v. Miller & Schroeder Financial Inc.*, Amended Statement of Claim dated December 12, 2001.

22. Attached hereto as Exhibit U is a true and correct copy of the Affidavit of Kenneth Larsen dated October 29, 2004.

23. Attached hereto as Exhibit V is a true and correct copy of the Policy (No. 8166-6027) issued to Miller & Schroeder, Inc.

24. Attached hereto as Exhibit W is a true and correct copy of a letter dated August 22, 2003 from Chubb Group of Insurance Companies to James F. Dlugosch, et al.

25. Attached hereto as Exhibit X is a true and correct copy of a letter dated October 2, 2003 from Chubb Group of Insurance Companies to Mary Jo Brenden.

26. Attached hereto as Exhibit Y is a true and correct copy of a letter dated October 6, 2003 from Chubb Group of Insurance Companies to Kevin Eukel of Hays Companies.

27. Attached hereto as Exhibit Z is a true and correct copy of the claim notes dated November 5, 2001 produced by defendant in discovery in this case.

28. Attached hereto as Exhibit AA is a true and correct copy of claim notes dated November 30, 2001, December 6, 2001, December 18, 2001 and December 27, 2001 produced by defendant in discovery in this case.

29. Attached hereto as Exhibit BB is a true and correct copy of excerpts from the deposition of James Dlugosch dated September 29, 2004.

FURTHER YOUR AFFIANT SAYETH NOT.

e/Kirk O. Kolbo
Kirk O. Kolbo

Subscribed and sworn to before me
this 29th day of October, 2004.

e/Clarissa D. Robertson
Notary Public

RECEIVED
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NASD DISPUTE RESOLUTION, INC.

In the Matter of the Arbitration between

EUGENE S. ELDRIDGE, individually and as Trustee of the Eldridge Family Trust; U.S. BANK OF WASHINGTON, N.A., as Corporate Co-Trustee of the Eldridge Family Trust; ARTHUR E. ELDRIDGE and LINDEN G. ELDRIDGE as designated Beneficiaries and Successor Co-Trustees of the Eldridge Family Trust; and the ELDRIDGE FAMILY TRUST,
Claimants,

v.

BRUCE RICHARD TALLEY; PATRICK FLYNN; PAMELA HOLTZCLAW; JOHN M. CLAREY, JR.; VICTOR DHOOGE; JAMES F. DLUGOSCH; STEVEN WESLEY ERICKSON; PAUL RICHARD EKHOLM; EDWARD JOEL HENTGES; JAMES IVERSON; KENNETH R. LARSEN; NANCY MELDEN; JEROME TABOLICH; ROGER WIKNER, KENNETH DAWKINS, KENNETH HALLORAN, THOMAS S. NELSON and DANIEL DILL,
Respondents.

In the THIRD-PARTY CLAIM of:

BRUCE RICHARD TALLEY,
Third-Party Claimant,

v.

MM&S FINANCIAL, INC., (n/k/a MARSHALL FINANCIAL , INC.); JAMES E. IVERSON; JEROME A. TABOLICH; EDWARD J. HENTGES; KENNETH R. LARSEN; PAUL R. EKHOLM; JAMES F. DLUGOSCH; KENNETH HALLORAN; KENNETH DAWKINS; TOM S. NELSON; JOHN M. CLAREY, JR.; VICTOR DHOOGE, MARY JO BRENDEN; AND DANIEL DILL,
Third-Party Respondents.

NASD-DR Arbitration No. 02-5426

AMENDED STATEMENT OF CLAIM

MG010950

EXHIBIT A

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Pursuant to the Rules of the National Association of Securities Dealers, Inc. ("NASD"), Claimants Eugene S. Eldridge, U.S. Bank of Washington, N.A., Arthur E. Eldridge, Linden G. Eldridge, and the Eldridge Family Trust (collectively "Eldridge") allege the following claims against Respondents Bruce Talley, Patrick Flynn, Pamela Holtzclaw, James M. Clarey, Jr., Victor Paul Dhooge, James F. Dlugosch, Steven Wesley Erickson, Paul Richard Ekholm, Edward Joel Hentges, James Iverson, Kenneth R. Larsen, Nancy Melden, Jerome Tabolich, Roger James Wikner, Kenneth Dawkins, Kenneth Halloran, Tom S. Nelson and Daniel Dill.

Introduction

1. Twenty-three years ago, Eugene Eldridge and his late wife set up the Eldridge Family Trust to protect the investments that they depended on for their retirement years. Beginning when he was already 93 years old and blind, at Respondents' urging and advice, Eldridge invested over $1.6 million in non-rated, high-risk bonds, all of which were underwritten and sold to him by Respondents' broker-dealer, Miller & Schroeder Financial, Inc. ("M&S"). In making these unsuitable bond sales to the elderly Eugene Eldridge, Respondents engaged in material misrepresentations and omissions. Moreover, the bonds themselves were part of a fraudulent scheme to illegally misappropriate and divert funds based upon misrepresentations and omissions, all of which were known or should have been known by Respondents. As a result, with each of the bonds in default, Eldridge has lost in excess of $1.5 million.

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2. Because Claimant Eugene S. Eldridge is 99 years old, a videotaped deposition was required to preserve his testimony. The deposition was taken, with notice and an opportunity to participate provided to all parties, on April 29, 2003.

3. Most Respondents were senior officials at M&S, a now defunct financial services/brokerage firm and NASD member where Eldridge maintained the accounts at issue. A number of the Respondents also had substantial ownership interests in M&S. Respondent Iverson has testified that in about 1996 M&S had gross revenues in the neighborhood of $30 to $32 million. Before M&S and related entities filed for bankruptcy, key assets were sold to MM&S Financial Inc. (and related companies), to which several of these Respondents also then quickly transferred. As indicated in the bankruptcy filing, M&S has apparently been renamed "Securities Resolution Corporation." M&S's successor for some purposes is the Marshall Financial Group, including MM&S Financial, Inc. n/k/a Marshall Financial Inc.

Parties

4. The Eldridge Family Trust was created in 1979 by Claimant Eugene S. Eldridge and his late wife Betty Eldridge for their benefit and for the benefit of their descendants. The situs and governing law of the Trust is Washington.

5. Claimant Eugene Eldridge, who resides in Seattle, continues to rely on the investments made by the Eldridge Family Trust. Mr. Eldridge is now 99 years old and facing ongoing health challenges. Claimants have requested expedited proceedings in this matter.

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6. Claimant Eldridge Family Trust includes three separate trusts, designated Trust A (the Survivor's Trust), Trust B (the Bypass Trust), and Trust C (the Income Trust). Eugene Eldridge is currently the Trustee or Co-Trustee of each of the Trusts. This matter concerns investments made by Trust A and Trust C. M&S maintained Account No. 38024139 on behalf of Eldridge Family Trust A, and Account No. 38012696 on behalf of Eldridge Family Trust C.

7. Claimant U.S. Bank of Washington, N.A. now serves as the Corporate Co-Trustee of Trust B and Trust C of the Eldridge Family Trust, and is a nominal party only.

8. Claimants Arthur E. Eldridge and Linden G. Eldridge are Eugene Eldridge's sons, and designated successor Co-Trustees and beneficiaries of the Eldridge Family Trust. They are named as Claimants in the event Eugene Eldridge is unable to complete the prosecution of this claim.

9. Claimants have elected not to participate at this time in any putative class action filed against Respondents.

10. Respondent Bruce Talley (CRD No. 1057917) was a registered representative of M&S (CRD No. 7119), holding the title of Senior Vice President, and was the branch manager of the Solana Beach, California office of M&S where the non-rated, high-risk bonds at issue were sold to Eldridge. Talley, along with Respondents Flynn and Holtzclaw, handled Eldridge's accounts at the M&S Solana Beach office and offered, recommended and sold bonds at issue to Eldridge. At all times mentioned herein, Talley was an agent and employee of M&S and acting within the course and scope of his agency and employment.

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11. Respondent Patrick Flynn (CRD No. 1049094) was a registered representative in the Solana Beach office of M&S. Flynn, along with Talley and Holtzclaw, handled Eldridge's accounts at the M&S Solana Beach office and offered, recommended and sold him bonds at issue. According to his CRD, in 1998, a customer brought a claim against Flynn arising from sales of unsuitable corporate bonds; the claim was resolved when M&S repurchased the securities from the customer at their original price. At about that time, his employment at M&S apparently terminated. In 2000, Flynn was censured, fined and suspended by the NASD for recommending and engaging in the purchase and sale in a public customer's account without reasonable grounds for believing the recommendation and sale were suitable in light of the customer's financial situation, investment objectives, health considerations and needs. At all times mentioned herein, Flynn was an agent and employee of M&S and acting within the course and scope of his agency and employment.

12. Respondent Pamela Holtzclaw (CRD No. 263479) was a registered representative in the Solana Beach office of M&S. Holtzclaw, along with Flynn and Talley, handled Eldridge's accounts at the M&S Solana Beach office and offered, recommended and sold him bonds at issue. At all times mentioned herein, Holtzclaw was an agent and employee of M&S and acting within the course and scope of her agency and employment.

13. Respondent John M. Clarey, Jr. (CRD No. 47319), during the relevant time, was the Executive Vice President of M&S, Chief Operating Officer and Chair of the key M&S Credit Committee, with gatekeeper responsibility for reviewing due diligence documents, and the offering materials and approving the offer and sale of non-rated bonds.

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During the relevant period, he was part of a group that acquired M&S and had a substantial investment in M&S. Clarey is designated a "Control Person" in the M&S Form BD. He had the authority to and did communicate directly with investors concerning M&S investments and did so, *inter alia*, with regard to the Heritage Bonds.

14. Respondent Victor Paul Dhooge (CRD No. 1160668), during the relevant time, was a First and/or Senior Vice President of M&S. Dhooge was the lead investment banker for M&S in connection with the Heritage Bond offerings, primarily responsible for the due diligence documentation and preparing the related Official Statements; he also presented deals to the Credit Committee. He was a key participant in the financing and marketing of the bonds, and had substantial communications with others regarding the Heritage Bonds.

15. Respondent James F. Dlugosch (CRD No. 873490), during the relevant time, was the Chairman and Chief Executive Officer of M&S, and a member of the key M&S Credit Committee, with gatekeeper responsibility for reviewing due diligence documents, and the offering materials and approving the offer and sale of non-rated bonds to the public. According to the M&S Form BD, he was also a Director and "Control Person" of M&S. During a relevant period he had a 19 percent interest in M&S. Dlugosch had the authority to and did communicate directly with investors concerning M&S investments and did so, *inter alia*, with regard to the Heritage Bonds.

16. Respondent Paul Richard Ekholm (CRD No. 1027146), during the relevant time, was a Senior Vice President and underwriter of M&S. He also served on the M&S Credit Committee, with gatekeeper responsibility for reviewing due diligence documents,

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and the offering materials and approving the offer and sale of non-rated bonds. After the collapse of M&S, he went on with several other respondents to Marshall Financial, Inc.

17. Respondent Steven Wesley Erickson (CRD No. 201971), during the relevant time, was a Senior Vice President and underwriter of M&S and also a member of the M&S Credit Committee, with gatekeeper responsibility for reviewing due diligence documents, and the offering materials and approving the offer and sale of non-rated bonds. He is also designated as a Principal in his CRD. After the collapse of M&S, Erickson also went on with several other respondents and M&S's assets to Marshall Financial, Inc.

18. Respondent Edward Joel Hentges (CRD No. 729166), during the relevant time, was a Vice-President and Chief Compliance Officer and otherwise had key compliance responsibilities at M&S to ensure its compliance with the securities laws in connection with the underwriting, marketing and sales of securities bonds. Hentges was also designated a "Control Person" in the M&S Form BD. After the collapse of M&S, he also went on, with other Respondents, to Marshall Financial, Inc. as its Chief Executive Officer, President and Director according to its CRD.

19. Respondent James E. Iverson (CRD No. 255720), a former enforcement attorney at the SEC, was an Executive Vice President, a central architect of the Heritage Bond offerings and partner in charge and supervisor at the Southern California M&S branch where Eldridge was sold the bonds. He was also a member of the M&S Credit Committee, with gatekeeper responsibility for reviewing due diligence documents, and the offering materials and approving the offer and sale of non-rated bonds. Until he sold out to other M&S officers and others during the relevant period, he was the long-time 48 or 49 percent

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owner of M&S and Chairman of the Board. Iverson was designated a "Control Person" in the M&S Form BD. According to Iverson, he received estimated gross proceeds of approximately $7-9 million for his part of his ownership interest. He continued as an officer and supervisor of the Solana Beach office after the sale. He supervised, and was responsible for, the financing, structuring and marketing of the Heritage Bonds from the outset, and had extensive communications directly and indirectly with others involved. He supervised, approved and/or ratified the work of Dhooge.

20. Respondent Kenneth Richard Larsen (CRD No. 1912333), during the relevant time, was the Vice-President Finance or Chief Financial Officer of M&S and an investor. After the collapse of M&S, he transferred with other Respondents to Marshall Financial, Inc., as its Chief Financial Officer and a principal according to Marshall Financial's CRD.

21. Respondent Nancy Melden (CRD No. 1296624), during the relevant time, was an officer of M&S. She is identified in her CRD as a former Branch Manager of the Solana Beach office of Miller & Schroeder.

22. Respondent Jerome Tabolich (CRD No. 1935633), during the relevant time, was an officer of M&S. Claimants are informed and believe that he was a member of the M&S Credit Committee, with gatekeeper responsibility for reviewing due diligence documents and the offering materials, and approving the offer and sale of non-rated bonds.

23. Respondent Roger James Wikner (CRD No. 466637), during the relevant time, was a 48.75 per cent owner of M&S, its President, a director and a principal.

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24. Respondent Kenneth Dawkins (CRD No.62841), during the relevant time, was an investor in M&S, an Executive Vice President, and a director and "Control Person" according to the M&S Form BD.

25. Kenneth Halloran (CRD No. 1062541), during the relevant time, was an investor in M&S, a Vice President, and its national sales manager including the Solana Beach office. Halloran was designated a "Control Person" in the M&S Form BD.

26. Thomas S. Nelson (CRD No. 1108782), during the relevant time, was Chief Financial Officer, Chief Compliance Officer and Senior or Executive Vice President. In addition, he is designated on his CRD as President of M&S, and a "Control Person" in the M&S Form BD.

27. Daniel Edward Dill (CRD No. 736761), during the relevant time, was a Senior Vice President and underwriter of M&S, and responsible for underwriting at least one or more of the Development Authority Bonds. According to his CRD, as part of his application for registration he was to be supervised by Respondent Iverson.

28. At relevant times mentioned herein, Respondents Clarey, Dhooge, Dlugosch, Ekholm, Erickson, Hentges, Iverson, Larsen, Melden, Talley, Tabolich, Wikner, Dawkins, Halloran, Nelson and Dill were control persons of M&S. While due to the bankruptcy filing M&S is not itself available to take responsibility for its violations of the federal and state securities laws, these Respondents are. Each had actual authority to control or influence corporate affairs in connection with the underwriting, financing, marketing and/or sale of securities at issue, and each participated in the exercise of control over corporate

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operations of M&S. In addition to those designated above, Claimants are informed and believe that other Respondents were also members of the key M&S Credit Committee.

Hearing Location

29. Pursuant to NASD rules, the hearing in this matter should take place in Seattle, Washington.

Factual Background

30. Eugene Eldridge and his late wife Betty set up the Eldridge Family Trust in 1979. One of the Trust's primary purposes was to provide financial security for the Eldridges during their lifetimes.

31. From 1996 to 1999, M&S arranged for the sale of public municipal bonds in connection with Heritage Housing Development Inc. and its affiliates (collectively "Heritage") and Robert Kasirer and his related entities (collectively "Kasirer"). Heritage and Kasirer and related persons were in the business of acquiring and renovating distressed properties as nursing homes. Kasirer and his affiliates were responsible for managing the development and operation of these start-up Heritage facilities. Heritage offered various bonds as securities on individual nursing facilities to be operated by Heritage/Kasirer. M&S, by and through respondents and others, was a central participant in the scheme to acquire and renovate these distressed properties at various sites around the country, financed by a sequence of offerings of non-rated municipal bonds based upon essentially the same or similar terms and involving the same key persons. In addition to acting as the underwriter for the Heritage bonds, M&S was the broker and primary market maker for Heritage bond sales.

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32. Beginning in 1997, when Eugene Eldridge already was 93 years old, Respondent Patrick Flynn began selling him the non-rated, high-risk bonds that are the subject of this action. After Flynn left M&S, Talley and Holtzclaw took responsibility for the Eldridge account and sold Eldridge additional non-rated, high-risk bonds that also are the subject of this action.

33. In 1997 through 1999, relying on recommendations by Respondents Flynn, Talley, and/or Holtzclaw, Eldridge purchased bonds from seven different offerings that were issued in connection with Heritage, at an investment totaling $1,350,389 (the "Heritage Bonds"), and three other bonds issued by housing development authorities in Illinois and Indiana at an investment of $299,162 (the "Development Agency Bonds"). A list of these bonds is included in **Exhibit A** hereto.

34. All of these bonds went into default. Eldridge hereby tenders the Heritage Bonds and Development Agency Bonds back to Respondents.

35. In selling the Heritage Bonds and Development Agency Bonds to Eldridge, Respondents represented that these securities were safe, sound and suitable investments for Eldridge. Such representation was false. Indeed, not only were the bonds plainly unsuitable for someone of Eldridge's age, but Respondents failed to make material disclosures, and made material misrepresentations about the bonds and their issuers. Material omissions included but were not limited to the bonds' undisputed high-risk/highly-speculative character, the long terms of the bonds, the risks of a limited secondary market, the risks and unsuitability of concentrating such a large amount of Eldridge's critical retirement assets in such high risk bonds, and the additional risks and unsuitability of

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concentrating the majority of the bonds in one interrelated group of securities (*i.e.* the Heritage Bonds). They also misrepresented and/or omitted additional material facts, including those in paragraph 39, below.

36. Respondents represented that they had particular expertise in municipal bonds like the securities at issue in this case.

37. M&S acted as both the underwriting investment banker and selling broker for the bonds at issue. Moreover, Respondents knew or should have known the relevant facts surrounding the bonds sold to Eldridge.

38. The Heritage Bonds and Development Agency Bonds were not in fact safe and sound investments. Moreover, by the summer of 1998, senior executives of M&S, including named control person Respondents in this matter, were aware that the bonds sold to Eldridge had serious problems. Eldridge is informed and believes that Respondents deliberately withheld material information regarding these securities from investors, including Eldridge.

39. Eldridge was sold his first of seven purchases of Heritage Bonds in July 1998, after M&S and Respondents had already underwritten and sold the first five offerings beginning in 1996. Respondents were in regular contact with Kasirer/Heritage personnel as the new offerings were prepared. Not only were the earlier offerings of the Heritage Bonds high-risk and subject to undisclosed problems, but by this time there was even more reason for Respondents to be aware and/or on notice of an array of material risks that were undisclosed and/or misrepresented to investors, including Eldridge. These included but were not limited to: cost overruns, construction delays, and revenue shortfalls concerning

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one or more prior offerings and related facilities; illegal misappropriation, diversion or commingling of prior offering proceeds from their proper purposes; serious judgments, liens and legal claims against Kasirer and other relevant entities (including Heritage entities); serious concerns about Kasirer's integrity, ability to perform the critical management functions required for the facilities to be viable and/or other management problems; an undisclosed loan by M&S to Heritage prior to the first Heritage offerings to fund initial activities, raising doubts about the underlying viability of Heritage and creating a conflicting interest on the part of M&S; and other material problems. Heritage and Kasirer fraudulently concealed material deficiencies by diverting funds from later offerings to the benefit of the facilities associated with the earlier offerings. Indeed, had the true facts been disclosed, these bond offerings sold to Eldridge would have been unmarketable. Instead, without meaningful disclosures, M&S and Respondents went on underwriting, marketing, and selling the bonds (at great profit) to its many retired customers and others until later in 1999 when M&S and Respondents ceased trading in Heritage bonds and refused to undertake further underwriting. In that eight-month period, M&S underwrote and sold to the 94-year-old Eugene Eldridge seven securities from these ongoing Heritage offerings totaling $1,350,389—including the very last Heritage offering in March 1999, all of which later defaulted.

40. In marketing the Heritage Bonds, M&S specifically sold to retired and elderly investors such as Eldridge and those with a concern for care of the elderly. Indeed, a large percentage, if not a majority, of individual customers of the M&S Solana Beach office were

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retired persons. Eldridge was known as a good customer at the Solana Beach office who purchased its bond issues

41. The Heritage Bonds and Development Authority Bonds all are in default and have lost virtually all of their value. Eldridge has recovered only $81,180 from his investments. The total losses incurred by Eldridge, exclusive of costs and fees, are presently $1,568,371, plus interest through December 31, 2003 in the amount of $1,038,449. See **Exhibit B** hereto.

Breach of Securities Regulatory Requirements

42. At all times relevant herein, Respondents were members of the NASD, which mandates certain minimum standards of conduct for its members. Respondents violated these standards, including the provisions set forth below.

43. Section 2110 of the NASD Conduct Rules requires its members to observe high standards of commercial honor and just and equitable principles of trade. In handling Eldridge's accounts, Respondents failed to observe a high standard of commercial honor. Respondents solicited and recommended strategies and transactions that were not in the best interests of their clients, but instead profited them. Respondents solicited and recommended unduly risky and unsuitable investment strategies through material misrepresentations and omissions, in disregard of Eldridge's rights, interests and investment objectives.

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44. Section 2310(a) of the NASD Conduct Rules provides: "[i]n recommending to a customer the purchase, sale, or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by the customer, as to his securities holdings and as to his

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financial situation and needs." The risky and speculative bond sales by Respondents to Eldridge did not comply with this rule.

45. NASD Rule 2110(d) prohibits misstatements and omissions of material facts in communications with the public. As alleged above, Respondents violated this provision.

46. Respondents Clarey, Dhooge, Dlugosch, Ekholm, Erickson, Hentges, Iverson, Larsen, Melden, Talley, Tabolich, Wikner, Nelson, Halloran and Dawkins also violated NASD Rule 3010 in failing to adequately supervise M&S's representatives.

Negligence, Negligent Supervision, and Misrepresentation

47. In order to induce Eldridge to purchase the defaulted bonds, Respondents negligently made misrepresentations and omissions of material fact to Eldridge. Among other things, Respondents misrepresented that the bonds were suitable for Eldridge, and were safe and secure investments.

48. Further, Respondents omitted to state to Eldridge material facts which they should have disclosed, including, among other things, that the bonds were not suitable investments and that the bonds were high risk investments. There were also material omissions and nondisclosures, including those described in paragraphs 35 and 39, above.

49. Each of these misrepresentations and omissions was material to Eldridge, and each of these omissions was a negligent misrepresentation to Eldridge.

50. Respondents made these misrepresentations and omissions with the intent to induce Eldridge to rely thereon. At the time the misrepresentations and omissions were made, they were made with negligent disregard for the truth. Eldridge detrimentally relied

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directly and/or indirectly on material misrepresentations and omissions made by Respondents, and Respondents were aware of such reliance by Eldridge.

51. Respondents owed Eldridge a duty of reasonable care in selling him securities. Respondents acted in a grossly negligent manner by failing to comply with not only their own rules, regulations and standards of conduct and supervision, but those imposed by the self-regulatory organizations as well.

52. Respondents had a duty to investigate appropriately and to ensure that all material information was fully disclosed and accurately stated in the offering documents and otherwise for the benefit of potential investors, including Eldridge.

53. Respondents were required to properly supervise the employees working under their control, and to exercise due care in doing so.

54. Respondents were negligent in failing to supervise properly the M&S agents, representative and employees involved in the underwriting, marketing and sale of the defaulted bonds and the handling of the Eldridge accounts.

55. Respondents breached their duties to Eldridge, and as a consequence, have proximately caused Eldridge to suffer damages.

56. Eldridge is entitled to recover from Respondents the damages resulting from Respondent's conduct, plus interest and attorney fees.

Securities Fraud and Common Law Fraud

57. In connection with the rendering of investment advice and in connection with the purchase and sale of securities, Respondents:

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(a) directly or indirectly employed a device, artifice or scheme to defraud Eldridge in that they knowingly, recklessly or negligently engaged in acts, transactions, practices and courses of business which operated as a fraud or deceit upon Eldridge;

(b) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in unethical and dishonest practices.

Such conduct violated the provisions of the Washington State Securities Act, RCW 21.20.010, 21.20.020. Respondents also violated RCW 21.20.430(3).

58. In order to induce Eldridge to make certain investments and/or transactions and not to make certain transactions, Respondents knowingly and/or recklessly made misrepresentations and omissions of material fact to Eldridge. Among other things, Respondents misrepresented that:

(a) Certain investments were suitable for Eldridge;

(b) Eldridge's assets were adequately protected; and

(c) The misrepresentations described in paragraphs 35 and 39, above

59. Further, Respondents omitted to state to Eldridge material facts which operated as a fraud on Eldridge including, among other things, that;

(a) The investment and/or transactions were not suitable;

(b) Eldridge's assets were not adequately protected;

(c) The omissions described in paragraphs 35 and 39, above.

60. Each of these omissions and misrepresentations was material to Eldridge and each of these omissions and misrepresentations operated as a fraud on Eldridge.

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61. Respondents made these misrepresentations and omissions with the intent to induce Eldridge to rely thereon. At the time the misrepresentations and omissions were made, they were false or were made with reckless or negligent disregard for the truth.

62. Eldridge directly and/or indirectly relied to his detriment on material misrepresentation and omissions made by Respondents and Respondents were aware of such reliance by Eldridge.

63. Respondents' conduct also violated California Corporations Code §§ 25401, 2501, and 25504.

64. Respondents' conduct also violated Sections 11 and 12 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 77k *et seq.*

65. Eldridge is entitled to recover from Respondents the damages resulting from Respondents' conduct, plus interest and attorney fees.

Breach of Fiduciary Duty

66. Eldridge entrusted his investments to Respondents, paying for their claimed expertise and relying upon their claimed expertise, and expected Respondents to provide reasonable investment advice consistent with Eldridge's investment needs and to warn of unsuitable investment strategies.

67. Respondents acted as fiduciaries to Eldridge.

68. Respondents owed Eldridge fiduciary duties to act in a fair, honest, just, trustworthy and equitable manner; to act with prudent care; to act in furtherance of Eldridge's best interests with the utmost care and loyalty, not for themselves; not to favor

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their own interest at Eldridge's expense and detriment; and to provide prompt and full disclosure of all material facts pertaining to his investments.

69. Respondents breached their fiduciary duties and conducted themselves towards Eldridge in a willful, reckless, and malicious manner by undertaking to deceive and harm Eldridge by misrepresentation, omission and conduct that placed Eldridge's account and assets at risk, by placing their own interests (financial and/or otherwise) above his, by failing to be informed of or take prudent action with information reasonably available to them, by failing to ensure disclosure of all material information, and by failing to perform adequate due diligence and investigation. Moreover, specifically with regard to the Heritage Bonds, Respondents breached this duty by permitting diversion of funds from their appropriate projects and failing to adequately monitor the projects on an ongoing basis.

70. The burden of proof is on the fiduciary to demonstrate no breach of loyalty has been committed. Respondents cannot meet this standard.

71. Eldridge is entitled to recover from Respondents the damages resulting from Respondent's conduct, plus interest and attorney fees.

Unfair and Deceptive Business Practices

72. Respondents falsely and inaccurately represented that the bonds sold to Eldridge were high quality and low risk, and that the issuers were economically viable. Respondents were also responsible for the misrepresentations and omissions described in paragraphs 35 and 39, above. In fact, Respondents knew or should have known of material adverse and negative facts surrounding the bonds and their issuers.

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73. Respondents' conduct was unfair, deceptive, unlawful and fraudulent, and therefore in violation of RCW 19.86.020 *et seq.* and California Business & Professions Code §17200.

74. Eldridge was damaged as a result of Respondents' unfair, deceptive, unlawful and fraudulent conduct, and is entitled to recover damages and attorney fees under the Acts.

Unjust Enrichment

75. As a result of the conduct alleged above, Respondents gained economic benefits, including commissions and other compensation.

76. Respondents have and retain money or benefits, which in justice and equity belong to Eldridge.

77. By obtaining such economic benefits, Respondents were unjustly enriched.

78. Under principles of equity, Respondents should be required to disgorge such economic gain.

Elder Abuse

79. At all relevant times herein, Eugene Eldridge was over the age of 65, and therefore a senior citizen as defined by California Civil Code Section 1761. He was a resident of California at the time of at least some of the bond purchases that are the subject of this case.

80. Under California Civil Code Section 3345, when a defendant is found liable and there is a statutory basis for any remedy the purpose of which is to punish or deter, the trier of fact may increase the amount of any such remedy by up to three times if it makes an affirmative finding in regard to one or more of the following factors:

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(a) The defendant knew or should have known that his conduct was directed to a senior citizen;

(b) The defendant's conduct caused a senior citizen to suffer: loss of a source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or government benefits program, or assets essential to the health or welfare of the senior citizen; or

(c) The senior citizen was substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

81. California Welfare and Institutions Code Section 15657 provides that, where a defendant is liable for financial abuse of an elder and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, the court shall award to the plaintiff reasonable attorneys' fees and costs. California Welfare and Institutions Code Section 15610.30 states that financial abuse of an elder occurs when a person engages or assists in taking, secreting or appropriating real or personal property of an elder to a wrongful use or with intent to defraud, or both.

82. Respondents' wrongful conduct, as alleged above, entitles Eldridge to recover treble damages, attorneys' fees, and costs, under these provisions.

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Request for Relief

Claimants request that the Arbitrators enter an award in favor of Claimants and against Respondents, jointly and severally, for the following:

A. Award rescinding the purchase of the bonds and reimbursing Eldridge for their purchase price;

B. Award of in excess of $1,568,371 in actual damages for the losses suffered by the Claimants, exclusive of interest, attorney fees and costs;

C. Award of punitive and exemplary damages;

D. Award of pre-award and post-award interest;

E. Award of fees, expenses and costs to Claimants as provided by contract, statutes, NASD rules, equity or any other ground recognized by the Arbitrators;

F. Award of all NASD hearing and filing fees; and

G. Such other relief as the Arbitrators deem just and proper.

DATED this 29th day of July, 2003.

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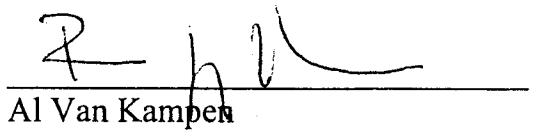

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and four copies of this Amended Statement of Claim were served via First Class Mail, postage prepaid, on Mr. Hassan A. Abedi at NASD Dispute Resolution, 300 South Grand Avenue, Suite 900, Los Angeles, California 90071, and copies of the Amended Statement of Claim were also served on the following:

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Dated this 27 day of July, 2003

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Tiffany H. Guimaraes

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EXHIBIT A

	BOND	CUSIP No.	Investment	Maturity	Date Purchased
Eldridge Family Trust A					
1.	Danforth Tex Health Facs Corp Rev 7.325% Heritage Duval Gardens – A	236141CF	$200,614	07/01/2028	07/08/98
2.	Tarrant Cnty Tex Health Facs 7.50% Heritage Eastwood Gardens – A	87638LDY	$250,260	12/01/2028	12/03/98
3.	Tarrant Cnty Tex Health Facs 7.75% Heritage VLY Gardens Ser – A	87638LFY	$200,689	03/01/2029	03/11/99
4.	Desert Hot Springs Calif Pub 6.50% Ref/Impt – Hlth Care Heritage	25041LAV	$197,181	08/01/2028	08/19/98
5.	Chicago Illinois Health Facs 7.625% Health Care – Ser A	16753AAQ	$200,678	07/01/2028	07/23/98
6.	Beech Grove Ind Economic Dev Rev 7.00% Beech Grove VGLG Apts PJ-SR-A	076698CB3	$101,166	01/01/2028	11/14/97
7.	Beech Grove Ind Economic Dev Rev 7.00% Diplomat South Apts PJ-SR-A	076698CZ	$97,860	01/01/2028	12/11/97
Eldridge Family Trust C					
8.	Chicago Illinois Health FACS 7.325% Heritage Care – Ser A	16753AAP	$200,655	07/01/2012	07/28/98
9.	Mexico Beach Fla Pub SVC Facs 7.50% Heritage House Seminole PJ – A	59283TBJ	$100,312	12/01/2028	12/17/98
10.	Illinois Dev Fin Auth Multi-family 7.00% Mtg-Spring Grove Apts – SR – SER A	451915AU	$100,136	01/01/2029	12/03/98

EXHIBIT B

Eldridge Family Trust A	Investment	Interest at 12% to 12/31/03	Total
1. Danforth Tex Health Facs Corp Rev 7.325% Heritage Duval Gardens-A	$200,614	$132,042	$332,656.00
2. Tarrant Cnty Tex Health Facs 7.50% Heritage Eastwood Gardens-A	$250,260	$152,542	$402,802.00
3. Tarrant Cnty Tex Health Facs 7.75% Heritage VLY Gardens Ser-A	$200,689	$115,861	$316,550.00
4. Desert Hot Springs Calif Pub 6.50% Ref/Impt-Hlth Care Heritage	$197,181	$127,060	$324,241.00
5. Chicago Illinois Health Facs 7.625 Health Care-Ser A*	$200,678	$125,180	$325,858.00
6. Beech Grove Ind Economic Dev Rev 7.00% Beech Grove VGLG Apts PJ-SR-A*	$101,166	$68,066	$169,232.00
7. Beech Grove Ind Economic Dev Rev 7.00% Diplomat South Apts PJ-SR-A*	$ 97,860	$65,230	$163,090.00
Eldridge Family Trust C			
8. Chicago Illinois Health Facs 7.325% Heritage Car-Ser A	$200,655	$130,750	$331,405.00
9. Mexico Beach Fla Pub SVC Facs 7.50% Heritage House Seminole PJ-A	$100,312	$60,682	$160,994.00
10. Illinois Dev Fin Auth Multi-family 7.00% Mtg-Spring Grove Apt-SR-SER A	$100,136	$61,036	$161,172.00
TOTALS	**$1,649,551.00**	**$1,038,449.00**	**$2,688,000.00**

* Nos. 5-7 were sold in 2002 for $25,700; $27,680 and $27,800 respectively. Interest figures are adjusted accordingly.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

In re HERITAGE BOND LITIGATION Gilbert Kivenson, Raymond Stits, Edith Stits, Howard Preston, and Rosanna Preston, individually and on behalf of all others similarly situated, Plaintiffs, v. U.S. Trust Company of Texas, N.A., U.S. Trust Corporation, Danforth Health Facilities Corporation, Tarrant County Health Facilities Development Corporation, City of Mexico Beach, Desert Hot Springs Public Financing Authority, City of Chicago, Jerold Goldstein, Onofrio V. Bertolini, Stephen P. Goodman, Evan Greenspan, Andrew Kornreich, Cary Medill, Emery Rubin, Larry A. Rubin, Herbert Saltzman, Virgil Lim, Clarke Underwood, Donald B. Chalker, Marshall Wexler, Robert Kasirer, Debra Kasirer, Bistra & Munkacs Holdings, Inc., JDDJ Holdings, L.P., Health Care Holdings, LLC, CareContinuum, LLC, Louis Pontarelli, William Filippone, Leo Dierkman, Alan Pollak, Geri Ostlund, Richard Kuhl, James E. Iverson, Victor P. Dhooge, John M. Clarey, James F. Dlugosh, Edward J. Hentges, Kenneth R. Larsen, Jerome E. Tabolich, Steven W. Erickson, Jerome E. Ekholm, Joel T. Boehm, Sabo & Green, Atkinson, Andelson, Loya, Ruud & Romo, Valuation Counselors Group, Inc., Coddington Appraisal Services, Capital Consulting Group, Inc., Healthcare Financial Solutions Group, Inc., Zelenofske, Axelrod & Co., Ltd., Berman and Bertolini, Inc. aka Berman & Associates, Michael Sobelman, and Sobelman Cohen & Sullivan LLP, Defendants.	Case No. CV 01-5752 DT (RCx) Consolidated With Case Nos: CV 02-382 DT (RCx) CV 02-993 DT (RCx) CV 02-2745 DT This Document Relates To: CV 02-382 DT (RCx) CV 02-993 DT (RCx) CONSOLIDATED CLASS ACTION COMPLAINT

EXHIBIT B

the same extent as such person, unless the other person who is so liable had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist."

282. As alleged above, the identified Defendants exercised "Control" over the Heritage Entities. They shaped the direction of management and policies. Kasirer through his daily oversight responsibilities, Goldstein, Bertolini, E. Rubin and Kornreich through supervision of high-ranking personnel, and Goodman and Lim as the principal accounting personnel. These Defendants reviewed and approved the Official Statements, along the agreements and other matters affecting the Heritage Entities. In addition, Goldstein and Bertolini signed the Official Statements, acted as principal executive Officers and Directors of the Heritage Entities, actively promoted the Heritage Bonds, and participated in the strategy and structuring of the offerings. As such, these Defendants bear "control" person liability under section 25504 for the Heritage Entities, violations of Section 25501.

283. The Miller & Schroeder Principals also bear liability under Section 25504 for Miller & Schroeder's violation of Section 25501. These principals exercised "control" over Miller & Schroeder's management and policy, and served as, or performed functions similar to, principal executive Officers or Directors of Miller & Schroeder, as alleged above. Given their positions of influence, the Miller & Schroeder Principals bear "control" person liability under Section 25504 for Miller & Schroeder's violations of Section 25501.[55]

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[55] No claim is plead in this complaint for violation of § 25501 as the claim is barred against Miller & Schroeder, due to its bankruptcy, and there is no point in suing the Heritage Entities as they are suspended corporations. However, Plaintiffs contend that Miller & Schroeder and the Heritage Entities violated § 25501.

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PHILLIP J. SALLEY

BEFORE THE ARBITRATION PANEL OF THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS

PHILLIP J. SALLEY, TRUSTEE, PHILLIP J. SALLEY REVOCABLE TRUST, UAD 6/30/93; PHILLIP J. SALLEY Plaintiffs, vs. MILLER & SCHROEDER FINANCIAL, INC., a Minnesota corporation; MARSHALL, MILLER & SCHROEDER, INC.; JAMES DLUGOSCH, JAMES IVERSON, JOHN CLAREY, ROGER WICKNER, NANCY MELDON, VICTOR DHOOGE, BRUCE TALLEY and DOES 1 through 25, inclusive, Defendants.	)	Case No. 01-03445 **CLAIMANT'S FIRST AMENDMENT STATEMENT OF CLAIM TO ADD MM & S FINANCIAL, INC. AS A RESPONDENT**

Pursuant to NASD Code of Arbitration Procedure Rule 10328 (a), Claimants hereby submit this First Amendment to the Statement of Claim, which shall be incorporated into the Statement of Claim as if set forth fully therein.

EXHIBIT C

AMENDED PARTIES

1. Respondent MM & S Financial, Inc. is a member of the National Association of Securities Dealers (CRD #114903) and subject to its rules. Respondent MM & S Financial, Inc. purchased the assets of Miller & Schroeder, Inc. pursuant to a purchase agreement in which substantially all or all of Miller & Schroeder, Inc.'s assets were obtained and are now being used by MM & S Financial, Inc. Pursuant to Code of Arbitration Procedure, Claimants hereby amend the Statement of Claim to include MM & S Financial, Inc. as a Respondent.

RESPECTFULLY SUBMITTED:

MARRON & WILSON, LLP

Date: January 22, 2002

E. Michael Wilson
Attorney for Claimants

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CASE NAME: Salley v. Miller CASE NO.: 01-03445

PROOF OF SERVICE BY MAIL
(CCP 1013 a(1) & (3) Local Rules, Division II, Rule 6.7)

I, L. Michael Wilson, declare that: I am over the age of 18 years and not a party to the case; I am employed in the County of San Diego, California, where the mailing occurs; and my business address is 1475 6TH Avenue, 3rd Floor, San Diego, CA 92101.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following documents:

CLAIMANT'S FIRST AMENDMENT STATEMENT OF CLAIM TO ADD MM & S FINANCIAL, INC. AS A RESPONDENT

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows: (See Attached Mailing List)

I then sealed each envelope and, with postage thereon fully pre-paid,

[ ] I deposited each in the United States Postal Service at:

[X] I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 22, ~~2002~~, 2001.

L. Michael Wilson

ATTACHMENT TO PROOF OF SERVICE BY MAIL

Ianthe Philips
NASD Dispute Resolution, Inc.
300 S. Grand Ave, Suite 1620
Los Angeles, CA 90071

Edward J. Hentges, Pres, MM & S Financial, Inc.
MM & S Financial, Inc., 150 South Fifth Street, Suite 3000
Minneapolis, MN 55402

FILE COPY

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PHILLIP J. SALLEY

BEFORE THE ARBITRATION PANEL OF THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS

PHILLIP J. SALLEY, TRUSTEE, PHILLIP J. SALLEY REVOCABLE TRUST, UAD 6/30/93; PHILLIP J. SALLEY Plaintiffs, vs. MILLER & SCHROEDER FINANCIAL, INC., a Minnesota corporation; MARSHALL, MILLER & SCHROEDER, INC.; JAMES DLUGOSCH, JAMES IVERSON, JOHN CLAREY, ROGER WICKNER, NANCY MELDON, VICTOR DHOOGE, BRUCE TALLEY and DOES 1 through 25, inclusive, Defendants.	Case No. **STATEMENT OF CLAIM**

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I.

INTRODUCTION

1. Miller and Schroeder Financial, Inc., ("Miller") was bought out in late 1996/early 1997 by its now CEO, Mr. James Dlugosch. Specifically, Mr. Dlugosch bought out the two former owners of Miller, Mr. James Iverson and Mr. Roger Wickner for about $17 million. On information and belief, the buy-out was financed from Miller's underwriting of bond deals, including Heritage Healthcare Bonds issued and sold throughout the country. The essence of these deals was that each of the parties involved would collect substantial fees for their participation; passing the cost to the investors. These fees included underwriting fees for Miller, management fees for Mr. Kasirer, and architectural fees for Mr. Bertolini.

2. Due to the fact that the substantial fees were lining the pockets of the participants, certain disclosures and duties were overlooked and/or purposely not made, and Miller and its executives failed to properly perform the underwriting duties and subsequent disclosures mandated therefrom. Further, in order to "push" these shady deals, Miller enlisted the help of it army of brokers and made it known that Miller must sell these issues to rid their inventory of them. Of these brokers, Mr. Bruce Talley was Mr. Salley's broker and sold Mr. Salley these bonds under the representations that they were safe, income producing municipal bonds. Mr. Salley placed his trust and confidence in Mr. Talley who represented he and Miller were experts in these investments, that they were safe, income producing investments, and there was no risk of loss to the principal.

3. Eventually the bonds defaulted, but only after Mr. Iverson and Mr. Wickner were paid, Mr. Dlugosch retained control of Miller, and the other parties collected their fees. Mr. Salley, along with many other bondholders including the Heartland Funds, were left holding the bag. Mr. Salley lost approximately $1.5 million of his retirement money.

4. Several indications of Miller's credibility in the bond business have recently arisen. Notably, Miller, one of its executive vice-presidents, and Miller's bond lawyer John Larsen recently

agreed to pay a total of $400,000 to settle allegations made by San Bernadino County, California, and several authorities, that they bribed county officials to obtain municipal bond business.

II.

PARTIES

5. Plaintiff, PHILLIP J. SALLEY, is and was during the relevant time period, the trustee of the PHILLIP J. SALLEY REVOCABLE TRUST (UAD 6/30/93), [referred to herein as "the Trust"]. Mr. Salley is a resident of California residing at 3345 Caminito Daniella, Del Mar, CA 92014.

6. Defendant MILLER & SCHROEDER FINANCIAL, INC. (hereinafter "Miller") is Minnesota corporation with its principal place of business located at 150 South Fifth Street, Suite 3000, Minneapolis, Minnesota 55402. Miller is qualified to do business in California and is a licensed broker-dealer under the laws of California and the United States. Miller is a member of the National Association of Securities Dealers; Miller transacts business in the municipal securities market and is governed by the rules of the NASD, the Municipal Securities Rulemaking Board, the Securities and Exchange Commission, and federal and state securities laws. During the relevant time period, Miller maintained a branch office location in Solana Beach, California, from which it offered and sold securities (particularly, bond investments) to the public. Said office has recently been closed due to Miller's exodus from the retail securities market.

7. Defendant MARSHALL, MILLER & SCHROEDER, INC. ("Marshall") is believed to have purchased Defendant MILLER & SCHROEDER FINANCIAL, INC. The Minneapolis Secretary of State records shows that Marshall was formed on April 5, 2001. Current NASD records do not show a change in licensing or business structure.

8. Defendant James F. Dlugosch is Miller's Chief Executive Officer and Chair of the Board of Directors. On information and belief, Mr. Dlugosch and Mssrs. Iverson and Wickner organized the buy-out, which was to be financed by underwriting fees received from the Heritage bonds and other speculative bonds.

9. Defendant James Iverson was a former Director, Vice President, and controlling shareholder of Miller and Schroeder Financial, Inc. and now is employed by Miller. On information and belief, Mr. Wickner received buy-out payments for his interests in Miller & Schroeder Financial, Inc. based on proceeds from underwriting of the Heritage bonds.

10. Defendant Roger James Wickner was a President, Director, of Miller & Schroeder Financial, Inc., and was the former part-owner of Miller & Schroeder Financial, Inc.. On information and belief, Mr. Wickner received buy-out payments for his interests in Miller & Schroeder Financial, Inc. based on proceeds from underwriting of the Heritage bonds.

11. Defendant Victor Dhooge was on information and belief the President (or held such title and responsibilities as would be commensurate with the title of President) of the Underwriting Department and organized, cooridinated, and performed or managed the performance of all Miller's due diligence responsibilities relating to Miller's underwriting of bonds, which are the subject of this complaint.

12. Defendant Nancy Meldon was on information and belief the Chief Compliance Officer at Miller. Ms. Meldon was responsible for review, inspection, and approval of certain aspects of Miller's due diligence responsibilities and supervisory resonsibilities over customer accounts including the accounts at issue.

13. Defendant John Clarey was an Owner of Miller and also had responsibilities for customer service and complaints. Mr. Clarey was a member of Miller's Credit Committee, which had oversight and approval powers and duties over all of Miller's underwriting ventures including the ones which are the subject of this complaint.

14. Defendant Bruce Talley was a Senior Vice President and Mr. Salley's account executive at Miller's Solana Beach California office, which has since closed due to Miller's exodus from the retail securities market.

III.

FACTUAL ALLEGATIONS

15. Miller held itself out as an experienced underwriter of municipal bonds.

16. Talley and Miller at all material times were governed by state and federal securities laws, the rules and regulations of the NASD, the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, and the California Department of Corporations.

17. At all relevant times, Mr. Talley was aware and knew that Mr. Salley's investments were made for his retirement. Prior to investing with Miller and Talley, Mr. Salley had little experience investing in bonds. Mr. Salley had previously invested only in very low-risk investments.

18. Sometime in 1997, Mr. Talley cold called Mr. Salley and after several conversations regarding municipal bonds, Mr. Talley gained Mr. Salley's trust and confidence. Mr. Salley expressed his goals of investing for safety of principal and income. Talley and Miller represented that they were very experienced in tax-free municipal bond offerings as well as other bond offerings and agreed they would recommend bond investments commensurate with Mr. Salley's expressed goals. Mr. Salley soon invested $1.5 million based on Mr. Talley's "expert" recommendations.

19. In stark disregard for Mr. Salley's requests for safe municipal bond investments, Miller and Talley recommended and sold to Mr. Salley many bonds outside of Mr. Salley's stated objectives. Talley recommended several bonds underwritten by Miller and represented these bonds to be safe, income producing investments.

20. Over the course of their relationship, Talley persuaded Mr. Salley to invest in "Heritage"[1] industrial revenue bonds ("IRBs") and several other bond offerings promoted by Miller. Eventually, most of these investments would either default, enter bankruptcy, or the underlying value become worthless. Mr. Salley's losses from the Heritage bond investments with Miller totaled $1.5 million.

21. At all relevant times surrounding Mr. Salley's bond purchases, Talley and Miller represented that the bonds were low-risk in character. On several occasions, Talley, in order to assure Mr. Salley of the Heritage bonds' risk level, represented the investments were safe because "no California Municipal Bond has ever defaulted." Talley further represented on many occassions before and after the sales of the bonds to Mr. Salley that he and other executives at Miller had personally

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[1] The Heritage bonds include all bonds offered through the various Heritage entities in various states.

inspected the facilities and that the Heritage entities were completing their stated objectives according to plan and there were "no problems" with the projects.

22. At all material times, Miller and Talley knew or should have known that the bonds were unrated, or of questionable viability, and that, if rated, such rating would have been such as to indicate that the ability of Heritage to meet their obligations in connection with the debentures was subject to substantial doubt in light of its financial condition at the time of the offering and their then recent financial history. Thereby meaning that the bonds were in fact not "safe" and were extremely risky.

23. Further, Miller and Talley knew or should have known, due to their underwriting research and position as financial advisor to Heritage, that the financial condition of Heritage was such that the projects were not feasible from inception due to several factors including but not limited to: 1) the "soft costs" (fees to consummate the deals) of the projects were too high on a percentage basis, 2) revenues to be derived from the facilities were unreasonably overstated, 3) the appraisal values of the land and facilities were overstated, and 4) the costs and expenses for operating long-term health care facilities were unreasonably underestimated.

24. In connection with the sales of the debentures and with the intent of inducing Mr. Salley to purchase the debentures, Miller and Talley failed to disclose material negative and adverse facts, which facts were known to Miller and Talley or would have been known to them in the exercise of reasonable care, including but not limited to the following:

a. The audited financial statements were outdated.

b. The issuers were highly leveraged.

c. The issuer's financial condition was such that it was unlikely to be able to service the debentures in accordance with the terms thereof.

d. From 1997 throught the date of Plaintiff's purchases, the issuers earnings were either insufficient or barely sufficient to cover its then fixed charges.

e. The issuer's cash flows were negative or close thereto from their inception through the offering of the bonds.

f. The issuers customarily borrowed additional amounts to pay existing obligations.

g. Miller was compensated a high percentage of the principle amount of the securities offered.

h. Total expenses of the offering were an excessive percentage of the principle amounts offered.

i. A substantial portion of the earnings from the Heritage bonds was required to be paid to certain entities in which Heritage or their insiders had pecuniary interests.

j. Heritage was insolvent at all relevant times herein.

k. There was significant commingling of funds among the different Heritage projects such that the Heritage combined offerings violated the applicable Bond documents and thus was misrepresented in the various prospectuses provided to the bondholders

25. The misrepresentations and omissions of material facts related to the sales of the debentures by Miller and Talley violated state and federal laws regulating underwriters, the rules, regulations, standards of conduct imposed on licensed brokers and agents by the SEC, the California Department of Corporations, the Municipal Securities Rulemaking Board and the NASD.

26. Said misrepresentations and omissions of material facts were made negligently and/or purposefully and with intent in order to accomplish the sale of the debentures to Mr. Salley.

27. The purchases by Mr. Salley were made in reliance upon and/or assuming the absence of any material negative information about the issuer of the debentures. Mr. Salley's reliance on his broker was justified in that Mr. Salley relinquished his trust and confidence to Mr. Talley by way of their fiduciary relationship.

28. Not until after Mr. Salley's purchase of the debentures, which determination was based on the oral representations of Talley (no other information having been provided to Mr. Salley when the decision to purchase was made), which representations were misleading because they did not include any material adverse or negative information about the Heritage entities, did Miller furnish to Mr. Salley a prospectus that described such debentures.

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BACKGROUND INFORMATION ON MILLER & SCHROEDER, INC.

29. On information and belief, Mr. James Iverson and Mr. Roger Wickner were the owners of Miller until sometime in early 1997. Mr. James Dulugosh arranged to buy out Iverson and Wickner and finance the buy-out with income from the underwriting of speculative municipal bonds.

30. On information and belief, the buy-out contract's terms included payments over a three-year period totaling $17 million dollars. Concurrently, Miller began underwriting a large amount of speculative municipal bond deals. These deals were commonly negotiated bids, as opposed to competitively bid deals where other underwriters bid for the deal. These deals included the Heritage bonds and essentially allowed Miller to set its underwriting fee at a very large percentage—amounting to about 5% in underwriting fees as opposed to the industry standard of 1-2%.

31. In fact, Miller has underwritten over 80 municipal bond deals that have defaulted or gone into bankruptcy in the past several years. Miller has reaped untold millions of dollars in fees for organizing these deals all under the radar of the SEC and other regulatory agencies.

FIRST CLAIM

BREACH OF FIDUCIARY DUTY AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

32. Plaintiff repeats and incorporates all preceding relevant paragraphs.

33. At all times herein mentioned, there existed between Defendants and Plaintiff a fiduciary relationship which arose from the Defendants serving as the agent in executing transactions for Plaintiff. This fiduciary duty mandates honesty, fair dealing and a duty to inform clients of material information regarding their relationship and exercise reasonable care in handling Plaintiff's Account. Gaining the trust and confidence of Plaintiff, Defendants owed to Plaintiff the highest standard of care, loyalty and fiduciary duty.

34. Defendants breached their fiduciary duty to Plaintiff by:

a. Failure to adequately disclose the true risks and facts associated with the various bond sales to Plaintiff;

b. Materially misrepresenting and/or omitting to disclose the true risks and facts associated with the various bond sales to Plaintiff;

c. Failing to implement a system of supervision and/or failing to supervise its employees and agents as set forth hereinafter:

d. Placing Defendants' own interests ahead of it customer's interests.

35. As a result of the aforementioned acts of Defendants, Plaintiff was actually and proximately harmed by the purchases of the various bonds sold and underwritten by Miller. Further, the aforementioned acts of Defendants were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

SECOND CLAIM

PROFESSIONAL NEGLIGENCE: VIOLATION OF NASD AND NYSE CONDUCT RULES

36. Plaintiff repeats and incorporates all previous relevant paragraphs.

NASD RULE 2110 – "STANDARDS OF CONDUCT"

37. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 2110 in that it had the responsibility to observe high standards of commercial honor and just and equitable principles of trade; and engaged in acts practices and course of business which operated as a breach of such responsibilities.

2210 – "COMMUNICATIONS WITH THE PUBLIC"

38. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 2210 in that it had the responsibility to insure that its advertisements and correspondence with the public and customers were based on principles of fair dealing and good faith and did not omit any material fact; and engaged in acts practices and courses of business which operated as a breach of such responsibilities.

3010 – "SUPERVISION"

39. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 3010 in that it had the responsibility to establish a system to supervise it agents and employees in each of its offices, departments and/or business activities, which was reasonably designed to achieve compliance with all applicable securities laws and regulations and with the rules of the NASD; and engaged in acts practices and courses of business which operated as a breach of such responsibilities.

IM – 2310 – 2 – "FAIR DEALING WITH CUSTOMERS"

40. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 2310 in that it had the responsibility to deal fairly in all interactions with customers; and engaged in acts practices and courses of business which operated as a breach of such responsibilities.

THIRD CLAIM

VIOLATION OF SECTIONS 10 (B) AND 20 OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 10B-5 OF THE SECURITIES EXCHANGED COMMISSION

41. Plaintiff repeats and incorporates all previous relevant paragraphs.

42. Defendants are liable as controlling persons for the damages herein alleged under Section 20 of the Securities Exchange Act of 1934 and under the doctrine of *respondent superior.*

FRAUD, DECEIT, AND OMISSION OF MATERIAL FACT

Defendants engaged in an unlawful course of conduct, pursuant to which they knowingly and/or recklessly made representations with no reasonable basis in fact and which acted as a fraud upon Plaintiff. Defendants made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, no misleading to Plaintiff.

43. Defendants further engaged in an unlawful course of conduct specifically prohibited by the SEC as a violation of Rule 10b-5 in that they induced purchases of the various bonds without

disclosure of all material adverse and negative facts which Defendant knew and was aware of and further misrepresented material facts concerning the various bond investments.

44. Plaintiff relied on Defendant's material misrepresentations and/or non-disclosure to his detriment. As a result of the aforementioned acts of Defendants, Plaintiff was actually and proximately harmed by the substantial decline of the value of his investments. Further, the aforementioned acts of Defendants were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

FOURTH CLAIM

CONSTRUCTIVE FRAUD

45. Plaintiff repeats and incorporates all previous relevant paragraphs.

46. As set forth above, a fiduciary relationship arose from the Defendants serving as advisors and brokers for Plaintiff and from the contracts executed by the parties. The fiduciary duty mandates honesty, fair dealing, a duty to exercise reasonable care in handling customer accounts, and the obligation to accurately disclose known material facts.

47. Defendants made material misrepresentations with regard to the nature and extent of the risks and material facts relevant to the various bond investments. Defendants had knowledge of the falsity and/or lacked reasonable grounds to believe in its truth and/or suppressed the truth which amounted to a breach of duty or intentional deception on behalf of the Defendants.

48. Defendants did these acts with the intent to induce reliance and trust by Plaintiff in Defendants and to placate Plaintiff. Plaintiff did in fact place his confidence in Defendants' false representations and material omissions.

49. As a result of the aforementioned acts of Defendants, Plaintiff was actually and proximately harmed by the substantial decline in the value of the various bond investments. Further, the aforementioned acts of Defendants were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

FIFTH CLAIM

NEGLIGENT MISREPRESENTATION

50. Plaintiff repeats and incorporates all previous relevant paragraphs.

51. Miller and Talley had and have a continuing duty to inform Plaintiff truthfully, accurately and fully about the characteristics and risks of the various bond investments.

52. Miller and Talley acted negligently and/or recklessly, in making various untrue statements of material fact and/or omitting to state material facts about the characteristics and risks of the various bond investments, as previously set forth herein, through oral and written communications, in order to induce Plaintiff to purchase said investments.

53. At the time these misrepresentations, misleading statements, and omissions were made, Plaintiff was ignorant of their falsity. Plaintiff justifiably relied, to his detriment, upon the superior knowledge and expertise of Miller and Talley, and on the misrepresentations, misleading statements, and omissions of Miller and Talley. Had Plaintiff been aware of the true facts, he would not have purchased said investments from Miller and Talley.

54. Further, Miller owed to Plaintiff a duty to disclose accurately, completely and fully all material facts that it knew or should have known and that were relevant to a decision to purchase the debentures.

55. Miller failed to exercise that degree of diligence and due care that Plaintiff was entitled to expect of Miller.

56. Miller owed to Plaintiff a duty of disclosure by virtue of its function as the underwriter of the debentures.

57. Miller failed to exercise due care and failed to satisfy its duty of disclosure in connection with the sales of the debentures to Plaintiff by misrepresenting and omitting material facts with respect to the debentures. Miller knew, or in the exercise of reasonable care would have known, of those material facts and misrepresentations.

58. In connection with his decision to purchase the debentures, Plaintiff reasonably and detrimentally, relied on Miller's failure to disclose material negative and adverse information about the issuer of said debentures.

59. In connection with his reliance on Miller's failure to disclose material negative and adverse information about the issuer of said debentures and the assumed absence of such information Plaintiff exercised due care.

60. As a result, and in proximate consequence, of Miller and Talley's negligent failure to disclose material negative and adverse information to Plaintiff at the time he decided to purchase the debentures, Plaintiff has been damaged and is entitled to recover damages from Miller in an amount to be proven at trial.

SIXTH CLAIM

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 et. seq., "UNFAIR TRADE PRACTICES ACT"

61. Plaintiff repeats and incorporates all previous relevant paragraphs.

62. The Unfair Trade Practices act defines unfair competition to include "any unfair, unlawful, or fraudulent" business act or practice. (Cal. Bus. & Prof. Code§17200) Unfair competition also includes "unfair, deceptive, untrue, or misleading advertising." The Act also provides for injunctive relief and restitution for violations.

63. Miller committed acts of unfair competition, as defined by Business & Professions Code Section 17200, by falsely and inaccurately making representations regarding the quality, risks, and economic viability of the various bond investments, when, in fact, Miller knew of material adverse and negative facts surrounding such bond investments. As a result, plaintiff sustained substantial losses in his account.

64. Miller's failure to inform Plaintiff of the true quality, risks, and economic viability of the various bond investments was contrary to the representations it made in its advertisements,

communications, and correspondence with Plaintiff and therefore violated Business & Professions Code §17200.

65. Pursuant to Business & Professions Code §17200 *et. seq.*, Plaintiff is entitled to enjoin Miller's wrongful practices and to obtain compensation for the losses they incurred by reason of Miller's unlawful, unfair and/or deceptive practices. As a direct and proximate result of the acts and practices alleged above Plaintiff is entitled to monetary losses suffered as a result of Miller's actions and disgorgement of Miller's ill-gotten gains in order to accomplish complete justice between the parties.

SEVENTH CLAIM
VIOLATION OF CONSUMER LEGAL REMEDIES ACT
CALIFORNIA CIVIL CODE SECTION 1750 et. seq.
AND CIVIL CODE SECTIONS 1709, 1710 FALSE ADVERTISING/
NEGLIGENT OR INTENTIONAL MISREPRESENTATION OF FACT

66. Plaintiff repeats and incorporates all previous relevant paragraphs.

67. The conduct of Miller constituted a violations of Section 1770, 1709, 1710 of the California Civil code, which prohibit unlawful advertising practices by representing that its bond offerings had characteristics and/or benefits which it did not have, namely (without limitation) that they were low-risk municipal bonds, that the financial circumstances surrounding the bonds were accurately represented, and that the bonds were guaranteed by Medicare, amongst other misrepresentations included in the preceding paragraphs.

68. Miller knew, or by the exercise of reasonable care should have known the various representations were false and/or misleading and that the statements Miller and its salespeople made in order to sell the bonds were inaccurate.

69. California Civil Code Section 1709 provides: "One who willfully decieves another with intent to induce him to alter his position to his injury or risk is liable for any damages which he thereby suffers."

70. California Civil Code Section 1710 provides: "A deceit, within the meaning of the last section, is either:

a. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

b. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

c. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or

d. A promise made without any intention of performing it."

71. As a result, Plaintiff suffered damages in an amount according to proof at the arbitration of this matter.

EIGHTH CLAIM

VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTIONS 25401 et. seq. & 25501 et. seq.

72. Plaintiff repeats and incorporates all previous relevant paragraphs.

73. Defendants engaged in an unlawful course of conduct, pursuant to which they knowingly and/or recklessly made representations with no reasonable basis in fact and which acted as a fraud upon Plaintiff. Defendants made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff.

74. Plaintiff relied on Defendant's material misrepresentations and/or non-disclosures to their detriment. As a result of the aforementioned acts of Defendants, Plaintiff was actually and proximately harmed by substantial decline in the various bond investments offered by miller and Talley. Further, the aforementioned acts of Defendants were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

NINTH CLAIM

NEGLIGENT MISREPRESENTATION

75. Plaintiff repeats and incorporates all previous relevant paragraphs.

76. By underwriting the debentures, Miller implicitly represented that it had determined that such debentures were meritorious investments and that it had conducted its due diligence in accordance with the standards of the industry. Miller was obliged to disclose all material facts that it knew and that were reasonably ascertainable.

77. Miller was obliged not to underwrite, and not to offer or recommend to investors such as Plaintiff, securities that it had not affirmatively determined to be meritorious investments.

78. Miller was obligated to investigate the merits of a security such as the debentures before underwriting them and offering them to investors such as Plaintiff to determine whether such security was a meritorious investment.

79. By underwriting the debentures, Miller owed to Plaintiff a duty of due care and due diligence to investigate the merits of the debenture offering and to determine that there was a substantial likelihood that the various bond investments would be able to meet their obligations in accordance with the terms of such debentures.

80. By carelessly and negligently failing to affirmatively determine that there was a substantial likelihood that the various bond investments would be able to meet their obligations under the debentures, Miller failed to exercise its duty of due care and due diligence in connection with its underwriting of the debentures.

81. If Miller had properly carried out its due diligence responsibilities, it would be determined that the various bond investments were unlikely to be able to meet their obligations in accordance with the terms of such debentures.

82. In determining whether to purchase the debentures, Plaintiff was induced by, and reasonably relied upon Miller to properly perform its duties of due care and due diligence in underwriting said debentures.

83. But for Miller's negligence, Plaintiff would not have suffered substantial losses on his purchase of the debentures, and such losses were the proximate or foreseeable consequence of Miller's negligence.

84. In view of the absence of any material negative or adverse information about the issuer of the debentures at the time that the decision was made to purchase the debentures and in reliance on Miller's implicit representations, by underwriting the debentures, that such debentures were a meritorious investment, Plaintiff exercised due care.

85. As a result of Miller's careless and negligent underwriting of the debentures, Plaintiff has been damaged and is entitled to recover damages from Miller in an amount to be proven at trial.

TENTH CLAIM

VIOLATION OF §12 (2) OF THE SECURITIES ACT OF 1933

86. Plaintiff repeats and incorporates all previous relevant paragraphs.

87. Miller offered and sold a security, namely the debentures, by means of a prospectus and oral communications. This prospectus and oral communications contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements and omissions Defendants knew, or in the exercise of reasonable care Defendants would have known, were false or were material facts which were required to be disclosed to avoid the representations which were made from being misleading.

88. Plaintiff did not know that the representations made to them by Miller regarding the matters described above were untrue and did not know the material facts that were not disclosed.

89. As a result of the matters set forth herein, pursuant to §12 (2) of the Securities Act, Plaintiff is entitled to rescind his purchases of the debentures and is entitled to interest on the amount paid for the debentures.

90. Miller is liable to Plaintiff pursuant to §12 (2) of the Securities Act.

91. Plaintiff did not know, and could not have known, of the facts upon which he has brought this claim sooner than one year before the date hereof. This claim is brought within three years from the date upon which the debentures were offered to the public.

ELEVENTH CLAIM

PROFESSIONAL NEGLIGENCE: VIOLATIONS OF MUNICIPAL SECURITIES RULEMAKING BOARD RULES

92. Plaintiff repeats and incorporates all previous relevant paragraphs.

93. Miller and Talley did not deal fairly with Mr. Salley who purchased the bonds.

94. For the reasons stated above, defendants Miller and Talley, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, effected transactions in, or induced or attempted to induce the purchase or sale of municipal securities in contravention of Rule G-17 of the Municipal Securities Regulation Board.

95. By reasons of the foregoing transactions, acts, practices and courses of conduct, defendants Miller and Talley violated Rule G-17 of the MSRB.

PRAYER

WHEREFORE, Plaintiff prays for damages in law and/or in equity and recovery against Defendants, and each of them, jointly and severally. The objective of this award is to make Plaintiff whole. That is, after attorneys' fees and costs are deducted from the award, Plaintiff should be left with 100% of his out-of-pocket losses. He is also entitled to receive imputed interest on his loss at the legal rate from the first date of his loss. The appropriate "make-whole" amount for the Plaintiff is as follows:

1. For the decline in the value of his investments and the opportunity cost associated with said investments in the approximate sum of $1,500,000.

2. Pre-award and post-award interest of Ten percent (10%) from the date of the original investment as allowed by law in an amount to be proven at trial;

3. For costs of arbitration and expenses including reasonable attorneys' fees and the cost of expert witnesses, and any other costs deemed reasonable and just, in an amount to be proven at trial;

4. For such exemplary damages as to make an example of Defendants and to punish their conduct;

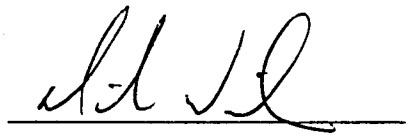
5. Damages pursuant to California Civil Code Sections 3294 and 3333;

6. For such further relief as the Panel deems to be just and equitable.

RESPECTFULLY SUBMITTED:

October 2, 2001

MARRON & WILSON, LLP



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Rec'd US Mail - 1/24/02
To: John Jagelia

January 22, 2002

VIA: US Mail

Ianthe Philips
NASD Dispute Resolution, Inc.
300 S. Grand Ave, Suite 1620
Los Angeles, CA 90071

Re: Philip J. Salley Revocable Trust v. Miller & Schroeder, Inc. et.al.
NASD Case No. 01-03445

Steven Onderwyzer, Indiv. And Trustee vs. Miller & Schroeder, Inc. et. al.
NASD Case No. 01-05301

Dear Ianthe:

Please find enclosed the original and three (3) copies of Claimant's First Amendment to the Statement of Claim for each of the above cases. Pursuant to NASD Code of Arbitration Procedure Rule 10328 (a), Claimants may freely amend the Statement of Claim before a Panel has been appointed. Copies of these amendments and the original Statement of Claim for each case are being copied and served by mail upon MM & S Financial at the address below.

Please contact this office with any questions or concerns. Thank you.

Sincerely,

L. Michael Wilson, Esq.

LMW/hs

Enclosures

cc: Edward J. Hentges, Pres, MM & S Financial, Inc. (w/encl)
MM & S Financial, Inc., 150 South Fifth Street, Suite 3000
Minneapolis, MN 55402

STEVEN M. GREEN, ESQ.
Law Offices of Steven M. Green
3636 Fourth Avenue, Suite 305
San Diego, CA 92103
(619) 294-8571

Attorney for Respondent and Third Party Claimant
Scott Penwarden

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In The Matter of the Arbitration Between: CHLOE KERNS EDGE TRS/ CHLOE KERNS EDGE TR, Claimants, v. SCOTT PENWARDEN and MILLER & SCHROEDER FINANCIAL, INC.; Respondents.	Case No. 01-03099 SCOTT PENWARDEN'S THIRD PARTY CLAIM
In the THIRD PARTY CLAIM of: SCOTT PENWARDEN Third Party Claimant, v. MM&S FINANCIAL, INC.,JAMES E. IVERSON; JEROME A.TABOLICH; EDWARD J. HENTGES; KENNETH R. LARSEN; STEVEN W. ERICKSON PAUL R. EKHOLM; JAMES F. DLUGOSCH; KENNETH HALLORAN; KENNETH DAWKINS; TOM S. NELSON; JAMES CLAREY; VICTOR DHOOGIE, MARY JO BRENDEN; AND DANIEL DILL, Third party respondents.	

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EXHIBIT D

Third Party Claimant alleges the following:

PARTIES

THIRD PARTY CLAIMANT

1. Third party claimant Scott Penwarden (Penwarden) is at all relevant times mentioned herein a resident of San Diego County, California, and the holder of a Series 7 agent's license. At all relevant times mentioned herein, third party claimant Penwarden was an agent and employee of Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc.

THIRD PARTY RESPONDENTS

2. Third Party Respondent MM&S Financial, Inc., holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Beginning in 2000, Miller & Schroeder Financial, Inc., began divesting portions of its business and businesses to various individuals and entities, including third party respondent MM&S Financial, Inc. Third party respondent MM&S Financial, Inc is conducting business from it's Solana Beach, California location as the successor to Miller & Schroeder Financial, Inc.

3. Any and all references herein to third party respondent MM&S Financial, Inc shall be as successor to Miller & Schroeder Financial, Inc..

4. Any and all references herein to Miller & Schroeder Financial, Inc. shall be as predecessor to third party respondent herein, MM&S Financial, Inc.

MILLER & SCHROEDER INDIVIDUAL CONTROL PERSONS/THIRD PARTY RESPONDENTS

5. Third party claimant alleges that Third Party Respondents, James E. **Iverson,** Jerome A. **Tabolich,** Edward J. **Hentges,** Kenneth R. **Larsen,** Steven W. **Erickson,** Paul R. **Ekholm** ,James F. **Dlugosch**, Kenneth **Halloran** , Kenneth E. **Dawkins**, Tom S. **Nelson** , John M. **Clarey,** Victor **Dhoogie,** Mary Jo **Brenden,** Daniel **Dill,** are and were at all relevant times, officers, underwriters, directors, members of the credit committee, and supervisors at Miller & Schroeder Financial, Inc. Miller & Schroeder Financial, Inc. filed bankruptcy on or about January 21, 2002, otherwise Miller & Schroeder Financial, Inc. would be a named cross

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claimant and or third party respondent in this third party claim. The third party claimant believes that these named individuals are members of the NASD and or the Municipal Bond Securities group giving the NASD jurisdiction in this case.

6. Third party respondents Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, Dlugosch, Halloran, Dawkins, Nelson, Dhoogie, Brenden, and Dill were at all relevant times herein key officers, underwriters, directors, members of the credit committee, and supervisors of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. and it's associated entities with responsibility for the due diligence for the Heritage Health Care Bonds, and other investments including Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others which were sold to the public including the claimants, causing the substantial losses to the claimants because of the actions of these "CONTROL PERSON THIRD PARTY RESPONDENTS" and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. At all times during the actions alleged herein, control person third party respondents were agents of each other in the activities alleged.

ALTER EGO ALLEGATIONS

7. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all third party respondents, and each of them, and all the other third party respondents, and each of them, such that any individuality and separateness between all third party respondents, and each of them, and the third party respondent corporate entities, has ceased to exist, and all the third party respondent corporate entities are the alter egos of third party respondents, and each of them, in that third party claimant alleges that each of the individual third party respondents used the assets of the third party respondent corporate entities to cause the losses to claimant herein.

8. Adherence to the fiction of the separate existence of any third party respondent corporate entity as an entity distinct from any of the other third party respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that such asserting third party respondents, and

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each of them, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith without financial liability.

CONSPIRACY TO DEFRAUD CLAIMANTS THROUGH OFFER & SALE OF HERITAGE BONDS AND VARIOUS OTHER BONDS

9. Commencing in or during 1996, and continuing on throughout the relevant time period, third party respondents, entered into agreements and scheme to defraud investors by effecting transactions in Heritage and Various other bonds through the use of negligent due diligence, improper underwriting, false and misleading statements of material facts. Third party claimant had no knowledge of this scheme to defraud investors at any time.

10. Pursuant to the agreement and scheme to defraud, third party respondents Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. acted as the investment banker and lead underwriter for all Heritage and Various other Bond offerings. Under the direction of the third party respondents, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., raised capital for purported health care facility development by structuring securities offerings utilizing a municipal entity as the stated issuer and raised capital through the sale of various other bonds such as Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others. The Heritage Bonds were structured by third party respondents and Miller & Schroeder as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. Eventually, these investments would either default, enter bankruptcy, or the underlying value became worthless.

11. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. knew or should have known that the bonds were of questionable viability. Third party respondents and Miller & Schroeder predecessor to third party respondent herein, MM&S Financial, Inc. further knew or should have known due to their due diligence, underwriting research, and

position as investment bankers and underwriters that the various bonds financial condition was tenuous, and the offerings were not financially feasible.

MILLER & SCHROEDER predecessor to third party respondent herein, MM&S Financial, Inc. EXIT STRATEGY

12. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance various public facilities and businesses.

13. Based on reputation and experience, Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. negotiated for itself substantial fees in excess of many millions of dollars for financing, structuring and marketing the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds, and other investments. These fees were paid from the proceeds of these investment sales.

14. As third party respondents became aware of cost overruns, construction delays, operational losses, cash flow problems, and looming defaults for the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments, third party respondents and Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. commenced a strategy to protect and preserve the interests of the third party respondents and each of them, to the exclusion of the claimants, and third party claimant Penwarden.

15. While more Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments were being sold by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Third Party respondent Iverson sold his stock in Miller & Schroeder Financial, Inc. predecessor to third party

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respondent herein, MM&S Financial, Inc. in 1997 in a management buyout led by Third Party respondent Dlugosch. Third party respondent Iverson continues to the present day to act as an officer, director, underwriter, and control person for third party respondent MM&S Financial, Inc.

16. The third party respondents advanced in excess of $700,000 to the promoters of the Heritage bonds so that the third party respondents could underwrite the Heritage Bonds. The third party respondents also were found to have been in a corrupt business arrangement with County of San Bernardino, California settling with the county by paying $350,000 in 2001. The third party respondents in 2000 started trying to sell pieces of the Miller and Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. business, knowing of their false dealings with their customers, culminating in the transfer of Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. businesses to third party respondent MM&S Financial, Inc. in August 2001, and the filing of bankruptcy by Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. in January 2002.

17. Third party claimant Penwarden alleges that at all material times mentioned herein, the various third party respondents and each of them stated to third party claimant that all the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other bonds were solvent; that all the proper "due diligence" had been done by the Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., and that third party claimant Penwarden should sell and continue to sell the various issues of the bonds to his clientele, and tell his clientele that the bonds were good investments. Third party claimant Penwarden had no knowledge of the fatal "due diligence" flaws of the bonds. Said flaws were known to third party respondents.

FRAUDULENT CONVEYANCE

18. Third party claimant alleges, that the third party respondents continue to conduct business as usual. Third party claimant is informed and believes that MM&S Financial, Inc. successor to Miller &

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Schroeder Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. third party respondents employ approximately 19 former managers and approximately 100 former employees of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. continues to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. to finance, structure, and market bonds. For example, MM&S Financial Inc. successor to Miller & Schroeder Financial, Inc. is now doing business from the former Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Solana Beach office.

19. Pursuant to Agreement, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. assets were transferred to MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. in an effort to avoid obligations relating to the previous fraudulent sale of Bonds by the third party respondents. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. structured the Agreement so that the value of the assets transferred to the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. exceeds the value received by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. was left insolvent for the intended purpose of not having the ability to meet liabilities due to the fraudulent bond sales.

20. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., structured the terms of the Agreement with knowledge that third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. would incur debts and obligations relating to the fraudulent bond sales.

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ROLES OF VARIOUS THIRD PARTY RESPONDENTS IN THE CONSPIRACY

21. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Bonds.

22. Third Party respondent **James Iverson** agreed to participate with full knowledge of the conspiracy by:

a. Supervising the Solana Beach office of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the Bonds;

b. Controlling the capital of Miller & Schroeder Financial, Inc. including secret loans to Heritage;

c. Acting as an officer, director, underwriter and shareholder of Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Providing secret loans and advances from Miller & Schroeder for Heritage to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

e. Directing Heritage Bond proceeds to assist in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

f. Instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

g. Providing advice and consultation to third party respondents and Miller & Schroeder in furtherance of its exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc. successor to Miller & Schroeder Financial, Inc.; and

h. Substantially assisting the fraudulent conveyance as a "control person".

23. **John Clarey** agreed to participate with full knowledge of the conspiracy by:

a. Acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other Bond underwritings and documentation including the Official Statements;

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b. Approving successive Bond underwritings while accumulating information of problems plaguing earlier Bond projects;

c. Acting as an officer, director, and shareholder of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the various Bond problems with investors and the media during implementation of the exit strategy;

e. Substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller."

24. **Jerome Tabolich** agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Bond underwritings and documentation including the Official Statements;

b. Acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Bonds;

c. Participating in the exit strategy and fraudulent conveyance as the President of Miller & Schroeder, and continuing thereafter as an officer and shareholder of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. ; and

d. substantially assisting the fraudulent conveyance as a "control person" and exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August, 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S Inc.; and

e. substantially assisting the fraudulent conveyance as a "control person".

25. **Edward Hentges** agreed to participate with full knowledge of the conspiracy by:

a. acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer and director of the Miller & Schroeder and continuing thereafter as an officer, director and shareholder of the MM&S; and

c. assisting the fraudulent conveyance as a control person.

26. **Kenneth Larsen** agreed to participate with full knowledge of the conspiracy by:

a. acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

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b. participating in the exit strategy and fraudulent conveyance as an executive officer of the Miller & Schroeder signing the Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc.; and

c. substantially assisting the fraudulent conveyance as a control person and knowledgeable seller.

27. **Steven Erickson** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the Miller & Shroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

28. **Paul Ekholm** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of Miller & Schroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

29. **James F. Dlugosch** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and

c. participating in the exit strategy and fraudulent conveyance as an executive officer and director of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

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30. Daniel Dill, Mary Jo Brenden, Victor Dhoogie, Tom Nelson, Kenneth Dawkins, and Kenneth Halloran, agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, underwriters and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds; and

c. participating in the exit strategy and fraudulent conveyance as control persons of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller."

COMMON MISREPRESENTATIONS AND OMISSIONS BY THIRD PARTY RESPONDENTS TO THIRD PARTY CLAIMANT

31. In connection with the various Bonds underwritten, offered and sold by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc., express and implied representations in the Official Statements, and oral communications to Third party claimant Penwarden were false and/or misleading statements, and the true facts were deliberately withheld from Third party claimant Penwarden. Just a few of the facts as listed below were with held from third party claimant:

a) Loans were made to promoters to get the various deals.

b) Promoters were not financially viable.

c) Promoters had various past records of fraudulent activities.

d) Official statements of bonds were not complete and were not true.

e) Various deals had operational and financial problems after funding.

f) Various bonds were not financially viable from the beginning.

g) Various bonds were based on improper appraisals.

h) Furthermore, third party claimant Penwarden was not adequately advised of the recent transaction history regarding real property being sold and pledged as security for

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bondholders and key transaction terms such as price, fair market value, liens, restrictive covenants, and the identity and profit of participants to the transaction.

32. Third party claimant Penwarden was misled by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. by not knowing the true and complete facts regarding the bonds sold to customers.

FIRST CAUSE OF ACTION
IMPLIED INDEMNITY
By Third party claimant as Against All Third party respondents

33. Third party claimant Penwarden refers to and realleges Paragraphs 1 through 33, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

34. If third party claimant Penwarden is held liable and responsible to Claimants for damages as alleged in the Statement of Claim, it will be solely due to the conduct of third party respondents, as herein alleged. Therefore, third party claimant Penwarden is entitled to be indemnified by said third party respondents, should such liability arise.

35. Third party claimant Penwarden has incurred, and is continuing to incur attorneys fees, forum fees, court costs, and other costs in connection with defending the claimant's Statement of Claim, the exact amount of which is unknown at this time. When the exact sum has been ascertained, third party claimant will seek leave to amend this Third Party Claim to set forth the true nature and amount of said expenses.

36. If third party claimant Penwarden is held liable or responsible to the Claimants for damages, said liability will be vicarious only, and said liability will be the direct and proximate result of the active and affirmative conduct of the third party respondents.

37. Third party claimant Penwarden is entitled to complete indemnification by said third party respondents, for any sum or sums for which third party claimant Penwarden may be adjudicated liable to Claimants, together with the costs of defense, costs of suit, and reasonable attorneys fees.

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SECOND CAUSE OF ACTION
COMPARATIVE INDEMNITY

By Third party claimants as Against All Third party respondents

38. Third party claimant Penwarden refers to and realleges Paragraphs 1 through 37, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

39. Third party claimant Penwarden contends that he is in no way legally responsible for the events giving rise to the Claimant's causes of action, or legally responsible in any other manner for the damages allegedly sustained by the Claimants. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Penwarden is held liable for any or all of the Claim asserted against him by Claimants, Third party respondents to the extent that their fault was a proximate cause of Claimant's damages and/or loses, are responsible for said damages and/or losses in proportion to each third party respondents comparative liability, and that this third party claimant is entitled to a determination of several liability.

40. By reason of the foregoing, third party claimant Penwarden is entitled to indemnity from third party respondents, for all costs, fees, expenses, settlements, and judgments paid by and incurred by third party claimant Penwarden in connection with this action.

THIRD CAUSE OF ACTION
DECLARATORY RELIEF

By Third party claimant as against All Third party respondents

41. Third party claimant Penwarden refers to and realleges Paragraphs 1 through 40, inclusive of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

42. An actual controversy has arisen between third party claimant Penwarden and third party respondents, with respect to the rights, duties, and obligations of the parties in that third party claimant Penwarden contends that he is without fault, responsibility, or blame for any of the damages allegedly suffered by the Claimants, if any at all. If there are any damages, the acts causing such damages were committed by the third party respondents, and not third party claimant Penwarden. Third party claimant contends that he is entitled to indemnity from third party respondents. Third party claimant Penwarden alleges that third party respondents, contend to the contrary.

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43. Third party claimant Penwarden desires a determination of his rights and duties, and a declaration that he is the entitled to full indemnity from third party respondents, for all damages, costs, and attorney's fees incurred in this action.

44. A declaration is necessary and appropriate at this time, under these circumstances in order that third party claimant Penwarden may ascertain his rights and duties.

FOURTH CAUSE OF ACTION
EQUITABLE INDEMNITY
By Third party claimant as Against All Third party respondents

45. Third party claimant Penwarden refers to and realleges Paragraphs 1 through 44, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

46. Third party claimant Penwarden alleges that he is in no way legally responsible for the events giving rise to Claimant's Statement of Claim, nor legally responsible in any manner for the damages allegedly sustained by Claimants. If, contrary to the foregoing allegations, third party claimant Penwarden is held liable for any or all of the claim for damages asserted against third party claimant by Claimants, then third party claimant Penwarden alleges that the third party respondents, were negligent, intentionally misrepresented certain facts, breached their fiduciary duties, as stated above. Third party claimant Penwarden alleges that the above stated acts of third party respondents, were the sole proximate cause of the damages and/or losses to Claimant.

47. By reason of the foregoing, third party respondents, are responsible and liable for any such damages in direct proportion to the extent of their above stated actions in bringing about said damages and/or losses. Thus, third party claimant Penwarden is entitled to judgment over third party respondents, in an amount proportionate to the amount of third party claimant Penwarden's financial responsibility for such damages that exceed his portion of responsibility, if any at all.

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FIFTH CAUSE OF ACTION
CONTRIBUTION

By Third party claimant as Against All Third party respondents

48. Third party claimant Penwarden refers to and realleges Paragraphs 1 through 47, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

49. Third party claimant Penwarden contends that he is in no way legally responsible for the damages alleged in Claimant's Statement of Claim. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Penwarden is held liable for all or any part of Claimant's alleged damages, third party respondents, to the extent that their fault is determined by the arbitrators, are obligated to reimburse and are liable to third party claimant Penwarden for all and any liability so assessed by way of contribution, and third party claimant Penwarden asserts herein his right to contribution.

WHEREFORE, third party claimant Penwarden prays:

1. For a declaration of the third party claimant's rights and duties;

2. For an order declaring the percentage of fault, if any, between third party claimant Penwarden, and third party respondents, and each of them, for damages and losses allegedly caused to Claimant;

3. For an order awarding judgment in favor of third party claimant Penwarden, and against third party respondents, based upon the relative percentage of fault of each party including the Claimant;

4. For an order that the third party claimant is entitled to be fully indemnified by third party respondents, for any and all settlements, compromises, and/or judgments entered into or against third party claimant as a result of this action;

5. For reasonable attorneys fees and costs in an amount according to proof; and

6. For such other and further relief as may be just and proper.

Dated: June 6, 2002

Steven M. Green
Attorney for Third Party Claimant
Scott Penwarden

MG010524

PROOF OF SERVICE

NASD-DR Case Number 01-03099 Edge v. Miller & Schroeder Financial, Inc. & Scott Penwarden

I am a citizen of the United States, a resident of the County of San Diego, California, over the age of 18 years, and not a party to the within action; my business address is: 3636 Fourth Avenue Suite 305, San Diego, California 92103.

On June 6, 2002, I served the attached:

MOTION TO FILE THIRD PARTY-CLAIM; THIRD-PARTY CLAIM

to the parties in said action by placing a true copy thereof in a sealed envelope with postage thereon, fully prepaid, via US Mail at San Diego, California addressed as follows:

Mr. Franklin Geerdes, Esq. GEERDES & GEERDES 328 West Third Avenue Escondido, CA 92025	Attorney for Claimant
Yoshawn Prater NASD 300 S. Grand Ave, Suite 1620 Los Angeles, CA 90071	NASD

I declare the foregoing to be true and correct under the penalty of perjury.

Steven M. Green
Attorney for Scott Penwarden

MG010525

DREHER LAW FIRM
Robert Scott Dreher, SBN 120527
Historic Louis Bank of Commerce Building
835 Fifth Avenue, Suite 202
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1551 Fourth Avenue, Suite 304
San Diego, CA 92101
Telephone (619) 233-0126
Facsimile (619) 233-0127

Attorneys for Plaintiff

RECEIVED
JUN 16 2003
copy: John, MJB, Paul, Ed

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

BRUCE R. TALLEY,

Plaintiff,

vs.

MILLER & SCHROEDER FINANCIAL, INC.; THE MARSHALL GROUP, INC., aka MINNESOTA MARSHALL GROUP, INC.; JIM ARIAS; JOHN M. CLAREY ; KENNETH E. DAWKINS; VICTOR P. DHOOGE; JAMES F. DLUGOSCH; PAUL R. EKHOLM; DONALD FUHRMAN; KENNETH HALLORAN; EDWARD J. HENTGES; JAMES E. IVERSON;; KENNETH R. LARSEN; JIM MORRELL; TOM NELSON; JOHN PETERSON; WILLIAM SEXTON; JEROME A. TABOLICH; ROBERT A. KASIRER; JEROLD V. GOLDSTEIN; ONOFRIO V. BERTOLINI; LARRY A. RUBIN; VIRGIL LIM; LEO DIERCKMANN; BERMAN & BERTOLINI, INC. aka BERMAN & ASSOCIATES; BHMC, INC.; JDDJ HOLDINGS, L.P.; DEBRA KASIRER, individually and as Trustee of the DEBRA KASIRER TRUST; KASIRER FAMILY HOLDINGS #4 LLC; CANON REALTY CORP.; JOEL T. BOEHM; SABO & GREEN, a Professional Law Corp.; ATKINSON, ANDELSON, LOYA, RUUD & ROMO, a Professional Law Corp.; U.S. TRUST CORPORATION, N.A.; U.S. TRUST COMPANY

(Caption continued on next page...)

Case No.: 610802187

***AMENDED* COMPLAINT FOR:**

1. **NEGLIGENCE;**
2. **BREACH OF FIDUCIARY DUTY;**
3. **CONSTRUCTIVE FRAUD;**
4. **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
5. **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
6. **INTERFERENCE WITH CONTRACTUAL RELATIONS;**
7. **AIDING & ABETTING BREACH OF FIDUCIARY DUTY;**
8. **BREACH OF CONTRACT;**
9. **BREACH OF CONTRACT - INDEMNITY;**

EXHIBIT E

Heritage Bond offerings and the veracity of the representations in the Preliminary Official Statements and the Official Statements for the respective Heritage Bond offerings. Defendant DHOOGE was a control person of the MILLER & SCHROEDER Defendants.

24. Defendant JAMES F. DLUGOSCH is a resident of Minnesota. From in or about August 1997 until at least sometime in the year 2000, Defendant DLUGOSCH was the Chairman and Chief Executive Officer of MILLER & SCHROEDER, and was a director and control person of the MILLER & SCHROEDER Corporate Defendants, and caused and/or permitted them to commit the actions set forth herein

25. Defendant PAUL R. EKHOLM is a resident of Minnesota. At all relevant times herein, Defendant EKHOLM was an officer and control person of the MILLER & SCHROEDER Corporate Defendants, and was also a member of the firm's credit committee, and caused and/or permitted them to commit the actions set forth herein.

26. Defendant KEN HALLORAN is a resident of Minnesota, was sales manager of MILLER & SCHROEDER, and served on the company's Credit Committee. At all relevant times herein Defendant HALLORAN was a director and control person of the MILLER & SCHROEDER Corporate Defendants, and caused and/or permitted them to commit the actions set forth herein.

27. Defendant EDWARD J. HENTGES is a resident of Minnesota. At all relevant times herein, Defendant HENTGES was compliance officer of MILLER & SCHROEDER, and was a control person of Defendant MILLER & SCHROEDER, and caused and/or permitted them to commit the actions set forth herein.

28. Defendant JAMES E. IVERSON was at all relevant times herein a resident of San Diego County, and was an officer, director, owner, and supervisor of Defendant MILLER & SCHROEDER. He was also a member of the firm's credit committee. From the commencement of the Heritage Bond offerings Defendant IVERSON was the Chairman of the Board of Defendant MILLER & SCHROEDER and was the ``partner in charge'' of the Solana Beach, California office of Defendant MILLER & SCHROEDER since its inception. Defendant IVERSON was also directly responsible for project supervision of all California issues of public finance securities underwritten by Defendant MILLER & SCHROEDER and the ``investment banking'' activities conducted from the Solana Beach, California office of Defendant MILLER & SCHROEDER. In this capacity Defendant IVERSON was responsible for supervising Defendant VICTOR P. DHOOGE, an investment banker working out of the Solana Beach, California office of Defendant MILLER & SCHROEDER. Defendant IVERSON, along with Lawyer Defendant JOEL T. BOEHM and Defendant DHOOGE, was responsible for structuring the Heritage Bond offerings as the underwriter's representative, and conducting ``due diligence'' investigations on behalf of Defendant MILLER & SCHROEDER into the merits of the Heritage Bond offerings and the veracity of the representations contained in the Preliminary Official Statement and Official Statement for each of the respective Heritage Bond offerings. In or about the summer of 1997 Defendant IVERSON sold his stock in MILLER & SCHROEDER, INC. (the parent of Defendant MILLER & SCHROEDER) of which Defendant IVERSON owned approximately 48%. After the sale of the stock, Defendant IVERSON continued on

pursuant to an agreement with the new ownership to manage and supervise the Solana Beach office of Defendant MILLER & SCHROEDER as he always had. Even after the sale of his stock in MILLER & SCHROEDER, INC., Defendant IVERSON continued to be a control person of Defendant MILLER & SCHROEDER. At all times IVERSON caused and/or permitted the MILLER & SCHROEDER DEFENDANTS to commit the actions set forth herein.

29. Defendant KENNETH R. LARSEN is a resident of Minnesota. At all relevant times herein, Defendant LARSEN was Chief Financial Officer and a control person of Defendant MILLER & SCHROEDER and caused and/or permitted them to commit the actions set forth herein.

30. Defendant JIM MORRELL is a resident of Minnesota. At all relevant times herein Defendant MORRELL was a director and control person of the MILLER & SCHROEDER Corporate Defendants, and caused and/or permitted them to commit some or all of the actions set forth herein.

31. Defendant TOM NELSON is a resident of Montana, and was formerly a resident of Minnesota. At all relevant times herein Defendant NELSON was an officer and/or director and control person of the MILLER & SCHROEDER Corporate Defendants, and was a member of the firm's credit committee, and caused and/or permitted them to commit the actions set forth herein.

32. Defendant JOHN PETERSON is a resident of Minnesota. At all relevant times herein, Defendant PETERSON was a board member and control person of the MILLER & SCHROEDER CORPORATE DEFENDANTS and caused and/or permitted them to commit the actions herein.

33. Defendant WILLIAM SEXTON is a resident of Minnesota. At all relevant times herein Defendant SEXTON was a director and control person of the MILLER & SCHROEDER Corporate Defendants, and caused and/or permitted them to commit the actions herein.

34. Defendant JEROME A. TABOLICH is a resident of Minnesota. At all relevant times herein, Defendant TABOLICH was an officer and director and control person of the MILLER & SCHROEDER Corporate Defendants, and was also a member of the firm's credit committee, and caused and/or permitted them to commit the actions set forth herein

35. Defendants ARIAS, CLAREY, DAWKINS, DHOOGE, DLUGOSCH, EKHOLM, ERICKSON, HALLORAN, HENTGES, IVERSON, LARSEN, MORRELL, NELSON, PETERSON, SEXTON, and TABOLICH are hereinafter referred to as the MILLER & SCHROEDER CONTROL DEFENDANTS. Each of these defendants was a control person of Defendant MILLER & SCHROEDER as control is defined by the California Corporations Code, and controlled the actions and operations of the MILLER & SCHROEDER Corporate Defendants, and had actual authority to control the business activities of MILLER & SCHROEDER including the activities described herein.

36. Together the MILLER & SCHROEDER Corporate Defendants and the MILLER & SCHROEDER Control Defendants will be referred-to as the MILLER & SCHROEDER DEFENDANTS or MILLER & SCHROEDER.

4. Attorney Defendants.

37. Defendant JOEL T. BOEHM is an attorney who resides in San Diego County. Defendant BOEHM and the law firms employing him were retained by the MILLER & SCHROEDER Defendants to act as

239. In addition Defendants by their actions caused damages and harm to Plaintiff and by those actions are required by equity to indemnify Plaintiff from the consequences of their actions. Defendants have failed and refused and continue to fail and refuse to defend and/or indemnify Plaintiff from damages caused by Defendants' own negligence and other wrongful acts in connection with the Heritage Bonds underwritings.

240. Plaintiff desires a judicial determination of the indemnity rights and duties of Plaintiff and Defendants, and each of them, under the rules of equity or contract, and Plaintiff further desires a declaration that Defendants and each of them are obligated to defend and indemnify Plaintiff against all claims relating to the underwriting, offer and sale of the Heritage Bonds, and to hold Plaintiff harmless from and against any and all damages, judgments, and/or other awards which may be recovered against Plaintiff related to the Heritage Bonds. Plaintiff also desires a declaration from this court that the responsibility for the flawed Heritage Bonds, and Plaintiffs' clients' losses resulting from their purchases of those Bonds, was the fault of Defendants and/or others, and was in no way the responsibility of Plaintiff, and Plaintiff thereon seeks an appropriate order that the reference(s) to these claims be expunged from Plaintiff's NASD professional record.

THIRTEENTH CAUSE OF ACTION

To Set Aside Fraudulent Conveyances

(Against the MILLER & SCHROEDER DEFENDANTS)

241. Plaintiff incorporates Paragraphs 1 through 240 herein.

242. Plaintiff is and was a creditor as defined in Civil Code

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Section 3439.01. These Defendants were and are debtors as defined in Civil Code Section 3439.01. By their actions described above these Defendants made transfers of assets with the actual intent to hinder, delay or defraud Plaintiff.

243. By their actions described above these Defendants made transfers of assets without receiving a reasonably equivalent value in exchange for the transfer or obligation, and were engaged in or about to engage in a business or transaction for which the remaining assets of these Defendants were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due. Defendants' actions constituted fraudulent transfers as defined in Civil Code Section 3439.04.

244. On account of Defendants' fraudulent transfer(s) Plaintiff is entitled to and hereby seeks avoidance of the fraudulent transfers to the extent necessary to satisfy Plaintiff's claim for damages and indemnity from the claims by Heritage Bondholders. Plaintiff hereby seeks all other relief to which he is entitled pursuant to Civil Code Section 3439.07 and as circumstances require.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

a. An order of this Court ordering Defendants to defend and indemnify Plaintiff for all damages and causes of action brought against him by his clients as a result of the Heritage Bonds;

b. An order from this Court expunging Plaintiff's NASD CRD (Central Registration Depository) Record, including but not limited

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FILE COPY

N M. GREEN, ESQ.
fices of Steven M. Green
urth Avenue, Suite 305
go, CA 92103
94-8571

y for Respondent and Third Party Claimant
alley

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Matter of the ion Between: IMMERMAN & PRISCILLA ERMAN TRS TIMMERMAN FAMILY UAD 3/31/83, Claimants, R & SCHROEDER FINANCIAL, INC.; ECURITIES RESOLUTION CORP.; FINANCIAL INC., a.k.a. MARSHALL R & SCHROEDER FINANCIAL, INC., DLUGOSCH, and BRUCE TALLEY, Respondents.	RESPONDENT BRUCE TALLEY'S THIRD PARTY CLAIM CASE NO. 01-06518
HIRD PARTY CLAIM of: E TALLEY Third Party Claimant, FINANCIAL, INC.,JAMES E. IVERSON; IE A.TABOLICH; EDWARD J. HENTGES; ETH R. LARSEN; STEVEN W. ERICKSON R. EKHOLM; JAMES F. DLUGOSCH; ETH HALLORAN; KENNETH INS; TOM S. NELSON; JAMES EY; VICTOR DHOOGIE, MARY JO DEN; AND DANIEL DILL,	

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EXHIBIT F

Third party respondents.)
)
)

Third Party Claimant alleges the following:

PARTIES

THIRD PARTY CLAIMANT

1. Third party claimant Bruce Talley is at all relevant times mentioned herein a resident of San Diego County, California, and the holder of a Series 7 agent's license. At all relevant times mentioned herein, third party claimant Talley was an agent and employee of Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc.

THIRD PARTY RESPONDENTS

2. Third Party Respondent MM&S Financial, Inc., holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Beginning in 2000, Miller & Schroeder Financial, Inc., began divesting portions of its business and businesses to various individuals and entities, including third party respondent MM&S Financial, Inc. Third party respondent MM&S Financial, Inc is conducting business from it's Solana Beach, California location as the successor to Miller & Schroeder Financial, Inc.

3. Any and all references herein to third party respondent MM&S Financial, Inc shall be as successor to Miller & Schroeder Financial, Inc..

4. Any and all references herein to Miller & Schroeder Financial, Inc. shall be as predecessor to third party respondent herein, MM&S Financial, Inc.

MILLER & SCHROEDER INDIVIDUAL CONTROL PERSONS/THIRD PARTY RESPONDENTS

5. Third party claimant alleges that Third Party Respondents, James E. **Iverson,** Jerome A. **Tabolich,** Edward J. **Hentges,** Kenneth R. **Larsen,** Steven W. **Erickson,** Paul R. **Ekholm** ,James F. **Dlugosch**, Kenneth **Halloran** , Kenneth E. **Dawkins**, Tom S. **Nelson** , John M. **Clarey,** Victor **Dhoogie,** Mary Jo **Brenden,** Daniel **Dill,** are and were at all relevant times, officers, underwriters, directors, members of the

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credit committee, and supervisors at Miller & Schroeder Financial, Inc. Miller & Schroeder Financial, Inc. filed bankruptcy on or about January 21, 2002, otherwise Miller & Schroeder Financial, Inc. would be a named cross claimant and or third party respondent in this third party claim. The third party claimant believes that these named individuals are members of the NASD and or the Municipal Bond Securities group giving the NASD jurisdiction in this case.

6. Third party respondents Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, Dlugosch, Halloran, Dawkins, Nelson, Dhoogie, Brenden, and Dill were at all relevant times herein key officers, underwriters, directors, members of the credit committee, and supervisors of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. and it's associated entities with responsibility for the due diligence for the Heritage Health Care Bonds, and other investments including Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others which were sold to the public including the claimants, causing the substantial losses to the claimants because of the actions of these "CONTROL PERSON THIRD PARTY RESPONDENTS" and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc." At all times during the actions alleged herein, control person third party respondents were agents of each other in the activities alleged.

ALTER EGO ALLEGATIONS

7. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all third party respondents, and each of them, and all the other third party respondents, and each of them, such that any individuality and separateness between all third party respondents, and each of them, and the third party respondent corporate entities, has ceased to exist, and all the third party respondent corporate entities are the alter egos of third party respondents, and each of them, in that third party claimant alleges that each of the individual third party respondents used the assets of the third party respondent corporate entities to cause the losses to claimant herein.

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8. Adherence to the fiction of the separate existence of any third party respondent corporate entity as an entity distinct from any of the other third party respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that such asserting third party respondents, and each of them, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith without financial liability.

CONSPIRACY TO DEFRAUD CLAIMANTS THROUGH OFFER & SALE OF HERITAGE BONDS AND VARIOUS OTHER BONDS

9. Commencing in or during 1996, and continuing on throughout the relevant time period, third party respondents, entered into agreements and scheme to defraud investors by effecting transactions in Heritage and Various other bonds through the use of negligent due diligence, improper underwriting, false and misleading statements of material facts. Third party claimant had no knowledge of this scheme to defraud investors at any time.

10. Pursuant to the agreement and scheme to defraud, third party respondents Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. acted as the investment banker and lead underwriter for all Heritage and Various other Bond offerings. Under the direction of the third party respondents, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., raised capital for purported health care facility development by structuring securities offerings utilizing a municipal entity as the stated issuer and raised capital through the sale of various other bonds such as Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others. The Heritage Bonds were structured by third party respondents and Miller & Schroeder as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. Eventually, these investments would either default, enter bankruptcy, or the underlying value became worthless.

11. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. knew or should have known that the bonds were of questionable

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viability. Third party respondents and Miller & Schroeder predecessor to third party respondent herein, MM&S Financial, Inc. further knew or should have known due to their due diligence, underwriting research, and position as investment bankers and underwriters that the various bonds financial condition was tenuous, and the offerings were not financially feasible.

MILLER & SCHROEDER predecessor to third party respondent herein, MM&S Financial, Inc. EXIT STRATEGY

12. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance various public facilities and businesses.

13. Based on reputation and experience, Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. negotiated for itself substantial fees in excess of many millions of dollars for financing, structuring and marketing the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds, and other investments. These fees were paid from the proceeds of these investment sales.

14. As third party respondents became aware of cost overruns, construction delays, operational losses, cash flow problems, and looming defaults for the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments, third party respondents and Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. commenced a strategy to protect and preserve the interests of the third party respondents and each of them, to the exclusion of the claimants, and third party claimant Talley.

15. While more Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments were being sold by third party respondents and

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Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Third Party respondent Iverson sold his stock in Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. in 1997 in a management buyout led by Third Party respondent Dlugosch. Third party respondent Iverson continues to the present day to act as an officer, director, underwriter, and control person for third party respondent MM&S Financial, Inc.

16. The third party respondents advanced in excess of $700,000 to the promoters of the Heritage bonds so that the third party respondents could underwrite the Heritage Bonds. The third party respondents also were found to have been in a corrupt business arrangement with County of San Bernardino, California settling with the county by paying $350,000 in 2001. The third party respondents in 2000 started trying to sell pieces of the Miller and Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. business, knowing of their false dealings with their customers, culminating in the transfer of Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. businesses to third party respondent MM&S Financial, Inc. in August 2001, and the filing of bankruptcy by Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. in January 2002.

17. Third party claimant Talley alleges that at all material times mentioned herein, the various third party respondents and each of them stated to third party claimant that all the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other bonds were solvent; that all the proper "due diligence" had been done by the Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., and that third party claimant Talley should sell and continue to sell the various issues of the bonds to his clientele, and tell his clientele that the bonds were good investments. Third party claimant Talley had no knowledge of the fatal "due diligence" flaws of the bonds. Said flaws were known to third party respondents.

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FRAUDULENT CONVEYANCE

18. Third party claimant alleges, that the third party respondents continue to conduct business as usual. Third party claimant is informed and believes that MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. third party respondents employ approximately 19 former managers and approximately 100 former employees of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. continues to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. to finance, structure, and market bonds. For example, MM&S Financial Inc. successor to Miller & Schroeder Financial, Inc. is now doing business from the former Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Solana Beach office.

19. Pursuant to Agreement, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. assets were transferred to MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. in an effort to avoid obligations relating to the previous fraudulent sale of Bonds by the third party respondents. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. structured the Agreement so that the value of the assets transferred to the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. exceeds the value received by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. was left insolvent for the intended purpose of not having the ability to meet liabilities due to the fraudulent bond sales.

20. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., structured the terms of the Agreement with knowledge that third

party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. would incur debts and obligations relating to the fraudulent bond sales.

ROLES OF VARIOUS THIRD PARTY RESPONDENTS IN THE CONSPIRACY

21. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Bonds.

22. Third Party respondent **James Iverson** agreed to participate with full knowledge of the conspiracy by:

a. Supervising the Solana Beach office of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the Bonds;

b. Controlling the capital of Miller & Schroeder Financial, Inc. including secret loans to Heritage;

c. Acting as an officer, director, underwriter and shareholder of Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Providing secret loans and advances from Miller & Schroeder for Heritage to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

e. Directing Heritage Bond proceeds to assist in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

f. Instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

g. Providing advice and consultation to third party respondents and Miller & Schroeder in furtherance of its exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc. successor to Miller & Schroeder Financial, Inc.; and

h. Substantially assisting the fraudulent conveyance as a "control person".

23. **John Clarey** agreed to participate with full knowledge of the conspiracy by:

a. Acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other Bond underwritings and documentation including the Official Statements;

b. Approving successive Bond underwritings while accumulating information of problems plaguing earlier Bond projects;

c. Acting as an officer, director, and shareholder of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the various Bond problems with investors and the media during implementation of the exit strategy;

e. Substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller."

24. **Jerome Tabolich** agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Bond underwritings and documentation including the Official Statements;

b. Acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Bonds;

c. Participating in the exit strategy and fraudulent conveyance as the President of Miller & Schroeder, and continuing thereafter as an officer and shareholder of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. ; and

d. substantially assisting the fraudulent conveyance as a "control person" and exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August, 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S Inc.; and

e. substantially assisting the fraudulent conveyance as a "control person",

25. **Edward Hentges** agreed to participate with full knowledge of the conspiracy by:

a. acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer and director of the Miller & Schroeder and continuing thereafter as an officer, director and shareholder of the MM&S; and

c. assisting the fraudulent conveyance as a control person.

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26. **Kenneth Larsen** agreed to participate with full knowledge of the conspiracy by:

a. acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer of the Miller & Schroeder signing the Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc.; and

c. substantially assisting the fraudulent conveyance as a control person and knowledgeable seller.

27. **Steven Erickson** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the Miller & Shroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

28. **Paul Ekholm** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of Miller & Schroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

29. **James F. Dlugosch** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and

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c. participating in the exit strategy and fraudulent conveyance as an executive officer and director of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

30. Daniel Dill, Mary Jo Brenden, Victor Dhoogie, Tom Nelson, Kenneth Dawkins, and Kenneth Halloran, agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, underwriters and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds; and

c. participating in the exit strategy and fraudulent conveyance as control persons of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller."

COMMON MISREPRESENTATIONS AND OMISSIONS BY THIRD PARTY RESPONDENTS TO THIRD PARTY CLAIMANT

31. In connection with the various Bonds underwritten, offered and sold by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc., express and implied representations in the Official Statements, and oral communications to Third party claimant Talley were false and/or misleading statements, and the true facts were deliberately withheld from Third party claimant Tailey. Just a few of the facts as listed below were with held from third party claimant:

a) Loans were made to promoters to get the various deals.

b) Promoters were not financially viable.

c) Promoters had various past records of fraudulent activities.

d) Official statements of bonds were not complete and were not true.

e) Various deals had operational and financial problems after funding.

f) Various bonds were not financially viable from the beginning.

g) Various bonds were based on improper appraisals.

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h) Furthermore, third party claimant Talley was not adequately advised of the recent transaction history regarding real property being sold and pledged as security for bondholders and key transaction terms such as price, fair market value, liens, restrictive covenants, and the identity and profit of participants to the transaction.

32. Third party claimant Talley was misled by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. by not knowing the true and complete facts regarding the bonds sold to customers.

FIRST CAUSE OF ACTION
IMPLIED INDEMNITY
By Third party claimant as Against All Third party respondents

33. Third party claimant Talley refers to and realleges Paragraphs 1 through 33, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

34. If third party claimant Talley is held liable and responsible to Claimants for damages as alleged in the Statement of Claim, it will be solely due to the conduct of third party respondents, as herein alleged. Therefore, third party claimant Talley is entitled to be indemnified by said third party respondents, should such liability arise.

35. Third party claimant Talley has incurred, and is continuing to incur attorneys fees, forum fees, court costs, and other costs in connection with defending the claimant's Statement of Claim, the exact amount of which is unknown at this time. When the exact sum has been ascertained, third party claimant will seek leave to amend this Third Party Claim to set forth the true nature and amount of said expenses.

36. If third party claimant Talley is held liable or responsible to the Claimants for damages, said liability will be vicarious only, and said liability will be the direct and proximate result of the active and affirmative conduct of the third party respondents.

37. Third party claimant Talley is entitled to complete indemnification by said third party respondents, for any sum or sums for which third party claimant Talley may be adjudicated liable to Claimants, together with the costs of defense, costs of suit, and reasonable attorneys fees.

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SECOND CAUSE OF ACTION
COMPARATIVE INDEMNITY

By Third party claimants as Against All Third party respondents

38. Third party claimant Talley refers to and realleges Paragraphs 1 through 37, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

39. Third party claimant Talley contends that he is in no way legally responsible for the events giving rise to the Claimant's causes of action, or legally responsible in any other manner for the damages allegedly sustained by the Claimants. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Talley is held liable for any or all of the Claim asserted against him by Claimants, Third party respondents to the extent that their fault was a proximate cause of Claimant's damages and/or loses, are responsible for said damages and/or losses in proportion to each third party respondents comparative liability, and that this third party claimant is entitled to a determination of several liability.

40. By reason of the foregoing, third party claimant Talley is entitled to indemnity from third party respondents, for all costs, fees, expenses, settlements, and judgments paid by and incurred by third party claimant Talley in connection with this action.

THIRD CAUSE OF ACTION
DECLARATORY RELIEF

By Third party claimant as against All Third party respondents

41. Third party claimant Talley refers to and realleges Paragraphs 1 through 40, inclusive of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

42. An actual controversy has arisen between third party claimant Talley and third party respondents, with respect to the rights, duties, and obligations of the parties in that third party claimant Talley contends that he is without fault, responsibility, or blame for any of the damages allegedly suffered by the Claimants, if any at all. If there are any damages, the acts causing such damages were committed by the third party respondents, and not third party claimant Talley. Third party claimant contends that he is entitled to indemnity from third party respondents. Third party claimant Talley alleges that third party respondents, contend to the contrary.

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43. Third party claimant Talley desires a determination of his rights and duties, and a declaration that he is the entitled to full indemnity from third party respondents, for all damages, costs, and attorney's fees incurred in this action.

44. A declaration is necessary and appropriate at this time, under these circumstances in order that third party claimant Talley may ascertain his rights and duties.

FOURTH CAUSE OF ACTION
EQUITABLE INDEMNITY
By Third party claimant as Against All Third party respondents

45. Third party claimant Talley refers to and realleges Paragraphs 1 through 44, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

46. Third party claimant Talley alleges that he is in no way legally responsible for the events giving rise to Claimant's Statement of Claim, nor legally responsible in any manner for the damages allegedly sustained by Claimants. If, contrary to the foregoing allegations, third party claimant Talley is held liable for any or all of the claim for damages asserted against third party claimant by Claimants, then third party claimant Talley alleges that the third party respondents, were negligent, intentionally misrepresented certain facts, breached their fiduciary duties, as stated above. Third party claimant Talley alleges that the above stated acts of third party respondents, were the sole proximate cause of the damages and/or losses to Claimant.

47. By reason of the foregoing, third party respondents, are responsible and liable for any such damages in direct proportion to the extent of their above stated actions in bringing about said damages and/or losses. Thus, third party claimant Talley is entitled to judgment over third party respondents, in an amount proportionate to the amount of third party claimant Talley's financial responsibility for such damages that exceed his portion of responsibility, if any at all.

FIFTH CAUSE OF ACTION
CONTRIBUTION
By Third party claimant as Against All Third party respondents

48. Third party claimant Talley refers to and realleges Paragraphs 1 through 47, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

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49. Third party claimant Talley contends that he is in no way legally responsible for the damages alleged in Claimant's Statement of Claim. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Talley is held liable for all or any part of Claimant's alleged damages, third party respondents, to the extent that their fault is determined by the arbitrators, are obligated to reimburse and are liable to third party claimant Talley for all and any liability so assessed by way of contribution, and third party claimant Talley asserts herein his right to contribution.

WHEREFORE, third party claimant Talley prays:

1. For a declaration of the third party claimant's rights and duties;

2. For an order declaring the percentage of fault, if any, between third party claimant Talley, and third party respondents, and each of them, for damages and losses allegedly caused to Claimant;

3. For an order awarding judgment in favor of third party claimant Talley, and against third party respondents, based upon the relative percentage of fault of each party including the Claimant;

4. For an order that the third party claimant is entitled to be fully indemnified by third party respondents, for any and all settlements, compromises, and/or judgments entered into or against third party claimant as a result of this action;

5. For reasonable attorneys fees and costs in an amount according to proof; and

6. For such other and further relief as may be just and proper.

Dated: June 6, 2002

Steven M. Green
Attorney for Third Party Claimant
Bruce Talley

MG015591

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Attorney for Respondent and Third Party Claimant
Bruce Talley

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In The Matter of the Arbitration Between: PHILLIP J. SALLEY, TRUSTEE, PHILLIP J. SALLEY REVOCABLE TRUST, UAD 6/30/93, PHILLIP J. SALLEY, Claimants, v. MILLER & SCHROEDER FINANCIAL, INC., a Minnesota Corporation; MARSHALL, MILLER & SCHROEDER, INC.; JAMES DLUGOSCH, JAMES IVERSON, JOHN CLAREY, ROGER WICKNER, NANCY MELDON, VICTOR DHOOGE, BRUCE TALLEY and DOES 1 Through 25, inclusive, Respondents.	Case No. 01-03445 BRUCE TALLEY'S THIRD PARTY CLAIM
In the THIRD PARTY CLAIM of: BRUCE TALLEY Third Party Claimant, v. MM&S FINANCIAL, INC.,JAMES E. IVERSON; JEROME A.TABOLICH; EDWARD J. HENTGES; KENNETH R. LARSEN; STEVEN W. ERICKSON; JL R. EKHOLM; JAMES F. DLUGOSCH; KENNETH HALLORAN; KENNETH DAWKINS; TOM S. NELSON; JAMES	

EXHIBIT G

party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S l ncial, Inc. would incur debts and obligations relating to the fraudulent bond sales.

ROLES OF VARIOUS THIRD PARTY RESPONDENTS IN THE CONSPIRACY

21. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Bonds.

22. Third Party respondent **James Iverson** agreed to participate with full knowledge of the conspiracy by:

a. Supervising the Solana Beach office of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the Bonds;

b. Controlling the capital of Miller & Schroeder Financial, Inc. including secret loans to Heritage;

c. Acting as an officer, director, underwriter and shareholder of Miller & Schroeder l ncial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Providing secret loans and advances from Miller & Schroeder for Heritage to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

e. Directing Heritage Bond proceeds to assist in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

f. Instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

g. Providing advice and consultation to third party respondents and Miller & Schroeder in furtherance of its exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc. successor to Miller & Schroeder Financial, Inc.; and

h. Substantially assisting the fraudulent conveyance as a "control person".

23. **John Clarey** agreed to participate with full knowledge of the conspiracy by:

a. Acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, (›alstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other Bond underwritings and documentation including the Official Statements;

b. Approving successive Bond underwritings while accumulating information of problems plaguing earlier Bond projects;

c. Acting as an officer, director, and shareholder of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the various Bond problems with investors and the media during implementation of the exit strategy;

e. Substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller."

24. **Jerome Tabolich** agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Bond underwritings and documentation including the Official Statements;

b. Acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Bonds;

c. Participating in the exit strategy and fraudulent conveyance as the President of Miller & Schroeder, and continuing thereafter as an officer and shareholder of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. ; and

d. substantially assisting the fraudulent conveyance as a "control person" and exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August, 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S Inc.; and

e. substantially assisting the fraudulent conveyance as a "control person",

25. **Edward Hentges** agreed to participate with full knowledge of the conspiracy by:

a. acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer and director of the Miller & Schroeder and continuing thereafter as an officer, director and shareholder of the MM&S; and

c. assisting the fraudulent conveyance as a control person.

26. **Kenneth Larsen** agreed to participate with full knowledge of the conspiracy by:

a. acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer of the Miller & Schroeder signing the Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc.; and

c. substantially assisting the fraudulent conveyance as a control person and knowledgeable seller.

27. **Steven Erickson** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the Miller & Shroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

28. **Paul Ekholm** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of Miller & Schroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

29. **James F. Dlugosch** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and

c. participating in the exit strategy and fraudulent conveyance as an executive officer and ctor of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

30. Daniel Dill, Mary Jo Brenden, Victor Dhoogie, Tom Nelson, Kenneth Dawkins, and Kenneth Halloran, agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, underwriters and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds; and

c. participating in the exit strategy and fraudulent conveyance as control persons of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller."

COMMON MISREPRESENTATIONS AND OMISSIONS BY THIRD PARTY RESPONDENTS TO THIRD PARTY CLAIMANT

31. In connection with the various Bonds underwritten, offered and sold by third party respondents Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc., express and implied representations in the Official Statements, and oral communications to Third party claimant Talley were false and/or misleading statements, and the true facts were deliberately withheld from Third party claimant Talley. Just a few of the facts as listed below were with held from third party claimant:

a) Loans were made to promoters to get the various deals.

b) Promoters were not financially viable.

c) Promoters had various past records of fraudulent activities.

d) Official statements of bonds were not complete and were not true.

e) Various deals had operational and financial problems after funding.

f) Various bonds were not financially viable from the beginning.

g) Various bonds were based on improper appraisals.

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Attorney for Respondent and Third Party Claimant
Bruce Talley

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In The Matter of the Arbitration Between: EUGENE S. ELDRIDGE, individually and as Trustee of the Eldridge Family Trust; U.S. BANK OF WASHINGTON, N.A., as Corporate Co-Trustee of the Eldridge Family Trust; ARTHUR E. ELDRIDGE and LINDEN G. ELDRIDGE as Designated Beneficiaries and Successor Co-Trustees of the Eldridge Family Trust; and the ELDRIDGE FAMILY TRUST, Claimants, v. BRUCE RICHARD TALLEY, PATRICK FLYNN, PAMELA HOLTZCLAW, JOHN M. CLAREY, JR., VICTOR DHOOGE, JAMES F. DLUGOSCH, STEVEN WESLEY ERICKSON, PAUL RICHARD EKHOLM, EDWARD JOEL HENTGES, JAMES IVERSON, KENNETH R. LARSEN, NANCY MELDON, JEROME TABOLICH, AND ROGER WICKNER, Respondents.	NASD Arbitration No. THIRD PARTY CLAIM
In the THIRD PARTY CLAIM of: BRUCE TALLEY	

Received 11/25/02
sent to Brian Palmer

MG010806

EXHIBIT H

Third Party Claimant,)
v.)
)
MM&S FINANCIAL, INC.,JAMES E. IVERSON;)
JEROME A.TABOLICH; EDWARD J. HENTGES;)
KENNETH R. LARSEN; PAUL R. EKHOLM;)
JAMES F. DLUGOSCH; KENNETH)
HALLORAN; KENNETH DAWKINS;)
TOM S. NELSON; JAMES CLAREY; VICTOR)
DHOOGIE, MARY JO BRENDEN; AND)
DANIEL DILL,)
)
Third party respondents.)
)

Third Party Claimant alleges the following:

PARTIES

THIRD PARTY CLAIMANT

1. Third party claimant Bruce Talley is at all relevant times mentioned herein a resident of San Diego County, California, and the holder of a Series 7 agent's license. At all relevant times mentioned herein, third party claimant Talley was an agent and employee of Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc.

THIRD PARTY RESPONDENTS

2. Third Party Respondent MM&S Financial, Inc., holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Beginning in 2000, Miller & Schroeder Financial, Inc., began divesting portions of its business and businesses to various individuals and entities, including third party respondent MM&S Financial, Inc. Third party respondent MM&S Financial, Inc is conducting business from it's Solana Beach, California location as the successor to Miller & Schroeder Financial, Inc.

3. Any and all references herein to third party respondent MM&S Financial, Inc shall be as successor to Miller & Schroeder Financial, Inc..

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4. Any and all references herein to Miller & Schroeder Financial, Inc. shall be as predecessor to third party respondent herein, MM&S Financial, Inc.

MILLER & SCHROEDER INDIVIDUAL CONTROL PERSONS/THIRD PARTY RESPONDENTS

5. Third party claimant alleges that Third Party Respondents, James E. **Iverson,** Jerome A. **Tabolich,** Edward J. **Hentges,** Kenneth R. **Larsen,** Steven W. **Erickson,** Paul R. **Ekholm** ,James F. **Dlugosch**, Kenneth **Halloran** , Kenneth E. **Dawkins**, Tom S. **Nelson** , John M. **Clarey,** Victor **Dhoogie,** Mary Jo **Brenden,** Daniel **Dill,** are and were at all relevant times, officers, underwriters, directors, members of the credit committee, and supervisors at Miller & Schroeder Financial, Inc. Miller & Schroeder Financial, Inc. filed bankruptcy on or about January 21, 2002, otherwise Miller & Schroeder Financial, Inc. would be a named cross claimant and or third party respondent in this third party claim. The third party claimant believes that these named individuals are members of the NASD and or the Municipal Bond Securities group giving the NASD jurisdiction in this case.

6. Third party respondents Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, Dlugosch, Halloran, Dawkins, Nelson, Dhoogie, Brenden, and Dill were at all relevant times herein key officers, underwriters, directors, members of the credit committee, and supervisors of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. and it's associated entities with responsibility for the due diligence for the Heritage Health Care Bonds, and other investments including Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others which were sold to the public including the claimants, causing the substantial losses to the claimants because of the actions of these "CONTROL PERSON THIRD PARTY RESPONDENTS" and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. At all times during the actions alleged herein, control person third party respondents were agents of each other in the activities alleged.

ALTER EGO ALLEGATIONS

7. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all third party respondents, and each of them, and all the other third party respondents, and each of them, such that any individuality and separateness between all third party respondents, and each of them, and the third party respondent corporate entities, has ceased to exist, and all the third party respondent corporate entities are the alter egos of third party respondents, and each of them, in that third party claimant alleges that each of the individual third party respondents used the assets of the third party respondent corporate entities to cause the losses to claimant herein.

8. Adherence to the fiction of the separate existence of any third party respondent corporate entity as an entity distinct from any of the other third party respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that such asserting third party respondents, and each of them, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith without financial liability.

CONSPIRACY TO DEFRAUD CLAIMANTS THROUGH OFFER & SALE OF HERITAGE BONDS AND VARIOUS OTHER BONDS

9. Commencing in or during 1996, and continuing on throughout the relevant time period, third party respondents, entered into agreements and scheme to defraud investors by effecting transactions in Heritage and Various other bonds through the use of negligent due diligence, improper underwriting, false and misleading statements of material facts. Third party claimant had no knowledge of this scheme to defraud investors at any time.

10. Pursuant to the agreement and scheme to defraud, third party respondents Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. acted as the investment banker and lead underwriter for all Heritage and Various other Bond offerings. Under the direction of the third party respondents, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., raised capital for purported health care facility development by structuring securities offerings

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utilizing a municipal entity as the stated issuer and raised capital through the sale of various other bonds such as Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others. The Heritage Bonds were structured by third party respondents and Miller & Schroeder as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. Eventually, these investments would either default, enter bankruptcy, or the underlying value became worthless.

11. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. knew or should have known that the bonds were of questionable viability. Third party respondents and Miller & Schroeder predecessor to third party respondent herein, MM&S Financial, Inc. further knew or should have known due to their due diligence, underwriting research, and position as investment bankers and underwriters that the various bonds financial condition was tenuous, and the offerings were not financially feasible.

MILLER & SCHROEDER predecessor to third party respondent herein, MM&S Financial, Inc. EXIT STRATEGY

12. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance various public facilities and businesses.

13. Based on reputation and experience, Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. negotiated for itself substantial fees in excess of many millions of dollars for financing, structuring and marketing the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds, and other investments. These fees were paid from the proceeds of these investment sales.

14. As third party respondents became aware of cost overruns, construction delays, operational losses, cash flow problems, and looming defaults for the Heritage, Boston Chicken, Jackson County Bonds,

Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments, third party respondents and Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. commenced a strategy to protect and preserve the interests of the third party respondents and each of them, to the exclusion of the claimants, and third party claimant Talley.

15. While more Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments were being sold by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Third Party respondent Iverson sold his stock in Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. in 1997 in a management buyout led by Third Party respondent Dlugosch. Third party respondent Iverson continues to the present day to act as an officer, director, underwriter, and control person for third party respondent MM&S Financial, Inc.

16. The third party respondents advanced in excess of $700,000 to the promoters of the Heritage bonds so that the third party respondents could underwrite the Heritage Bonds. The third party respondents also were found to have been in a corrupt business arrangement with County of San Bernardino, California settling with the county by paying $350,000 in 2001. The third party respondents in 2000 started trying to sell pieces of the Miller and Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. business, knowing of their false dealings with their customers, culminating in the transfer of Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. businesses to third party respondent MM&S Financial, Inc. in August 2001, and the filing of bankruptcy by Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. in January 2002.

17. Third party claimant Talley alleges that at all material times mentioned herein, the various third party respondents and each of them stated to third party claimant that all the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City

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of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other bonds were solvent; that all the proper "due diligence" had been done by the Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., and that third party claimant Talley should sell and continue to sell the various issues of the bonds to his clientele, and tell his clientele that the bonds were good investments. Third party claimant Talley had no knowledge of the fatal "due diligence" flaws of the bonds. Said flaws were known to third party respondents.

FRAUDULENT CONVEYANCE

18. Third party claimant alleges, that the third party respondents continue to conduct business as usual. Third party claimant is informed and believes that MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. third party respondents employ approximately 19 former managers and approximately 100 former employees of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. continues to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. to finance, structure, and market bonds. For example, MM&S Financial Inc. successor to Miller & Schroeder Financial, Inc. is now doing business from the former Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Solana Beach office.

19. Pursuant to Agreement, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. assets were transferred to MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. in an effort to avoid obligations relating to the previous fraudulent sale of Bonds by the third party respondents. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. structured the Agreement so that the value of the assets transferred to the MM&S

Financial, Inc. successor to Miller & Schroeder Financial, Inc. exceeds the value received by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. was left insolvent for the intended purpose of not having the ability to meet liabilities due to the fraudulent bond sales.

20. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., structured the terms of the Agreement with knowledge that third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. would incur debts and obligations relating to the fraudulent bond sales.

ROLES OF VARIOUS THIRD PARTY RESPONDENTS IN THE CONSPIRACY

21. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Bonds.

22. Third Party respondent **James Iverson** agreed to participate with full knowledge of the conspiracy by:

a. Supervising the Solana Beach office of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the Bonds;

b. Controlling the capital of Miller & Schroeder Financial, Inc. including secret loans to Heritage;

c. Acting as an officer, director, underwriter and shareholder of Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Providing secret loans and advances from Miller & Schroeder for Heritage to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

e. Directing Heritage Bond proceeds to assist in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

f. Instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

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g. Providing advice and consultation to third party respondents and Miller & Schroeder in furtherance of its exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc. successor to Miller & Schroeder Financial, Inc.; and

h. Substantially assisting the fraudulent conveyance as a "control person".

23. **John Clarey** agreed to participate with full knowledge of the conspiracy by:

a. Acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other Bond underwritings and documentation including the Official Statements;

b. Approving successive Bond underwritings while accumulating information of problems plaguing earlier Bond projects;

c. Acting as an officer, director, and shareholder of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the various Bond problems with investors and the media during implementation of the exit strategy;

e. Substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller."

24. **Jerome Tabolich** agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Bond underwritings and documentation including the Official Statements;

b. Acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Bonds;

c. Participating in the exit strategy and fraudulent conveyance as the President of Miller & Schroeder, and continuing thereafter as an officer and shareholder of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. ; and

d. substantially assisting the fraudulent conveyance as a "control person" and exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August, 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S Inc.; and

e. substantially assisting the fraudulent conveyance as a "control person",

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25. **Edward Hentges** agreed to participate with full knowledge of the conspiracy by:

a. acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer and director of the Miller & Schroeder and continuing thereafter as an officer, director and shareholder of the MM&S; and

c. assisting the fraudulent conveyance as a control person.

26. **Kenneth Larsen** agreed to participate with full knowledge of the conspiracy by:

a. acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer of the Miller & Schroeder signing the Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc.; and

c. substantially assisting the fraudulent conveyance as a control person and knowledgeable seller.

27. **Paul Ekholm** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of Miller & Schroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

28. **James F. Dlugosch** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and

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c. participating in the exit strategy and fraudulent conveyance as an executive officer and director of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

29. Daniel Dill, Mary Jo Brenden, Victor Dhoogie, Tom Nelson, Kenneth Dawkins, and Kenneth Halloran, agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, underwriters and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds; and

c. participating in the exit strategy and fraudulent conveyance as control persons of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller."

COMMON MISREPRESENTATIONS AND OMISSIONS BY THIRD PARTY RESPONDENTS TO THIRD PARTY CLAIMANT

30. In connection with the various Bonds underwritten, offered and sold by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc., express and implied representations in the Official Statements, and oral communications to Third party claimant Talley were false and/or misleading statements, and the true facts were deliberately withheld from Third party claimant Talley. Just a few of the facts as listed below were with held from third party claimant:

a) Loans were made to promoters to get the various deals.

b) Promoters were not financially viable.

c) Promoters had various past records of fraudulent activities.

d) Official statements of bonds were not complete and were not true.

e) Various deals had operational and financial problems after funding.

f) Various bonds were not financially viable from the beginning.

g) Various bonds were based on improper appraisals.

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h) Furthermore, third party claimant Talley was not adequately advised of the recent transaction history regarding real property being sold and pledged as security for bondholders and key transaction terms such as price, fair market value, liens, restrictive covenants, and the identity and profit of participants to the transaction.

31. Third party claimant Talley was misled by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. by not knowing the true and complete facts regarding the bonds sold to customers.

FIRST CAUSE OF ACTION
IMPLIED INDEMNITY
By Third party claimant as Against All Third party respondents

32. Third party claimant Talley refers to and realleges Paragraphs 1 through 33, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

33. If third party claimant Talley is held liable and responsible to Claimants for damages as alleged in the Statement of Claim, it will be solely due to the conduct of third party respondents, as herein alleged. Therefore, third party claimant Talley is entitled to be indemnified by said third party respondents, should such liability arise.

34. Third party claimant Talley has incurred, and is continuing to incur attorneys fees, forum fees, court costs, and other costs in connection with defending the claimant's Statement of Claim, the exact amount of which is unknown at this time. When the exact sum has been ascertained, third party claimant will seek leave to amend this Third Party Claim to set forth the true nature and amount of said expenses.

35. If third party claimant Talley is held liable or responsible to the Claimants for damages, said liability will be vicarious only, and said liability will be the direct and proximate result of the active and affirmative conduct of the third party respondents.

36. Third party claimant Talley is entitled to complete indemnification by said third party respondents, for any sum or sums for which third party claimant Talley may be adjudicated liable to Claimants, together with the costs of defense, costs of suit, and reasonable attorneys fees.

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SECOND CAUSE OF ACTION
COMPARATIVE INDEMNITY

By Third party claimants as Against All Third party respondents

37. Third party claimant Talley refers to and realleges Paragraphs 1 through 37, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

38. Third party claimant Talley contends that he is in no way legally responsible for the events giving rise to the Claimant's causes of action, or legally responsible in any other manner for the damages allegedly sustained by the Claimants. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Talley is held liable for any or all of the Claim asserted against him by Claimants, Third party respondents to the extent that their fault was a proximate cause of Claimant's damages and/or loses, are responsible for said damages and/or losses in proportion to each third party respondents comparative liability, and that this third party claimant is entitled to a determination of several liability.

39. By reason of the foregoing, third party claimant Talley is entitled to indemnity from third party respondents, for all costs, fees, expenses, settlements, and judgments paid by and incurred by third party claimant Talley in connection with this action.

THIRD CAUSE OF ACTION
DECLARATORY RELIEF

By Third party claimant as against All Third party respondents

40. Third party claimant Talley refers to and realleges Paragraphs 1 through 40, inclusive of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

41. An actual controversy has arisen between third party claimant Talley and third party respondents, with respect to the rights, duties, and obligations of the parties in that third party claimant Talley contends that he is without fault, responsibility, or blame for any of the damages allegedly suffered by the Claimants, if any at all. If there are any damages, the acts causing such damages were committed by the third party respondents, and not third party claimant Talley. Third party claimant contends that he is entitled to indemnity from third party respondents. Third party claimant Talley alleges that third party respondents, contend to the contrary.

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42. Third party claimant Talley desires a determination of his rights and duties, and a declaration that he is the entitled to full indemnity from third party respondents, for all damages, costs, and attorney's fees incurred in this action.

43. A declaration is necessary and appropriate at this time, under these circumstances in order that third party claimant Talley may ascertain his rights and duties.

FOURTH CAUSE OF ACTION
EQUITABLE INDEMNITY
By Third party claimant as Against All Third party respondents

44. Third party claimant Talley refers to and realleges Paragraphs 1 through 44, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

45. Third party claimant Talley alleges that he is in no way legally responsible for the events giving rise to Claimant's Statement of Claim, nor legally responsible in any manner for the damages allegedly sustained by Claimants. If, contrary to the foregoing allegations, third party claimant Talley is held liable for any or all of the claim for damages asserted against third party claimant by Claimants, then third party claimant Talley alleges that the third party respondents, were negligent, intentionally misrepresented certain facts, breached their fiduciary duties, as stated above. Third party claimant Talley alleges that the above stated acts of third party respondents, were the sole proximate cause of the damages and/or losses to Claimant.

46. By reason of the foregoing, third party respondents, are responsible and liable for any such damages in direct proportion to the extent of their above stated actions in bringing about said damages and/or losses. Thus, third party claimant Talley is entitled to judgment over third party respondents, in an amount proportionate to the amount of third party claimant Talley's financial responsibility for such damages that exceed his portion of responsibility, if any at all.

FIFTH CAUSE OF ACTION
CONTRIBUTION
By Third party claimant as Against All Third party respondents

47. Third party claimant Talley refers to and realleges Paragraphs 1 through 47, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

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48. Third party claimant Talley contends that he is in no way legally responsible for the damages alleged in Claimant's Statement of Claim. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Talley is held liable for all or any part of Claimant's alleged damages, third party respondents, to the extent that their fault is determined by the arbitrators, are obligated to reimburse and are liable to third party claimant Talley for all and any liability so assessed by way of contribution, and third party claimant Talley asserts herein his right to contribution.

WHEREFORE, third party claimant Talley prays:

1. For a declaration of the third party claimant's rights and duties;

2. For an order declaring the percentage of fault, if any, between third party claimant Talley, and third party respondents, and each of them, for damages and losses allegedly caused to Claimant;

3. For an order awarding judgment in favor of third party claimant Talley, and against third party respondents, based upon the relative percentage of fault of each party including the Claimant;

4. For an order that the third party claimant is entitled to be fully indemnified by third party respondents, for any and all settlements, compromises, and/or judgments entered into or against third party claimant as a result of this action;

5. For reasonable attorneys fees and costs in an amount according to proof; and

6. For such other and further relief as may be just and proper.

Dated: November 21, 2002

Steven M. Green
Attorney for Third Party Claimant
Bruce Talley

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PROOF OF SERVICE

NASD-DR Case Number
Eldridge, et al. v. Bruce Richard Talley, et al.

I am a citizen of the United States, a resident of the County of San Diego, California, over the age of 18 years, and not a party to the within action; my business address is: 3636 Fourth Avenue Suite 305, San Diego, California 92103.

On November 22, 2002, I served the attached:

1. Eldridge et. al. claim and corresponding Uniform Submission Agreements
2. Bruce Talley's Statement of Answer and corresponding Uniform Submission Agreement
3. Third Party Claim
4. Letter to Third Party Respondents
5. Proof of Service.

to the parties in said action by placing a true copy thereof in a sealed envelope with postage thereon, fully prepaid, via US Mail at San Diego, California addressed as follows:

SEE ATTACHED SERVICE LIST

Executed at San Diego, California on November 22, 2002.

I declare the foregoing to be true and correct under the penalty of perjury.

Steven M. Green
Attorney for Bruce Talley

SERVICE LIST

Eldridge, et al v. Talley, et al.
Third Party Claim

Kenneth Dawkins 768 Goodrich Avenue St. Paul, MN 55105	
MM&S Financial, Inc. 150 S. Fifth St., Ste. 3000 Minneapolis, MN 55402	
James Iverson 31300 Lobo Canyon Road Agoura, CA 91301	
Jerome A. Tabolich MM&S Financial, Inc. 150 S. Fifth St., Ste. 3000 Minneapolis, MN 55402 612-376-1500	
Edward Hentges MM&S Financial, Inc. 150 S. Fifth St., Ste. 3000 Minneapolis, MN 55402 612-376-1500	
Kenneth Larsen MM&S Financial, Inc. 150 S. Fifth St., Ste. 3000 Minneapolis, MN 55402 612-376-1500	
Paul Eckholm MM&S Financial, Inc. 150 S. Fifth St., Ste. 3000 Minneapolis, MN 55402 612-376-1500	
James F. Dlugosch 4501 Park Glen Rd. lSt. Louis Park, MN 55416	
Daniel Dill George Baum & Co. 777 108th Ave., N.E. Bellvue, WA 98004	

Tom Nelson D. A. Davidson, & Co. 8 Third Street N. Great Falls, Montana 59401	
John Clary 14720 South 15th St. Afton, MN 55001	
Victor Dhoogie WEDBUSH 12526 High Bluff Dr., Ste. 300 San Diego, CA 92130 858-792-3599	
Kenneth Halloran RBC Dain Rausher 60 S. 6th St. Minneapolis, MN 55402	
Mary Jo Brenden MM&S Financial, Inc. 150 S. Fifth St., Ste. 3000 Minneapolis, MN 55402 612-376-1500	
J. Patrick Flynn 827 Holly Ridge Circle Encinitas, CA 92075	
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Nancy Meldon 150 South Fifth Street, Suite 3000 Minneapolis, MN 55402	
Roger J. Wickner 150 South Fifth Street, Suite 3000 Minneapolis, MN 55402	
Al Van Kampen ROHDE & VAN KAMPEN , PLLC 1000 Second Avenue, Ste. 3110 Seattle, Washington 98104 206-386-7353	Attorney for Claimants
Mr. Hassan Abedi NASD Dispute Resolution Department 300 S. Grand Ave., Ste. 1620 Los Angeles, CA 90071	NASD

1-16-02

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN DR. J. KENNETH FLESHMAN, M.D., as TRUSTEE OF THE FLESHMAN FAMILY TRUST; Claimant -and- MILLER-SCHROEDER FINANCIAL INC.; MARK AUGUSTA; SECURITIES RESOLUTION CORP. (CRD No. 7119); MM&S FINANCIAL, INC.; and ANY SUCCESSOR-IN-LIABILITY CORPORATIONS OR COMPANIES OF SAID CORPORATE RESPONDENTS; JAMES E. IVERSON; JEROME A. TABOLICH; EDWARD J. HENTGES; KENNETH R. LARSEN; STEVEN W. ERICKSON; PAUL R. EKHOLM; JAMES F. DLUGOSCH; KENNETH HALLORAN; KENNETH DAWKINS; TOM S. NELSON; JAMES CLAREY; VICTOR DHOOGIE, MARY JO BRENDEN; and DANIEL DILL, Respondents.	No. NASD 01-01444 **CLAIMANT'S SECOND AMENDED STATEMENT OF CLAIM**

Claimant, Dr. J. Kenneth Fleshman ("Claimant"), by his attorneys, Mesch, Clark & Rothschild, P.C., for his Second Amended Statement of Claim against Respondents, Miller-Schroeder Financial Inc.("Miller-Schroeder"), Securities Resolution Corp. ("Securities Resolution"), MM&S Financial ("MM&S"), Mark Augusta ("Augusta"), James E. Iverson,

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EXHIBIT I

Jerome A. Tabolich, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, James F. Dlugosch, Kenneth Halloran, Kenneth Dawkins, Tom S. Nelson, James Clarey, Victor Dhoogie, Mary Jo Brenden, and Daniel Dill, states as follows:

PARTIES

1. Miller-Schroeder, Securities Resolution, and MM&S at all times material hereto, were broker-dealers in securities, registered as such with the U.S. Securities and Exchange Commission ("SEC") and, among others, the State of Arizona. They also were members of various securities industry self-regulatory organizations, including the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"). Mark Augusta was at all times material an agent of Respondents and acted within the course and scope of such employment. Collectively, Miller-Schroeder, Securities Resolution, and MM&S will be referred to as Respondents. Their CRD Number is 7119. This Second Amended Statement of Claim is also being filed against any successor corporations, companies or partnerships of said corporate Respondents that assumed, or should have assumed, their liabilities, including the liability for this claim.

2. The Claimant is the Trustee of the Fleshman Trust, which was the client of the Respondents.

3. Respondent, MM&S Financial, Inc., holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Beginning in 2000, Miller & Schroeder Financial, Inc., began divesting portions of its business and

businesses to various individuals and entities, including Respondent, MM&S Financial, Inc. Respondent, MM&S Financial, Inc, is conducting business from its Solana Beach, California location as the successor to Miller & Schroeder Financial, Inc.

4. Any and all references herein to Respondent, MM&S Financial, Inc., shall be as successor to Miller & Schroeder Financial, Inc.

5. Any and all references herein to Miller & Schroeder Financial, Inc. shall be as predecessor to Respondent herein, MM&S Financial, Inc.

ADDITIONAL "CONTROL PERSON" RESPONDENTS

6. Claimant, Dr. J. Kenneth Fleshman, alleges that Respondents, James E. Iverson, Jerome A. Tabolich, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm ,James F. Dlugosch, Kenneth Halloran , Kenneth E. Dawkins, Tom S. Nelson , John M. Clarey, Victor Dhoogie, Mary Jo Brenden, Daniel Dill, are and were at all relevant times, officers, underwriters, directors, members of the credit committee, and supervisors at Miller & Schroeder Financial, Inc. Miller & Schroeder Financial, Inc. filed bankruptcy on or about January 21, 2002. The Claimant believes that these named individuals are members of the NASD and or the Municipal Bond Securities group giving the NASD jurisdiction in this case.

7. Additional Respondents Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, Dlugosch, Halloran, Dawkins, Nelson, Dhoogie, Brenden, and Dill were at all relevant times herein key officers, underwriters, directors, members of the credit committee, and supervisors of Miller & Schroeder Financial, Inc. predecessor to Respondent herein,

MM&S Financial, Inc. and its associated entities with responsibility for the due diligence for the Heritage Health Care Bonds, and other investments including Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others which were sold to the public including the Claimant's, causing the substantial losses to the Claimant because of the actions of these "Control Person Respondents" and Miller & Schroeder Financial, Inc., predecessor to Respondent herein, MM&S Financial, Inc. At all times during the actions alleged herein, Control Person Respondents were agents of each other in the activities alleged.

JURISDICTION AND HEARING VENUE

8. The NASD has jurisdiction to hear and decide this controversy, and the parties are bound to arbitrate the claim in accordance with Section 10201(a) of the NASD Code of Arbitration Procedure.

9. The Claimant requests that the hearing be held in Tucson.

10. The Claimant's Statement gives rise to personal-injury claims and a public-hearing dispute calling for public or non-securities industry arbitrators.

FACTS

11. Claimant is a resident of and the claim hereinafter alleged arose in Pima County, Arizona.

12. Claimant is a trustee of the trust established by his father in 1988. His father, James Kenneth Fleshman, was born in 1907 and died in May 2001 at age 94. His mother was born in 1904 (she is 97); she lives in Eugene, Oregon. All of their assets are listed in the trust. James Kenneth Fleshman, the elder Fleshman, used to be a chemical engineer for Uniroyal for 34 years and had lived in a care center in Oregon with around-the-clock nursing care because he suffered from dementia, diabetes and brain damage. He had a cardiac pace maker for his pulse inserted in him. The elder Fleshman had been declared by his doctor to be physically and mentally incapable of managing his financial or other business affairs. *Exhibit 1*. Another physician wrote that the elder Fleshman was under his care for "multiple medical problems relating to the aging process. He is physically and mentally incapable of managing the affairs of his trust because of this." *Id.* Mrs. Frances Fleshman, the elder Fleshman's wife, also has been declared by her physician to be physically and mentally incapable of managing her financial and business affairs due to "multiple medical problems associated with the aging process." *Id.* The Claimant, in addition to being the Trustee of his father's trust, also has power of attorney conferred by both his parents to receive all information and handle all matters relating to Respondents. *See Exhibit 2.*

13. In 1989, Claimant's father began to trade with the Solano Beach, California, office of the Respondents, through a broker named Mark Augusta, whom the elder Fleshman met after seeing Augusta on television. The elder Fleshman invested in bonds, primarily tax

exempt ones (California and federal tax-exempt bonds). Claimant's father had not met Augusta in person for many years until after the account was opened.

14. The account was opened through telephone calls and the mail. It was several years before Claimant's father ever met Mr. Augusta in person and then only twice. Mr. Augusta would call the Claimant's father with recommendations. Mr. Augusta never made any statements about risk or alternatives to his recommendations. Mr. Augusta never provided a prospectus or information relating to quality or risk or an analysis of the account and holdings.

15. In 1997, due to problems relating to their age, the Claimant's parents moved to Oregon, where his sister could assist with their needs. His father continued his account with Respondents.

16. As a result of the mishandling of the account committed by Respondents, including the sale of unsuitable investments and the failure to properly diversify the account, the account was transferred to A.G. Edwards in July 1999.

17. Many of the bonds sold by the Respondents saw their values steeply declining. Others simply failed; Boston Chicken, for example, filed for bankruptcy and Tarrant County Health Care Facility missed payments. In June 2000, all of the non-performing bonds were liquidated and those whose issuing entities were in jeopardy were also liquidated. The transactions involved un-rated, high-risk, "junk bonds."

18. The losses, including the bankruptcy and defaults totaled $229,256.00, excluding interest and lost investment opportunities. *See Exhibit 3.* The Claimant's father trusted Mr. Augusta to make solid recommendations. The extreme risk of these investments was inappropriate for the age and financial goals of Claimant's parents.

19. On June 20, 2000, Claimant went to the Respondents expressing his concern and asking for information and records that he did not have. He never received the records and was told the Respondents did not have a new account opening form. The Claimant also was told the Respondents could not access records prior to 1992 due to computer problems.

20. The Respondents did not reply to several requests for copies of records.

21. Respondents failed in their responsibility to provide quality investment advice to clients in their 90s. These were their only assets and preservation of principal was of equal importance as income generation. The recommended speculative investments of low quality securities were inappropriate for a conservative account.

22. With the flurry of trading in 1997 and 1998, particularly in bonds that, it is believed, were brought to market by Respondents, there was unsuitable trading in the account for the sole benefit of Respondents and at the risk of Claimant's parents and the trust.

23. The Securities and Exchange Commission has informed Claimant that the SEC has begun an investigation into the health-care facility investments sold by Respondents. The SEC has interviewed Claimant in connection with its inquiry.

THE ORIGINAL LEGAL CLAIMS

24. The Claimant incorporates in The Legal Claims section all of the prior paragraphs.

A. **Negligence:** The Respondents, through their employees, supervisors and managers, negligently handled Claimant's securities portfolio, failed to meet the "know your customer" standards, omitted to advise Claimant of appropriate tax considerations, and otherwise caused substantial damage.

B. **Breach of Fiduciary Duties:** The Respondents breached their fiduciary duties by failing to properly supervise Mr. Augusta, investigate the transactions, and advise on more prudent investments.

C. **Failure to Exercise Management Supervision:** The Respondents failed to exercise even minimal management supervision and control over their salesman, Mr. Augusta, in the transactions involving the Claimant, leading to the sale of investments that were totally unsuitable to the financial objectives, resources and tax implications of Claimant.

D. **Arizona Securities Fraud:** The Respondents' acts, omissions, and breach of fiduciary duties violated the Arizona Revised Statutes, A.R.S. §§ 44-1991 *et seq.*, in that the Respondents omitted to state material facts necessary to have been made to Claimant about the various investments, including statements necessary to make other statements not misleading. The Respondents failed to state all the necessary material facts to the Claimant about the investments in order to prevent the Respondents' statements from being misleading. These actions and inactions constitute securities fraud under Arizona law. The Respondents

made false representations concerning the suitability and risks of each bond they sold, representing to the elder Fleshman that these bonds were safe and secure when they were actually risky and illiquid investments. Two of the investments (Tarrant County, Texas and SFC) ended in default and Boston Chicken landed in bankruptcy. The list of the investments for which the Respondents made recommendations are attached as *Exhibit 3.*

E. **Arizona Elder Abuse Statute:** The Respondents violated the Arizona Elder Abuse Statutes, A.R.S. § 46-456(C), because they were persons who were in a position of trust and confidence to an incapacitated or vulnerable adult, who by intimidation or deception knowingly took control, title, use or management of an incapacitated or vulnerable adult's assets or property with the intent to permanently deprive that person of the asset or property. These responsible persons are subject to damages in a civil action brought on behalf of the said incapacitated or vulnerable adult up to three times the amount of monetary damages as may be established to be owing to said person or his estate. Pursuant to provisions of A.R.S. § 46-456(D), a person who is in a position of trust and confidence to an incapacitated or vulnerable adult, who by intimidation or deception, knowingly takes control, title, use or management of an incapacitated or vulnerable adult's assets or property with the intent to permanently deprive that person of the asset or property, forfeits all benefits with respect to the estate of the deceased, incapacitated or vulnerable adult.

F. **Punitive Damages:** The Claimant is entitled to punitive damages for the acts of the Respondents, which were all done with an evil hand and an evil mind and were outrageous, willful and wanton.

THE AMENDED ADDITIONAL LEGAL CLAIMS

ALTER EGO ALLEGATIONS

25. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all Respondents, and each of them, and all the other Respondents, and each of them, such that any individuality and separateness between all Respondents, and each of them, and the Respondent corporate entities, has ceased to exist, and all the Respondent corporate entities are the alter egos of Respondents, and each of them, in that Claimant alleges that each of the individual Respondents used the assets of the Respondent corporate entities to cause the losses to Claimant herein.

26. Adherence to the fiction of the separate existence of any Respondent corporate entity as an entity distinct from any of the other Respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that such asserting Respondents, and each of them, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith without financial liability.

CONSPIRACY TO DEFRAUD CLAIMANT THROUGH OFFER & SALE OF HERITAGE BONDS AND VARIOUS OTHER BONDS

27. Commencing in or during 1996, and continuing on throughout the relevant time period, Respondents, entered into agreements and scheme to defraud investors by effecting transactions in Heritage and various other bonds through the use of negligent due diligence, improper underwriting, false and misleading statements of material facts. Claimant had no knowledge of this scheme to defraud investors at any time.

28. Pursuant to the agreement and scheme to defraud, Respondents Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. acted as the investment banker and lead underwriter for all Heritage and Various other Bond offerings. Under the direction of the Respondents, Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc., raised capital for purported health care facility development by structuring securities offerings utilizing a municipal entity as the stated issuer and raised capital through the sale of various other bonds such as Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others. The Heritage Bonds were structured by Respondents and Miller & Schroeder as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. Eventually, these investments would either default, enter bankruptcy, or the underlying value became worthless.

29. Respondents and Miller & Schroeder Financial, Inc predecessor to Respondent herein, MM&S Financial, Inc. knew or should have known that the bonds were of

questionable viability. Respondents and Miller & Schroeder predecessor to Respondent herein, MM&S Financial, Inc. further knew or should have known due to their due diligence, underwriting research, and position as investment bankers and underwriters that the various bonds' financial condition was tenuous, and the offerings were not financially feasible.

MILLER & SCHROEDER PREDECESSOR TO

RESPONDENT HEREIN, MM&S FINANCIAL, INC. EXIT STRATEGY

30. The Respondents and Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance various public facilities and businesses.

31. Based on reputation and experience, Miller & Schroeder Financial, Inc., predecessor to Respondent herein, MM&S.Financial, Inc. negotiated for itself substantial fees in excess of many millions of dollars for financing, structuring and marketing the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globaistar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds, and other investments. These fees were paid from the proceeds of these investment sales.

32. As Respondents became aware of cost overruns, construction delays, operational losses, cash flow problems, and looming defaults for the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove

Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments, Respondents and Miller & Schroeder Financial, Inc., predecessor to Respondent herein, MM&S Financial, Inc. commenced a strategy to protect and preserve the interests of the Respondents and each of them, to the exclusion of the Claimant.

33. While more Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments were being sold by Respondents and Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. Respondent Iverson sold his stock in Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. in 1997 in a management buyout led by Respondent Dlugosch. Respondent Iverson continues to the present day to act as an officer, director, underwriter, and control person for Respondent MM&S Financial, Inc.

34. The Respondents advanced in excess of $700,000 to the promoters of the Heritage bonds so that the Respondents could underwrite the Heritage Bonds. The Respondents also were found to have been in a corrupt business arrangement with County of San Bernardino, California settling with the county by paying $350,000 in 2001. The Respondents in 2000 started trying to sell pieces of the Miller and Schroeder Financial, Inc., predecessor to Respondent herein, MM&S Financial, Inc. business, knowing of their false

dealings with their customers, culminating in the transfer of Miller and Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. businesses to Respondent MM&S Financial, Inc. in August 2001, and the filing of bankruptcy by Miller and Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. in January 2002.

35. Claimant had no knowledge of the fatal "due diligence" flaws of the bonds. Said flaws were known to Respondents.

FRAUDULENT CONVEYANCE

36. Claimant alleges, that the Respondents continued to conduct business as usual. Claimant is informed and believes that Respondent, MM&S Financial, Inc., employs approximately 19 former managers and approximately 100 former employees of Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. continues to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc., to finance, structure, and market bonds. For example, MM&S Financial Inc. successor to Miller & Schroeder Financial, Inc. is now doing business from the former Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. Solana Beach office.

37. Pursuant to Agreement, Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. assets were transferred to MM&S Financial, Inc.

successor to Miller & Schroeder Financial, Inc. in an effort to avoid obligations relating to the previous fraudulent sale of Bonds by the Respondents. Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. structured the Agreement so that the value of the assets transferred to the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. exceeds the value received by Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. was left insolvent for the intended purpose of not having the ability to meet liabilities due to the fraudulent bond sales.

38. The Respondents and Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc., structured the terms of the Agreement with knowledge that Respondents and Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. would incur debts and obligations relating to the fraudulent bond sales.

ROLES OF VARIOUS RESPONDENTS IN THE CONSPIRACY

39. Respondents and Miller & Schroeder Financial, Inc predecessor to Respondent herein, MM&S Financial, Inc. agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Bonds.

40. Respondent James Iverson agreed to participate with full knowledge of the conspiracy by:

a. Supervising the Solana Beach office of Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the Bonds;

b. Controlling the capital of Miller & Schroeder Financial, Inc. including secret loans to Heritage;

c. Acting as an officer, director, underwriter and shareholder of Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Providing secret loans and advances from Miller & Schroeder for Heritage to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

e. Directing Heritage Bond proceeds to assist in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

f. Instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

g. Providing advice and consultation to Respondents and Miller & Schroeder in furtherance of its exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc. successor to Miller & Schroeder Financial, Inc.; and

h. Substantially assisting the fraudulent conveyance as a control person

41. **John Clarey** agreed to participate with full knowledge of the conspiracy by:

a. Acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other Bond underwritings and documentation including the Official Statements;

b. Approving successive Bond underwritings while accumulating information of problems plaguing earlier Bond projects;

c. Acting as an officer, director, and shareholder of Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the various Bond problems with investors and the media during implementation of the exit strategy;

e. Substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller."

42. **Jerome Tabolich** agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Bond underwritings and documentation including the Official Statements;

b. Acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Bonds;

c. Participating in the exit strategy and fraudulent conveyance as the President of Miller & Schroeder, and continuing thereafter as an officer and shareholder of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc.;

d. Substantially assisting the fraudulent conveyance as a "control person" and exit strategy and fraudulent conveyance, including selling his Miller &

Schroeder stock in August, 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S Inc.; and

e. Substantially assisting the fraudulent conveyance as a "control person."

43. **Edward Hentges** agreed to participate with full knowledge of the conspiracy by:

a. Acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. Participating in the exit strategy and fraudulent conveyance as an executive officer and director of the Miller & Schroeder and continuing thereafter as an officer, director and shareholder of the MM&S; and

c. Assisting the fraudulent conveyance as a control person.

44. **Kenneth Larsen** agreed to participate with full knowledge of the conspiracy by:

a. acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer of the Miller & Schroeder signing the Agreement dated July

26, 2001, and continuing thereafter as an executive officer of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc.; and

c. substantially assisting the fraudulent conveyance as a control person and knowledgeable seller.

45. **Steven Erickson** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the Miller & Schroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

46. **Paul Ekholm** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of Miller & Schroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

47. **James F. Dlugosch** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and

c. participating in the exit strategy and fraudulent conveyance as an executive officer and director of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

48. **Daniel Dill, Mary Jo Brenden, Victor Dhoogie, Tom Nelson, Kenneth Dawkins, and Kenneth Halloran**, agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, underwriters and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds; and

c. participating in the exit strategy and fraudulent conveyance as control persons of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller."

COMMON MISREPRESENTATIONS AND OMISSIONS BY RESPONDENTS TO CLAIMANT

49. In connection with the various Bonds underwritten, offered and sold by Respondents and Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc., express and implied representations in the Official Statements, and oral communications to Claimant Fleshman were false and/or misleading statements, and the true facts were deliberately withheld from Claimant Fleshman. Just a few of the facts as listed below were with held from Claimant:

a) Loans were made to promoters to get the various deals.

b) Promoters were not financially viable.

c) Promoters had various past records of fraudulent activities.

d) Official statements of bonds were not complete and were not true.

e) Various deals had operational and financial problems after funding.

f) Various bonds were not financially viable from the beginning.

g) Various bonds were based on improper appraisals.

h) Furthermore, Claimant was not adequately advised of the recent transaction history regarding real property being sold and pledged as security for bondholders and key transaction terms such as price, fair market value, liens, restrictive covenants, and the identity and profit of participants to the transaction.

50. Claimant was misled by Respondents and Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc. by not knowing the true and complete facts regarding the bonds sold to customers.

PRAYER FOR RELIEF

WHEREFORE, Claimant requests that he be granted an arbitration award against the Respondents, jointly and severally and against each of them, for the following:

A. General and special damages to be determined at hearing, but not less than $229,256, excluding interest and lost investment opportunities, which are also being requested.

B. Reasonable attorney's fees and costs.

C. Punitive damages.

D. Triple damages under the Arizona Elder Abuse Statutes, A.R.S. § 46-456 *et seq.*

E. Other legal and equitable relief that the arbitrators may award as reasonable and just.

Respectfully submitted: January 16, 2003.

DR. J. KENNETH FLESHMAN

By: Alan A

MESCH, CLARK & ROTHSCHILD, P.C.
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164575

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT, CALIFORNIA - WESTERN DIVISION

IN RE HERITAGE BOND LITIGATION	MDL Case No. 1475
	Case No. CV 01-5752 DT (RCx)
RUSSEL and VIRGINIA BEKTER, as Trustees of the BETKER FAMILY TRUST; BETKER PARTNERS ONE, LP; BETKER PARTNERS THREE, LP; LORI O'SHEA; and MICHAEL O'SHEA, Plaintiffs, vs. U.S. TRUST CORPORATION, N.A.; U.S. TRUST COMPANY OF TEXAS, N.A.; BANK OF NEW YORK, INC.; HERITAGE HEALTHCARE OF AMERICA, INC.; HERITAGE GERIATRIC HOUSING DEVELOPMENT VII, INC.; HERITAGE GERIATRIC HOUSING DEVELOPMENT VIII, INC.; HERITAGE GERIATRIC HOUSING DEVELOPMENT IX, INC.; HERITAGE CARE OF CHICAGO, INC.; HERITAGE CARE OF SARASOTA, INC.; HERITAGE HOUSING DEVELOPMENT, INC.; HEALTH CARE HOLDINGS, LLC; CARECONTINUUM, LLC; HERITAGE ACCEPTANCE CORPORATION; AFFILIATED METROPOLITAN	**Consolidated with Cases:** CV 02-382 DT (RCx); CV 02-993 DT (RCx); CV 02-2745 DT (AJWx); CV 02-6484 DT (RCx); CV 02-6841 DT (RCx) **Companion Cases:** CV 02-6512 DT (AJWx) **CONSOLIDATED FIFTH AMENDED COMPLAINT** **This Document Relates to:** CV 01-5752 DT (RCx) and CV 02-6841 DT (RCx), *Betker* 1. Violation Of Rule 10b-5 And Section 10(b) Of The Securities Exchange Act Of 1934 2. "Control Person" Liability Under Section 20

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EXHIBIT J

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CONTRACTORS, INC.; VALUATION COUNSELORS GROUP, INC.; ROBERT KASIRER; JEROLD GOLDSTEIN; ONOFRIO V. BERTOLINI; BRUCE R. TALLEY; DEBRA KASIRER, individually and as Trustee of the DEBRA KASIRER TRUST; CANON REALTY CORPORATION; HERITAGE HOUSING V, INC.; BHMC CORP.; JDDJ HOLDINGS, L.P.; JAMES E. IVERSON; VICTOR P. DHOOGE; JOHN M. CLAREY; JAMES F. DLUGOSH; EDWARD J. HENTGES; KENNETH R. LARSEN; JEROME E. TABOLICH; STEVEN W. ERICKSON; PAUL R. EKHOLM; JOEL T. BOEHM; SABO & GREEN; CODDINGTON APPRAISAL SERVICES; CAPITAL VALUATION GROUP; HEALTHCARE FINANCIAL SOLUTIONS Group, Inc.; and ZELENKOFSKE, AXELROD & CO., LTD.; and DOES 1 through 10, inclusive,

Defendants.

Of The Securities Exchange Act Of 1934

3. Violations Of Section 12(A)(2) Of The Securities Act Of 1933

4. Violations Of California Corporations Code Sections 25401 And 25501

5. Control Person Liability Under California Corporations Code Section 25504

6. Joint And Several Liability Under California Corporations Code Section 25504.1

7. Joint And Several Liability Under California Corporations Code Section 25504.2

8. Negligent Misrepresentation

9. Breach Of Fiduciary Duty

10. Negligence

11. Breach Of Contract

12. Trustee Negligence

13. Breach Of Trustee's Fiduciary Duty

14. Fraudulent Concealment

15. Intentional Misrepresentation

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B. SECOND CAUSE OF ACTION - "CONTROL PERSON" LIABILITY UNDER SECTION 20 OF THE SECURITIES EXCHANGE ACT OF 1934

[Against Heritage Principals and HHD - as to Last Three (3) Heritage Bond Offerings from November 13, 1998 to March 11, 1999][2]

193. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth.

194. According to section 20(a) of the Securities Exchange Act of 1934:

> "Every person who, directly or indirectly, controls any person liable under any provision of this Act or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or

---

[2] If the Sarbanes-Oxley Act applies, then Plaintiffs' Second Cause of Action covers the last eight (8) Heritage Bond Offerings from December 22, 1997 to March 11, 1999, as against Heritage Principals, HHD, and Miller & Schroeder Principals. Alternatively, if class action tolling applies, then Plaintiffs' Second Cause of Action covers the last two (2) Heritage Bond Offerings from December 21, 1998 to March 11, 1999 as against

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indirectly induce the act or acts constituting the violation or cause of action."

195. As alleged above, Kasirer, Goldstein, and Bertolini were principals of the Heritage organization and shaped the direction of Heritage's management and policies. Kasirer had extensive dealings with Miller & Schroeder, strategizing on structure and marketing of the Heritage Bonds. Through his management companies, HCH, CareContinuum, and Iatros, Kasirer exercised further control over the Heritage Entities, including financial and operational management. Goldstein and Bertolini exercised control over the Heritage Entities through their positions as principal executive officers and directors of HHD and as officer and directors of the Heritage Entities.

196. In addition, Kasirer, Goldstein and Bertolini actively promoted the Heritage Bonds in conjunction with Miller & Schroeder. They also reviewed and approved the Official Statements, along with agreements and other matters affecting the Heritage Entities. Goldstein and Bertolini signed the Official Statements. Their high-level actions subject them to "control person" liability under Section 20 for the primary violations of the Heritage Entities.

Heritage Principals, HHD, and Miller & Schroeder Principals.

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197. Miller & Schroeder Principals influenced Miller & Schroeder's underwriting of the Heritage Bonds, as follows:

(a) James E. Iverson was an Executive Vice President of Miller & Schroeder and the branch manager of Miller & Schroeder's Solana Beach office. He supervised, and was knowledgeable about and responsible for, the financing, structuring, and marketing of the Heritage Bonds. Correspondence to him also show that Iverson ratified the concealment of problems related to the Heritage offerings, including problems brought to his attention through dealings with Kasirer and through his supervision of Dhooge.

(b) Victor P. Dhooge was the lead investment banker for Miller & Schroeder in connection with the Heritage Bonds. He was principally responsible for conducting due diligence documentation, preparing the Official Statements, presenting the underwriting "deal" to Miller & Schroeder's Credit Committee. Miller & Schroeder documents show Dhooge to have had extensive communications with Heritage Principals, particularly Kasirer, on promotion and marketing of the Heritage Bonds.

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(c) John M. Clarey was, at all relevant times, an Executive Vice President and the Chief Operating Officer of Miller & Schroeder. He also served as Chairman and a member of Miller & Schroeder's Credit Committee. Through the Credit Committee, Clarey had "gate keeper" responsibility for reviewing Iverson and Dhooge's due diligence documentation, the Official Statements, and approving the offer and sale of the Heritage Bonds.

(d) James F. Dlugosh was the Chief Executive Officer of Miller & Schroeder and member of its Credit Committee, which reviewed and approved the due diligence documents, the Official Statements, and the offer and sale of Heritage Bonds.

(e) Edward J. Hentges was an Executive Vice President and the Chief Compliance Officer of Miller & Schroeder. He was responsible for ensuring Miller & Schroeder's compliance with securities laws, including its compliance in connection with the Heritage offerings.

(f) Kenneth R. Larsen was the Chief Financial Officer of Miller & Schroeder with knowledge and ability to influence corporate affairs in connection with

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the financing, structuring, marketing of the Heritage Bonds, including the and concealment of material facts.

(g) Jerome E. Tabolich was an officer of Miller & Schroeder and member of the Credit Committee with responsibility for reviewing the due diligence documentation, the Official Statements, and approving the offer and sale of the Heritage Bonds.

(h) Steven W. Erickson was an employee of Miller & Schroeder and member of its Credit Committee with responsibility for reviewing the due diligence documentation, the Official Statements, and approving the offer and sale of the Heritage Bonds.

(i) Paul R. Ekholm was a Senior Vice President of Miller & Schroeder and member of its Credit Committee with responsibility for reviewing the due diligence documentation, the Official Statements, and approving the offer and sale of the Heritage Bonds.

198. As alleged above, Miller & Schroeder Principals exercised "control" over Miller & Schroeder's management and

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policy, and served as, or performed functions similar to, principal executive officers or directors of Miller & Schroeder. The conduct and influence of the Miller & Schroeder Principals was a primary factor in Miller & Schroeder's approval of the Official Statements and decision to underwrite the Heritage offerings. As such, and pending application of the Sarbanes-Oxley Act or class action tolling, the principals listed above bear "control person" liability for their company's primary violations of Section 10(b) and Rule 10b-5.

C. THIRD CAUSE OF ACTION - VIOLATIONS OF SECTION 12(a)(2) OF THE SECURITIES ACT OF 1933

[Against Heritage Entities][3]

198. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth.

199. Section 12(a)(2) of the Securities Act of 1933 ("Securities Act") imposes liability on "Any person" who:

> "offers or sells a security (whether or not exempted by the provisions of section 3, other than paragraph (2) of subsection (a) thereof), by the use of any means or

[3] The Heritage Entities previously failed to file responsive pleadings, and Plaintiffs have taken their default.

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NATIONAL ASSOCIATION OF SECURITIES DEALERS

In The Matter of the Arbitration Between: DR. J. KENNETH FLESHMAN, M.D., as TRUSTEE OF THE FLESHMAN FAMILY TRUST, Claimants, v. MILLER -SCHROEDER FINANCIAL INC.; MARK AUGUSTA;SECURITES RESOLUTION CORP.; MM&S FINANCIAL; and ANY SUCCESSOR-IN-LIABILITY CORPORATIONS OR COMPANIES OF SAID CORPORATE DEFENDANTS, Respondents.	Case No. 01-014444 RESPONDENT MARK AUGUSTA'S THIRD PARTY CLAIM
In the THIRD PARTY CLAIM of: MARK AUGUSTA Third Party Claimant, v. MM&S FINANCIAL, INC.,JAMES E. IVERSON; JEROME A.TABOLICH; EDWARD J. HENTGES; KENNETH R. LARSEN; STEVEN W. ERICKSON PAUL R. EKHOLM; JAMES F. DLUGOSCH; KENNETH HALLORAN; KENNETH DAWKINS; TOM S. NELSON; JAMES CLAREY; VICTOR DHOOGIE, MARY JO	

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BRENDEN; AND DANIEL DILL,)
)
Third party respondents.)
)

Third Party Claimant alleges the following:

PARTIES

THIRD PARTY CLAIMANT

1. Third party claimant Mark Augusta is at all relevant times mentioned herein a resident of San Diego County, California, and the holder of a Series 7 agent's license. At all relevant times mentioned herein, third party claimant Augusta was an agent and employee of Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc.

THIRD PARTY RESPONDENTS

2. Third Party Respondent MM&S Financial, Inc., holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Beginning in 2000, Miller & Schroeder Financial, Inc., began divesting portions of its business and businesses to various individuals and entities, including third party respondent MM&S Financial, Inc. Third party respondent MM&S Financial, Inc is conducting business from it's Solana Beach, California location as the successor to Miller & Schroeder Financial, Inc.

3. Any and all references herein to third party respondent MM&S Financial, Inc shall be as successor to Miller & Schroeder Financial, Inc..

4. Any and all references herein to Miller & Schroeder Financial, Inc. shall be as predecessor to third party respondent herein, MM&S Financial, Inc.

MILLER & SCHROEDER INDIVIDUAL CONTROL PERSONS/THIRD PARTY RESPONDENTS

5. Third party claimant alleges that Third Party Respondents, James E. **Iverson,** Jerome A. **Tabolich,** Edward J. **Hentges,** Kenneth R. **Larsen,** Steven W. **Erickson,** Paul R. **Ekholm** ,James F. **Dlugosch**, Kenneth **Halloran** , Kenneth E. **Dawkins**, Tom S. **Nelson** , John M. **Clarey,** Victor **Dhoogie,** Mary

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Jo **Brenden,** Daniel **Dill,** are and were at all relevant times, officers, underwriters, directors, members of the credit committee, and supervisors at Miller & Schroeder Financial, Inc. Miller & Schroeder Financial, Inc. filed bankruptcy on or about January 21, 2002, otherwise Miller & Schroeder Financial, Inc. would be a named cross claimant and or third party respondent in this third party claim. The third party claimant believes that these named individuals are members of the NASD and or the Municipal Bond Securities group giving the NASD jurisdiction in this case.

6. Third party respondents Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, Dlugosch, Halloran, Dawkins, Nelson, Dhoogie, Brenden, and Dill were at all relevant times herein key officers, underwriters, directors, members of the credit committee, and supervisors of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. and it's associated entities with responsibility for the due diligence for the Heritage Health Care Bonds, and other investments including Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others which were sold to the public including the claimants, causing the substantial losses to the claimants because of the actions of these "CONTROL PERSON THIRD PARTY RESPONDENTS," and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. At all times during the actions alleged herein, control person third party respondents were agents of each other in the activities alleged.

ALTER EGO ALLEGATIONS

7. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all third party respondents, and each of them, and all the other third party respondents, and each of them, such that any individuality and separateness between all third party respondents, and each of them, and the third party respondent corporate entities, has ceased to exist, and all the third party respondent corporate entities are the alter egos of third party respondents, and each of them, in that third party claimant alleges that each of the individual third party respondents used the assets of the third party respondent corporate entities to cause the losses to claimant herein.

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8. Adherence to the fiction of the separate existence of any third party respondent corporate entity as an entity distinct from any of the other third party respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that such asserting third party respondents, and each of them, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith without financial liability.

CONSPIRACY TO DEFRAUD CLAIMANTS THROUGH OFFER & SALE OF HERITAGE BONDS AND VARIOUS OTHER BONDS

9. Commencing in or during 1996, and continuing on throughout the relevant time period, third party respondents, entered into agreements and scheme to defraud investors by effecting transactions in Heritage and Various other bonds through the use of negligent due diligence, improper underwriting, false and misleading statements of material facts. Third party claimant had no knowledge of this scheme to defraud investors at any time.

10. Pursuant to the agreement and scheme to defraud, third party respondents Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. acted as the investment banker and lead underwriter for all Heritage and Various other Bond offerings. Under the direction of the third party respondents, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., raised capital for purported health care facility development by structuring securities offerings utilizing a municipal entity as the stated issuer and raised capital through the sale of various other bonds such as Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others. The Heritage Bonds were structured by third party respondents and Miller & Schroeder as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. Eventually, these investments would either default, enter bankruptcy, or the underlying value became worthless.

11. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. knew or should have known that the bonds were of questionable

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viability. Third party respondents and Miller & Schroeder predecessor to third party respondent herein, MM&S Financial, Inc. further knew or should have known due to their due diligence, underwriting research, and position as investment bankers and underwriters that the various bonds financial condition was tenuous, and the offerings were not financially feasible.

MILLER & SCHROEDER predecessor to third party respondent herein, MM&S Financial, Inc. EXIT STRATEGY

12. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance various public facilities and businesses.

13. Based on reputation and experience, Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. negotiated for itself substantial fees in excess of many millions of dollars for financing, structuring and marketing the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds, and other investments. These fees were paid from the proceeds of these investment sales.

14. As third party respondents became aware of cost overruns, construction delays, operational losses, cash flow problems, and looming defaults for the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments, third party respondents and Miller & Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. commenced a strategy to protect and preserve the interests of the third party respondents and each of them, to the exclusion of the claimants, and third party claimant Augusta.

15. While more Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others Bonds and other investments were being sold by third party respondents and

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Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Third Party respondent Iverson sold his stock in Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. in 1997 in a management buyout led by Third Party respondent Dlugosch. Third party respondent Iverson continues to the present day to act as an officer, director, underwriter, and control person for third party respondent MM&S Financial, Inc.

16. The third party respondents advanced in excess of $700,000 to the promoters of the Heritage bonds so that the third party respondents could underwrite the Heritage Bonds. The third party respondents also were found to have been in a corrupt business arrangement with County of San Bernardino, California settling with the county by paying $350,000 in 2001. The third party respondents in 2000 started trying to sell pieces of the Miller and Schroeder Financial, Inc., predecessor to third party respondent herein, MM&S Financial, Inc. business, knowing of their false dealings with their customers, culminating in the transfer of Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. businesses to third party respondent MM&S Financial, Inc. in August 2001, and the filing of bankruptcy by Miller and Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. in January 2002.

17. Third party claimant Augusta alleges that at all material times mentioned herein, the various third party respondents and each of them stated to third party claimant that all the Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other bonds were solvent; that all the proper "due diligence" had been done by the Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., and that third party claimant Augusta should sell and continue to sell the various issues of the bonds to his clientele, and tell his clientele that the bonds were good investments. Third party claimant Augusta had no knowledge of the fatal "due diligence" flaws of the bonds. Said flaws were known to third party respondents.

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FRAUDULENT CONVEYANCE

18. Third party claimant alleges, that the third party respondents continue to conduct business as usual. Third party claimant is informed and believes that MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. third party respondents employ approximately 19 former managers and approximately 100 former employees of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. continues to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. to finance, structure, and market bonds. For example, MM&S Financial Inc. successor to Miller & Schroeder Financial, Inc. is now doing business from the former Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Solana Beach office.

19. Pursuant to Agreement, Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. assets were transferred to MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. in an effort to avoid obligations relating to the previous fraudulent sale of Bonds by the third party respondents. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. structured the Agreement so that the value of the assets transferred to the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. exceeds the value received by Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. was left insolvent for the intended purpose of not having the ability to meet liabilities due to the fraudulent bond sales.

20. The third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc., structured the terms of the Agreement with knowledge that third

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party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. would incur debts and obligations relating to the fraudulent bond sales.

ROLES OF VARIOUS THIRD PARTY RESPONDENTS IN THE CONSPIRACY

21. Third party respondents and Miller & Schroeder Financial, Inc predecessor to third party respondent herein, MM&S Financial, Inc. agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Bonds.

22. Third Party respondent **James Iverson** agreed to participate with full knowledge of the conspiracy by:

a. Supervising the Solana Beach office of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the Bonds;

b. Controlling the capital of Miller & Schroeder Financial, Inc. including secret loans to Heritage;

c. Acting as an officer, director, underwriter and shareholder of Miller & Schroeder Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Providing secret loans and advances from Miller & Schroeder for Heritage to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

e. Directing Heritage Bond proceeds to assist in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

f. Instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

g. Providing advice and consultation to third party respondents and Miller & Schroeder in furtherance of its exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc. successor to Miller & Schroeder Financial, Inc.; and

h. Substantially assisting the fraudulent conveyance as a "control person".

23. **John Clarey** agreed to participate with full knowledge of the conspiracy by:

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a. Acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage, Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and other Bond underwritings and documentation including the Official Statements;

b. Approving successive Bond underwritings while accumulating information of problems plaguing earlier Bond projects;

c. Acting as an officer, director, and shareholder of Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. during the financing, structuring, and marketing of the various Bonds;

d. Accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the various Bond problems with investors and the media during implementation of the exit strategy;

e. Substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller."

24. **Jerome Tabolich** agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Bond underwritings and documentation including the Official Statements;

b. Acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Bonds;

c. Participating in the exit strategy and fraudulent conveyance as the President of Miller & Schroeder, and continuing thereafter as an officer and shareholder of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc. ; and

d. substantially assisting the fraudulent conveyance as a "control person" and exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August, 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S Inc.; and

e. substantially assisting the fraudulent conveyance as a "control person",

25. **Edward Hentges** agreed to participate with full knowledge of the conspiracy by:

a. acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer and director of the Miller & Schroeder and continuing thereafter as an officer, director and shareholder of the MM&S; and

c. assisting the fraudulent conveyance as a control person.

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26. **Kenneth Larsen** agreed to participate with full knowledge of the conspiracy by:

a. acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer of the Miller & Schroeder signing the Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc.; and

c. substantially assisting the fraudulent conveyance as a control person and knowledgeable seller.

27. **Steven Erickson** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the Miller & Shroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

28. **Paul Ekholm** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of Miller & Schroeder and continuing thereafter as an executive officer and shareholder of the MM&S; and

d. substantially assisting the fraudulent conveyance as a control person.

29. **James F. Dlugosch** agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and

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c. participating in the exit strategy and fraudulent conveyance as an executive officer and director of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

30. Daniel Dill, Mary Jo Brenden, Victor Dhoogie, Tom Nelson, Kenneth Dawkins, and Kenneth Halloran, agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, underwriters and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the various Bonds; and

c. participating in the exit strategy and fraudulent conveyance as control persons of Miller & Schroeder and substantially assisting the fraudulent conveyance as a "knowledgeable seller."

COMMON MISREPRESENTATIONS AND OMISSIONS BY THIRD PARTY RESPONDENTS TO THIRD PARTY CLAIMANT

31. In connection with the various Bonds underwritten, offered and sold by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. successor to Miller & Schroeder Financial, Inc., express and implied representations in the Official Statements, and oral communications to Third party claimant Augusta were false and/or misleading statements, and the true facts were deliberately withheld from Third party claimant Augusta. Just a few of the facts as listed below were with held from third party claimant:

a) Loans were made to promoters to get the various deals.

b) Promoters were not financially viable.

c) Promoters had various past records of fraudulent activities.

d) Official statements of bonds were not complete and were not true.

e) Various deals had operational and financial problems after funding.

f) Various bonds were not financially viable from the beginning.

g) Various bonds were based on improper appraisals.

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h) Furthermore, third party claimant Augusta was not adequately advised of the recent transaction history regarding real property being sold and pledged as security for bondholders and key transaction terms such as price, fair market value, liens, restrictive covenants, and the identity and profit of participants to the transaction.

32. Third party claimant Augusta was misled by third party respondents and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. by not knowing the true and complete facts regarding the bonds sold to customers.

FIRST CAUSE OF ACTION
IMPLIED INDEMNITY
By Third party claimant as Against All Third party respondents

33. Third party claimant Augusta refers to and realleges Paragraphs 1 through 33, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

34. If third party claimant Augusta is held liable and responsible to Claimants for damages as alleged in the Statement of Claim, it will be solely due to the conduct of third party respondents, as herein alleged. Therefore, third party claimant Augusta is entitled to be indemnified by said third party respondents, should such liability arise.

35. Third party claimant Augusta has incurred, and is continuing to incur attorneys fees, forum fees, court costs, and other costs in connection with defending the claimant's Statement of Claim, the exact amount of which is unknown at this time. When the exact sum has been ascertained, third party claimant will seek leave to amend this Third Party Claim to set forth the true nature and amount of said expenses.

36. If third party claimant Augusta is held liable or responsible to the Claimants for damages, said liability will be vicarious only, and said liability will be the direct and proximate result of the active and affirmative conduct of the third party respondents.

37. Third party claimant Augusta is entitled to complete indemnification by said third party respondents, for any sum or sums for which third party claimant Augusta may be adjudicated liable to Claimants, together with the costs of defense, costs of suit, and reasonable attorneys fees.

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SECOND CAUSE OF ACTION
COMPARATIVE INDEMNITY

By Third party claimants as Against All Third party respondents

38. Third party claimant Augusta refers to and realleges Paragraphs 1 through 37, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

39. Third party claimant Augusta contends that he is in no way legally responsible for the events giving rise to the Claimant's causes of action, or legally responsible in any other manner for the damages allegedly sustained by the Claimants. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Augusta is held liable for any or all of the Claim asserted against him by Claimants, Third party respondents to the extent that their fault was a proximate cause of Claimant's damages and/or loses, are responsible for said damages and/or losses in proportion to each third party respondents comparative liability, and that this third party claimant is entitled to a determination of several liability.

40. By reason of the foregoing, third party claimant Augusta is entitled to indemnity from third party respondents, for all costs, fees, expenses, settlements, and judgments paid by and incurred by third party claimant Augusta in connection with this action.

THIRD CAUSE OF ACTION
DECLARATORY RELIEF

By Third party claimant as against All Third party respondents

41. Third party claimant Augusta refers to and realleges Paragraphs 1 through 40, inclusive of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

42. An actual controversy has arisen between third party claimant Augusta and third party respondents, with respect to the rights, duties, and obligations of the parties in that third party claimant Augusta contends that he is without fault, responsibility, or blame for any of the damages allegedly suffered by the Claimants, if any at all. If there are any damages, the acts causing such damages were committed by the third party respondents, and not third party claimant Augusta. Third party claimant contends that he is entitled to indemnity from third party respondents. Third party claimant Augusta alleges that third party respondents, contend to the contrary.

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43. Third party claimant Augusta desires a determination of his rights and duties, and a declaration that he is the entitled to full indemnity from third party respondents, for all damages, costs, and attorney's fees incurred in this action.

44. A declaration is necessary and appropriate at this time, under these circumstances in order that third party claimant Augusta may ascertain his rights and duties.

FOURTH CAUSE OF ACTION
EQUITABLE INDEMNITY
By Third party claimant as Against All Third party respondents

45. Third party claimant Augusta refers to and realleges Paragraphs 1 through 44, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

46. Third party claimant Augusta alleges that he is in no way legally responsible for the events giving rise to Claimant's Statement of Claim, nor legally responsible in any manner for the damages allegedly sustained by Claimants. If, contrary to the foregoing allegations, third party claimant Augusta is held liable for any or all of the claim for damages asserted against third party claimant by Claimants, then third party claimant Augusta alleges that the third party respondents, were negligent, intentionally misrepresented certain facts, breached their fiduciary duties, as stated above. Third party claimant Augusta alleges that the above stated acts of third party respondents, were the sole proximate cause of the damages and/or losses to Claimant.

47. By reason of the foregoing, third party respondents, are responsible and liable for any such damages in direct proportion to the extent of their above stated actions in bringing about said damages and/or losses. Thus, third party claimant Augusta is entitled to judgment over third party respondents, in an amount proportionate to the amount of third party claimant Augusta's financial responsibility for such damages that exceed his portion of responsibility, if any at all.

FIFTH CAUSE OF ACTION
CONTRIBUTION
By Third party claimant as Against All Third party respondents

48. Third party claimant Augusta refers to and realleges Paragraphs 1 through 47, inclusive, of this Third Party Claim, and incorporates the same by reference as though fully set forth at length herein.

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49. Third party claimant Augusta contends that he is in no way legally responsible for the damages alleged in Claimant's Statement of Claim. However, if as a result of the matters alleged in Claimant's Statement of Claim, third party claimant Augusta is held liable for all or any part of Claimant's alleged damages, third party respondents, to the extent that their fault is determined by the arbitrators, are obligated to reimburse and are liable to third party claimant Augusta for all and any liability so assessed by way of contribution, and third party claimant Augusta asserts herein his right to contribution.

WHEREFORE, third party claimant Augusta prays:

1. For a declaration of the third party claimant's rights and duties;

2. For an order declaring the percentage of fault, if any, between third party claimant Augusta, and third party respondents, and each of them, for damages and losses allegedly caused to Claimant;

3. For an order awarding judgment in favor of third party claimant Augusta, and against third party respondents, based upon the relative percentage of fault of each party including the Claimant;

4. For an order that the third party claimant is entitled to be fully indemnified by third party respondents, for any and all settlements, compromises, and/or judgments entered into or against third party claimant as a result of this action;

5. For reasonable attorneys fees and costs in an amount according to proof; and

6. For such other and further relief as may be just and proper.

Dated: June 6, 2002

Steven M. Green
Attorney for Third Party Claimant
Mark Augusta

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

LEWIS G. HERRMANN AS TRUSTEE OF THE HERRMANN FAMILY TRUST, on behalf of himself and all others similarly situated, Plaintiff, v. MILLER & SCHROEDER FINANCIAL, INC.; MILLER & SCHROEDER, INC.; MILLER & SCHROEDER INVESTMENTS CORPORATION; MILLER & SCHROEDER SMALL BUSINESS CAPITAL CORPORATION; MILLER & SCHROEDER MORTGAGE CORPORATION; POOLED LOAN MARKETING CORPORATION; PLMC-I, INC; MARSHALL MILLER & SCHROEDER, INC.; MM&S INVESTMENTS CORPORATION; MM&S FINANCIAL , INC.; JAMES E. IVERSON; JOHN M. CLAREY; JEROME A. TABOLICH; EDWARD J. HENTGES; KENNETH R. LARSEN; STEVEN W. ERICKSON; PAUL R. EKHOLM; JAMES F. DLUGOSCH; MARK F. AUGUSTA; BRUCE R. TALLEY; GAY M. REEVES formerly known as GAY DIAZ; JAMI J. WAGNER; DANIEL C. OSGOOD; DEBORAH L. STOKES; SCOTT T. PENWARDEN; TIMOTHY E. JONES; RONALD W. VANDERVEEN; BEREAN CAPITAL, INC.; JOEL T. BOEHM; SABO & GREEN, a professional corporation; ATKINSON, ANDELSON, LOYA, RUUD & ROMO, a professional corporation; HERITAGE HOUSING DEVELOPMENT, INC.;	CASE NO. GIC 778499 **CLASS ACTION COMPLAINT FOR:** **1.** Misrepresentations in connection with the offer and sale of securities in violation of section 12(2) of the 1933 Securities Act; **2.** Misrepresentations in connection with the offer and sale of securities in violation of section 25501 of the California Corporations Code; **3.** Fraud and Deceit; **4.** Negligent Misrepresentation; **5.** Breach of Fiduciary Duty; **6.** Avoidance of transfer, Temporary Restraining Order, Preliminary and Permanent Injunction, Attachment, and Appointment of a Receiver; **7.** Successor Liability

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EXHIBIT L

HERITAGE HEALTHCARE OF AMERICA, INC.; HERITAGE RANCHO HEALTHCARE, INC; HERITAGE CARE OF CHICAGO, INC.; HERITAGE GERIATRIC HOUSING DEVELOPMENT IX, INC.; HERITAGE CARE OF SARASOTA, INC.; HERITAGE GERIATRIC HOUSING DEVELOPMENT VIII, INC.; HERITAGE GERIATRIC HOUSING DEVELOPMENT VII, INC.; JEROLD V. GOLDSTEIN; EMERY RUBIN; LARRY A. RUBIN; VIRGIL LIM; ONOFRIO V. BERTOLINI; BERMAN AND BERTOLINI, INC. aka BERMAN & ASSOCIATES; HEALTH CARE HOLDINGS, LLC; CARECONTINUUM, LLC; IHN HEALTH SERVICES GROUP, INC.; BHMC, INC.; JDDJ HOLDINGS, L.P.; ROBERT A. KASIRER; and DOES 1 though 100,

Defendants.

Plaintiff, Lewis G. Herrmann as Trustee of The Herrmann Family Trust, alleges on behalf o himself and all others similarly situated as follows:

I.

SUMMARY

1. This is a class action complaint on behalf of purchasers of municipal bonds underwritten offered and sold by Defendant Miller & Schroeder Financial, Inc. (hereinafter referred to as Miller & Schroeder"). The municipal bonds were structured as conduit financing for the acquisition of distressec hospital properties to be converted into health care and Alzheimer care facilities. The stated issuer o the municipal bonds was a quasi-governmental agency that assumed no debt obligations to bond holder and no project oversight. Instead, bond holders were dependant upon the integrity and skill of the promoter, Defendant Heritage Housing Development, Inc. and its affiliates, and the manager, Defendan Robert Kasirer and his affiliates, to generate operating revenues from the proposed health care facilitie to pay debt obligations of principal and interest to the bond holders. Twelve related bond offerings, wit a face value of over $144 million, were financed, structured, and marketed by Miller & Schroeder fror its Solana Beach, California office. All twelve bond issuances are in default and are hereinafter referre to as the "Heritage Bonds".

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Investment bankers and other control persons at Miller & Schroeder structured each of the offerings in negotiations with Defendant Heritage Housing Development, Inc. and its affiliates and control persons. The creation and marketing of the Heritage Bonds was centered in the Solana Beach office of Miller & Schroeder. The Heritage Bonds were mostly offered and sold from the Solana Beach branch office of Miller & Schroeder which acted as the underwriter for each of the Heritage Bonds.

With respect to each of the Heritage Bonds, a primary disclosure document known as an Official Statement was prepared by Defendant Miller & Schroeder's counsel, Defendant Joel Boehm of San Diego. Defendants knew these Official Statements contained common and typical misrepresentations of relevant facts and omitted to state other facts necessary to be disclosed so that other facts stated would not be misleading. Generally, the misrepresentations and omissions concerned: (1) overstating the value of the collateral represented by the underlying real estate projects securing the Heritage Bonds; (2) the background and experience of the Heritage Bond promoters and managers; (3) an undisclosed financial relationship between the Heritage Bond promoters and Miller & Schroeder in the form of undisclosed loans from Miller & Schroeder and their repayment from bond proceeds; and (4) a course of business to conceal development delays and cost overruns that were extraordinary in light of promised construction cost "guarantees" in the Official Statements, and defaults in connection with prior Heritage Bond offerings structured, financed, and marketed by Miller & Schroeder.

These misrepresentations and omissions of material facts were contained in written Official Statements drafted by Miller & Schroeder and disseminated by its Solana Beach sales staff to Plaintiffs and other investors through the instrumentalities of interstate commerce including the mails.

In addition to common misrepresentations of material facts, omissions of material facts, half-truths, and misleading statements in each of the Official Statements prepared by Miller & Schroeder, oral misrepresentations and omissions, parroting the false and misleading written misrepresentations, were made directly to Plaintiffs by Miller & Schroeder representatives. The misrepresented and omitted information caused the bonds to be in a state of default and the loss of Plaintiffs' investment funds.

The Solana Beach office of Miller & Schroeder Financial, Inc. conducted a boiler room sales operation targeting elderly investors because of their need and desire for safety of principal and the historically low default rate associated with municipal bonds. Sales were generated in part by television

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commercials featuring Defendant Mark Augusta, a broker with the Solana Beach office of Miller & Schroeder. The Solana Beach office of Miller & Schroeder also sought to acquire leads in the form of Alzheimer donor lists for the purpose of cold calling prospective investors.

Defendant Miller & Schroeder underwrote, offered, and sold approximately $144,000,000 in Heritage Bonds, almost exclusively from the Solana Beach office, to elderly investors scattered across the country, including San Diego County. Numerous Heritage Bond holders have asserted claims in response to the defaulted Heritage Bonds.

In an effort to frustrate Heritage Bond holders' claims, Defendants commenced an Asset Purchase Agreement in the summer of 2001 whereby the assets of Miller & Schroeder Financial, Inc. and its affiliates were purportedly conveyed to related party Defendants for the intended purpose of rendering Miller & Schroeder Financial, Inc. insolvent. Nonetheless, the business of Miller & Schroeder Financial, Inc. continues under the name of Defendant MM&S Financial, Inc. from the same offices, including Solana Beach, California.

This class action complaint prays for judgment with respect to the underlying securities fraud in the Heritage Bonds, for an order and judgment setting aside the conveyance, for attachment against the assets fraudulently conveyed, for an injunction necessary to prevent further fraudulent conveyances, and for appointment of a receiver to take charge of the assets transferred.

II.

PARTIES

A. PLAINTIFFS

2. Plaintiff Lewis Herrmann is approximately 90 years old and resides in California. At all relevant times herein, he is acting as a trustee of The Herrmann Family Trust.

B. MILLER & SCHROEDER CORPORATE DEFENDANTS

3. Defendant Miller & Schroeder Financial, Inc.("Miller & Schroeder"), is a Minnesota corporation doing business in San Diego County, from offices in Solana Beach, as a securities firm underwriting and selling municipal bonds. Miller & Schroeder was issued a broker-dealer certificate in California in 1984 authorizing it to offer and sell securities in compliance with the law. Miller & Schroeder has been a member of the National Association of Securities Dealers ("NASD"), a self-

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regulatory organization, since 1976. Miller & Schroeder has at all times herein, held itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. At all relevant times herein, Plaintiffs maintained a securities brokerage account with Miller & Schroeder.

4. Plaintiff is informed and believes and based thereon alleges that Defendants Miller & Schroeder Inc., Miller & Schroeder Investments Corporation, Miller & Schroeder Small Business Capital Corporation, Miller & Schroeder Mortgage Corporation, Pooled Loan Marketing Corporation, and PLMC-I Inc. are Minnesota corporations affiliated with Miller & Schroeder through common ownership and control. These five corporate defendants, plus Miller & Schroeder, are sometimes collectively referred to hereinafter as "MILLER & SCHROEDER DEFENDANTS".

C. MM&S CORPORATE DEFENDANTS

5. Defendant MM&S Financial Inc. ("MM&S") is a Minnesota corporation doing business in San Diego County, from offices in Solana Beach, as a securities firm underwriting and selling municipal bonds. Following the recent acquisition of assets from the MILLER & SCHROEDER DEFENDANTS, MM&S became a licensed broker-dealer in California and a member of the NASD in October, 2001, thereby authorizing it to offer and sell securities in compliance with the law. MM&S holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Plaintiffs are informed and believe that MM&S is operating as a successor corporation of Miller & Schroeder. Beginning in 2001, the MILLER & SCHROEDER DEFENDANTS began divesting portions of its business to employees and others. Plaintiffs are informed and believe that Miller & Schroeder continues to conduct business as usual from its Solana Beach office, using the name of MM&S.

6. Plaintiff is informed and believes and based thereon alleges that Defendants Marshall Miller & Schroeder Inc., and MM&S Investments Corporation are Minnesota corporations affiliated with MM&S through common ownership and control. These two corporate defendants, plus MM&S, are sometimes collectively referred to hereinafter as "MM&S DEFENDANTS".

D. MILLER & SCHROEDER INDIVIDUAL DEFENDANTS

7. Defendant James E. Iverson is and was at all relevant times herein a resident of San Diego County, a former Securities & Exchange Commission enforcement attorney, and an officer, director,

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owner, and supervisor of MILLER & SCHROEDER DEFENDANTS.

8. Plaintiff is informed and believes and based thereon alleges that Defendant John M. Clarey is a resident of Minnesota. At all relevant times herein, Defendant Clarey was an officer, director, owner, and supervisor of MILLER & SCHROEDER DEFENDANTS.

9. Plaintiff is informed and believes and based thereon alleges that Defendant Jerome A. Tabolich is a resident of Minnesota. At all relevant times herein, Defendant Tabolich was an officer, owner, and supervisor of MILLER & SCHROEDER DEFENDANTS.

10. Plaintiff is informed and believes and based thereon alleges that Defendant Edward J. Hentges is a resident of Minnesota. At all relevant times herein, Defendant Hentges was an officer, director, owner, and supervisor of MILLER & SCHROEDER DEFENDANTS.

11. Plaintiff is informed and believes and based thereon alleges that Defendant Kenneth R. Larsen is a resident of Minnesota. At all relevant times herein, Defendant Larsen was an officer, owner, and supervisor of MILLER & SCHROEDER DEFENDANTS.

12. Plaintiff is informed and believes and based thereon alleges that Defendant Steven W. Erickson is a resident of Minnesota. At all relevant times herein, Defendant Erickson was an officer, director, owner, and supervisor of MILLER & SCHROEDER DEFENDANTS.

13. Plaintiff is informed and believes and based thereon alleges that Defendant Paul R. Ekholm is a resident of Minnesota. At all relevant times herein, Defendant Ekholm was an officer and supervisor of MILLER & SCHROEDER DEFENDANTS.

14. Plaintiff is informed and believes and based thereon alleges that Defendant James F. Dlugosch is a resident of Minnesota. At all relevant times herein, Defendant Dlugosch was an officer, director, owner, and supervisor of MILLER & SCHROEDER DEFENDANTS.

15. Defendants Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, and Dlugosch were at all relevant times herein key employees of the MILLER & SCHROEDER DEFENDANTS and/or members of Miller & Schroeder's credit committee with responsibility for reviewing and approving the Heritage Bonds for sale to the investing public, and are sometimes collectively referred to hereinafter as "KEY EMPLOYEE DEFENDANTS".

16. Defendant Mark F. Augusta has been and is a resident of San Diego County. At all

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relevant times herein, Augusta was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

17. Defendant Bruce R. Talley has been and is a resident of San Diego County. At all relevant times herein, Talley was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

18. Defendant Gay M. Reeves, also known as Gay Diaz, has been and is a resident of San Diego County. At all relevant times herein, Reeves was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

19. Defendant Jami J. Wagner has been and is a resident of San Diego County. At all relevant times herein, Wagner was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

20. Plaintiff is informed and believes that Defendant Daniel C. Osgood is a resident of San Diego County. At all relevant times herein, Osgood was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

21. Plaintiff is informed and believes that Defendant Timothy E. Jones has been and is a resident of San Diego County. At all relevant times herein, Jones was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

22. Plaintiff is informed and believes that Defendant Scott T. Penwarden has been and is a resident of San Diego County. At all relevant times herein, Penwarden was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

23. Plaintiff is informed and believes that Defendant Deborah L. Stokes has been and is a resident of San Diego County. At all relevant times herein, Stokes was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

24. Plaintiff is informed and believes that Defendant Ronald W. Vanderveen has been and is a resident of San Diego County. At all relevant times herein, Vanderveen was employed as a stockbroker for Miller & Schroeder offering and selling Heritage Bonds from the Solana Beach office.

25. Defendants Augusta, Talley, Reeves, Wagner, Osgood, Jones, Penwarden, Stokes, and

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Vanderveen are sometimes collectively referred to hereinafter as "SALES DEFENDANTS".

E. DEFENDANTS ASSISTING MILLER & SCHROEDER

26. Defendant Berean Capital, Inc., is a Delaware corporation doing business as a securities firm underwriting and selling municipal bonds. Berean Capital Inc. has been a member of the NASD since 1989. Berean Capital Inc.'s broker-dealer certificate was revoked in California in 1999. At all times herein, Berean Capital Inc. has held itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds.

27. Defendant Joel T. Boehm is at all relevant times herein an attorney residing in San Diego County. Defendant Boehm and the law firms employing him were retained by Miller & Schroeder to act as underwriter's counsel for the Heritage Bonds.

28. Defendant Sabo & Green is a dissolved California law firm that employed defendant Boehm and acted as underwriter's counsel for Miller & Schroeder in connection with the following Heritage Bonds: 1996 Rancho Cucuamonga, 1996 Danforth Texas City, 1997 Mexico Beach Sarasota, 1997 Danforth Houston, 1997 Tarrant Fort Worth, 1998 Chicago, 1998 Desert Hot Springs, and 1998 Danforth Austin.

29. Defendant Atkinson, Andelson, Loya, Ruud & Romo is a law firm, located in San Diego County, employing defendant Boehm and acting as underwriter's counsel for Miller & Schroeder in connection with the following Heritage Bonds: 1998 Tarrant Houston, 1998 Tarrant Fort Worth, 1998 Tarrant Brownsville, and 1998 Mexico Beach Seminole.

F. HERITAGE PROMOTER DEFENDANTS

30. Defendant Heritage Housing Development Inc. is a nonprofit California corporation with headquarters in Encino, California. Heritage Housing Development Inc. is at all relevant times herein, in the business of using Heritage Bond proceeds to acquire and renovate distressed hospitals.

31. Defendant Heritage Healthcare of America Inc. is a nonprofit California corporation and an affiliate of defendant Heritage Housing Development Inc.

32. Defendant Heritage Rancho Healthcare Inc. is a nonprofit Nebraska corporation and an affiliate of defendant Heritage Housing Development Inc.

33. Defendant Heritage Care of Chicago Inc. is a nonprofit Illinois corporation and an

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affiliate of defendant Heritage Housing Development Inc.

34. Defendant Heritage Geriatric Housing Development IX Inc. is a nonprofit Texas corporation and an affiliate of defendant Heritage Housing Development Inc.

35. Defendant Heritage Geriatric Housing Development VIII Inc. is a nonprofit Texas corporation and an affiliate of defendant Heritage Housing Development Inc.

36. Defendant Heritage Geriatric Housing Development VII Inc. is a nonprofit Texas corporation and an affiliate of defendant Heritage Housing Development Inc.

37. Defendant Heritage Care of Sarasota Inc. is a nonprofit Florida corporation and an affiliate of defendant Heritage Housing Development Inc.

38. Defendant Jerold V. Goldstein is and at all relevant times herein was a licensed California attorney acting as an officer and director for Heritage Housing Development, Inc. and its affiliates. Plaintiff is informed and believes that Defendant Goldstein resides in Los Angeles County.

39. Defendant Emery Rubin is and at all relevant times herein was acting as an officer and director of Heritage Housing Development, Inc., and its affiliates. Plaintiffs is informed and believes that Defendant Rubin resides in Los Angeles County.

40. Defendant Larry A. Rubin is and at all relevant times herein was acting as an officer and director for Heritage Housing Development, Inc., and its affiliates. Plaintiff is informed and believes that Defendant Rubin resides in Los Angeles County.

41. Defendant Virgil Lim is and at all relevant times herein was acting as an officer and director for Heritage Housing Development, Inc., and its affiliates. Plaintiff is informed and believes that Defendant Lim resides in Los Angeles County.

42. Defendant Onofrio Bertolini is and at all relevant times herein was acting as an officer and director for Heritage Housing Development, Inc., and its affiliates. Defendant Bertolini is also a principal of Defendant Berman and Bertolini, Inc. Plaintiff is informed and believes that Defendant Bertolini resides in Los Angeles County.

43. Defendant Berman and Bertolini, Inc., aka Berman & Associates, is a California corporation engaged in construction oversight in connection with the Heritage Bonds.

44. Heritage Housing Development Inc., Heritage Healthcare of America Inc., Heritage

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Rancho Healthcare Inc., Heritage Care of Chicago Inc., Heritage Geriatric Housing Development IX Inc., Heritage Geriatric Housing Development VIII Inc., Heritage Geriatric Housing Development VII Inc., Heritage Care of Sarasota Inc., Jerold Goldstein, Emery Rubin, Larry Rubin, Virgil Lim, Onofrio Bertolini, and Berman and Bertolini Inc. are sometimes collectively referred to hereinafter as "HERITAGE DEFENDANTS".

G. KASIRER MANAGER DEFENDANTS

45. Defendant Robert A. Kasirer is a resident of Los Angeles County and an attorney licensed to practice law in New York. Kasirer is in the business of buying, selling, and renovating distressed or vacant health care properties with funds raised from the public sale of municipal bonds. Kasirer does business as an owner, officer, director, and control person of co-defendants JDDJ Holdings L.P., Health Care Holdings LLC, CareContinuum LLC, BHMC Corp., and IHN Health Services Group Inc.

46. Defendant JDDJ Holdings L.P. ("JDDJ") is a California limited partnership dominated and controlled by defendant Kasirer. JDDJ participates in the acquisition of distressed hospital properties for resale in connection with the Heritage Bond underwritings complained of herein. Heritage Bond proceeds are used to purchase the property.

47. Defendant Health Care Holdings LLC ("HCH") is a Nevada limited liability company dominated and controlled by defendant Kasirer. HCH receives fees, from bond proceeds, to manage the daily operations of the proposed Alzheimer facilities financed by the Heritage Bonds.

48. Defendant CareContinuum LLC is a California limited liability company dominated and controlled by defendant Kasirer. CareContinuum LLC receives a fee, from bond proceeds, to manage the daily operations of the proposed Alzheimer facilities financed by the Heritage Bonds.

49. Defendant BMHC Corp. is a Delaware corporation dominated and controlled by defendant Kasirer. BMHC Corp. participates in the acquisition of distressed or vacant hospital properties for resale in connection with the Heritage Bonds. Heritage Bond proceeds are used to purchase the property.

50. Defendant IHN Health Services Group, Inc.("IHN") is a Georgia corporation dominated and controlled by defendant Kasirer. IHN receives fees, from bond proceeds, to manage the daily operations of the proposed hospitals and Alzheimer facilities financed by the Heritage Bonds.

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51. Robert Kasirer, JDDJ, HCH, CareContinuum LLC, BMHC Corp., and IHN are sometimes collectively referred to hereinafter as "KASIRER DEFENDANTS".

52. Plaintiff does not know the names of defendants sued herein as DOES 1 - 100 who were acting at all times herein as agents, employees, principals, partners, business associates, co-conspirators, aiders and abettors, successors, or alter egos of the named Defendants and who committed acts in furtherance of the scheme to defraud alleged herein.

53. Defendants and each of them, unless otherwise stated in this Complaint, directly or indirectly, singularly and in concert and aiding and abetting each other, have engaged in acts and practices constituting violations of law complained of herein pursuant to a common plan and scheme among all defendants.

III.
CONSPIRACY TO DEFRAUD THROUGH THE OFFER AND SALE OF HERITAGE BONDS

A. GENERAL DESCRIPTION OF THE SCHEME TO DEFRAUD

54. Commencing in or about 1996, Defendants entered into an agreement and scheme to defraud investors by effecting transactions in Heritage Bonds through the use of false and misleading statements of material facts.

55. Pursuant to the agreement and scheme to defraud, Miller & Schroeder acted as the investment banker and lead underwriter in all twelve Heritage Bond offerings. Under the direction of KEY EMPLOYEE DEFENDANTS, and others unknown to Plaintiffs at this time, Miller & Schroeder raised capital for purported health care facility development by structuring securities offerings utilizing a municipal entity as the stated issuer. Miller & Schroeder SALES DEFENDANTS were responsible for retail distribution of the securities, in the form of municipal bonds referred to collectively herein as Heritage Bonds, to investors such as the Plaintiff Class.

56. The Heritage Bonds, underwritten and sold by Miller & Schroeder in furtherance of the agreement and scheme to defraud, share these characteristics: the stated issuer was a local governmental agency or non-profit corporation created pursuant to a statutory scheme addressing health care needs; the governmental issuer did not have taxing power and lacked assets to secure the bonds; the ultimate obligors responsible for debt service payments to investors are the HERITAGE DEFENDANTS and

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the KASIRER DEFENDANTS in their respective roles as promoter and manager of the proposed real estate project; the Heritage Bonds were unrated and without meaningful credit enhancements; most of the Heritage Bonds were presented to investors as tax-exempt; the underwriter, Miller & Schroeder, and its counsel, defendant Boehm, drafted the primary disclosure document for each offering, known as an Official Statement, for use in soliciting prospective investors; as municipal bonds, the Heritage Bonds are exempt from the registration provisions of the securities law, but are not exempt from the disclosure provisions of the securities law; the Heritage Bonds were marketed as secured municipal bonds; payment for fees of the participants, such as the promoter, manager, the stated issuer, and the legal and securities professionals, was contingent upon the sale of the municipal bonds.

57. Defendant Miller & Schroeder acquired the Heritage Bonds at a discount from the stated issuers. Miller & Schroeder realized a profit by immediately reselling the municipal bonds to the public at or near the face amount of the bonds. In addition, Miller & Schroeder extracted other fees for their professional services. All revenue received by Miller & Schroeder for financing, structuring and distributing the Heritage Bonds was derived from investor proceeds.

58. Defendants engaged in ongoing fraudulent marketing of fraudulently issued municipal bonds targeted at elderly investors. Defendants utilized mass media advertising designed to create the misleading impression that the Heritage Bonds were safe and conservative municipal bonds. Defendants' fraudulent scheme was designed to take advantage of the public perception that municipal bonds, based on historical performance, are relatively safe and conservative.

B. PROPOSED DEVELOPMENT OF HERITAGE HEALTH CARE FACILITIES

59. Commencing in 1996, Miller & Schroeder underwrote and sold the Heritage Bonds, in denominations of $5,000 per bond with a face value of over $144 million to provide financing for the HERITAGE DEFENDANTS' proposed business of acquiring, developing, renovating, and operating health care facilities such as Alzheimer care facilities.

60. The Heritage Bonds were structured by Miller & Schroeder as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. The stated issuer was a quasi-governmental agency that sold its name and disclaimed any responsibility for debt service and project oversight. The stated issuer acted as a conduit to facilitate mostly tax-exempt

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financing to private developers such as the HERITAGE DEFENDANTS and the KASIRER DEFENDANTS.

61. The success of each proposed health care facility financed by the Heritage Bonds, and thus the repayment of principal and interest to bond holders, was dependant upon the experience, skill, competence, efforts and integrity of the promoters and managers. The Heritage Bonds were in effect providing financing for private real estate development projects of the HERITAGE DEFENDANTS and the KASIRER DEFENDANTS. The development projects were speculative start-up real estate ventures financed by Miller & Schroeder's sale of Heritage Bonds to the Plaintiff Class.

C. SEED MONEY PROVIDED BY MILLER & SCHROEDER DEFENDANTS

62. The MILLER & SCHROEDER DEFENDANTS agreed to loan seed money to the HERITAGE DEFENDANTS and the KASIRER DEFENDANTS before the Heritage Bonds were structured and marketed to the investing public. The purpose of the loans was to provide bridge financing for preliminary work such as property appraisals and feasibility studies.

63. This seed money took the form of at least two loans, totaling approximately $700,000. The loans were secured by investor proceeds derived from the anticipated public sale of Heritage Bonds.

64. The seed money loans from Miller & Schroeder to the HERITAGE DEFENDANTS and KASIRER DEFENDANTS were not disclosed to investors in the Heritage Bonds.

D. STRUCTURING THE HERITAGE BONDS

65. In order to secure its seed money loans and to generate fees, Miller & Schroeder structured the Heritage Bonds in the form of negotiated conduit revenue bonds for sale to the public.

66. Miller & Schroeder assembled a "working group" of bond professionals who recruited the stated issuers and commenced drafting the agreements and documents necessary to make the proposed Heritage Bonds marketable to investors.

67. The KASIRER DEFENDANTS located distressed hospitals and negotiated for their purchase with anticipated proceeds from the proposed sale of Heritage Bonds.

68. The HERITAGE DEFENDANTS participated as the promoter by borrowing Heritage Bond proceeds to provide funds to purchase and renovate the hospital property.

69. The HERITAGE DEFENDANTS and the KASIRER DEFENDANTS were paid "fees"

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from bond proceeds to oversee the renovation of the proposed hospital or Alzheimer facility, obtain licensure to operate as a hospital or Alzheimer facility, and to manage the daily operations of the facility.

70. Defendants Sabo & Green and Atkinson, Andelson, Loya, Ruud & Romo, acting through their employee, Defendant Joel Boehm, were retained by Miller & Schroeder to act as underwriter's counsel and draft the Official Statements for use in marketing the Heritage Bonds. Boehm was not licensed to practice law in California until January of 1997, and thus was engaged in the unauthorized practice of law in California in connection with the 1996 Rancho Cucamonga offering and the 1996 Danforth Texas City offering.

71. All of the defendants, acting as participants assembled by Miller & Schroeder in connection with the Heritage Bonds, were paid fees only if and when the bonds were sold to the public.

72. Each of the Heritage Bond offerings involved the services of an institutional trustee pursuant to a written trust indenture to facilitate the flow of money in each Heritage Bond offering.

73. Miller & Schroeder and its KEY EMPLOYEE DEFENDANTS structured the Heritage Bonds so that the trustees allocated bond holder proceeds to establish reserve funds, working capital funds, and funded interest. Miller & Schroeder intended that these reserves, composed of investor funds, be used to make initial debt service payments in lieu of project revenues.

74. Miller & Schroeder also structured the Heritage Bonds so that substantial principal payments were not due until many years later. By "back loading" principal payments and using investor-funded reserves to make interest payments, Miller & Schroeder was able to mask cash flow problems and delay defaults for the Heritage bonds.

75. The trustees have declared the Heritage Bonds to be in default and are in the process of gathering, conserving, and if necessary, foreclosing the hospital property securing the bonds.

E. MARKETING THE HERITAGE BONDS

76. As the underwriter responsible for distribution of the Heritage Bonds to the investing public, Miller & Schroeder relied on its SALES DEFENDANTS in Solana Beach.

77. SALES DEFENDANTS, under the supervision of KEY EMPLOYEE DEFENDANTS, would solicit potential investors in the Heritage Bonds by using the Official Statement for each offering. SALES DEFENDANTS would obtain "indications of interest" from prospective investors.

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78. After Miller & Schroeder determined that sufficient "indications of interest" were obtained by SALES DEFENDANTS, the bond issuance was ready to close. Closing occurred when the working group executed the necessary documents, including the bond purchase agreement whereby Miller & Schroeder purchased the entire bond offering, less its negotiated discount.

79. Upon closing each Heritage Bond transaction, SALES DEFENDANTS collected investor funds in exchange for the Heritage Bonds.

80. SALES DEFENDANTS, from their Solana Beach office of Miller & Schroeder, targeted elderly investors seeking safety and tax benefits historically provided by municipal bonds. The solicitations included mass media advertising on television and in newspapers, and cold calling.

F. CHRONOLOGY OF THE HERITAGE BONDS

81. Beginning in 1996, the Miller & Schroeder financed, structured, and marketed to Plaintiff Class the Heritage Bonds as follows:

1. California Communities Local Public Improvements Financing Authority Health Care Revenue Bonds $13,050,000 (Rancho Cucamonga Hospital) Official Statement dated February 15, 1996

2. Danforth Health Facilities Corporation Revenue Bonds $7,295,000 (Danforth Long Term Care Facility-Texas City Texas) Official Statement dated December 20, 1996

3. Danforth Health Facilities Corporation Revenue Bonds $10,370,000 (Sam Houston Long Term Care Facility, Houston, Texas) Official Statement dated March 3, 1997

4. Tarrant County Health Facilities Development Corporation Revenue Bonds $13,420,000 (St. Joseph Long Term Care Facility, Fort Worth, Texas) Official Statement dated May 15, 1997

5. City of Mexico Beach, Florida Public Services Facilities Revenue Bonds $12,305,000 Multi-Jurisdictional No-Profit Series 1997 (Heritage House of Sarasota Project) Official Statement dated December 22, 1997

6. Danforth Health Facilities Corporation Revenue Bonds $11,090,000 (Heritage Duval Gardens, Austin, Texas) Official Statement dated July 10, 1998

7. City of Chicago, Illinois Health Facilities Revenue Bonds $17,275,000 (Heritage Care of Chicago, Inc.) Official Statement dated July 24, 1998

8. Desert Hot Springs Public Financing Authority Health Care Refunding and Improvement Certificates of Participation $22,330,000 (Heritage Hospital Project) Official Statement dated August 20, 1998

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9. Tarrant County Health Facilities Development Corporation Revenue Notes $6,855,000
(St. Joseph Long Term Care Facility, Fort Worth, Texas)
Official Statement dated October 1, 1998

10. Tarrant County Health Facilities Development Corporation Revenue Bonds $11,320,000
(Heritage Eastwood Gardens, Houston, Texas)
Official Statement dated November 13, 1998

11. City of Mexico Beach, Florida Public Service Facilities Revenue Bonds $7,230,000
Multi-Jurisdictional Non-Profit Series 1998 (Heritage House of Seminole Project)
Official Statement dated December 21, 1998

12. Tarrant County Health Facilities Development Corp. Revenue Bonds $11,715,000
(Heritage Valley Gardens, Brownsville, Texas)
Official Statement dated March 11, 1999

82. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about February of 1996, Miller & Schroeder underwrote, offered, and sold California Communities Local Public Improvements Financing Authority Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Rancho Cucamonga (hereinafter referred to as "Rancho Cucamonga"). The face value of the bonds totaled $13,050,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The KASIRER DEFENDANTS were paid to manage the facility.

83. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning on or about December of 1996, Miller & Schroeder underwrote, offered, and sold Danforth Health Facilities Corporation Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Texas City, Texas (hereinafter referred to as "Danforth - Texas City"). The face value of the bonds totaled $7,295,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The HERITAGE DEFENDANTS used bond proceeds to acquire the property from Columbia/HCA. The KASIRER DEFENDANTS were paid to manage the facility.

84. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about March of 1997, Miller & Schroeder underwrote, offered, and sold Danforth Health Facilities Corporation Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Houston, Texas (hereinafter referred to as " Danforth -

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Houston"). The face value of the bonds totaled approximately $10,370,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The KASIRER DEFENDANTS were paid to manage the facility.

85. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning on or about May 15, 1997, Miller & Schroeder underwrote, offered, and sold Tarrant County Health Facilities Development Corporation Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Fort Worth, Texas (hereinafter referred to as "Tarrant - Ft. Worth"). The face value of the bonds totaled $13,420,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The HERITAGE DEFENDANTS used bond proceeds to acquire the property from the KASIRER DEFENDANTS. Thereafter the KASIRER DEFENDANTS were paid to manage the facility.

86. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about December of 1997, Miller & Schroeder underwrote, offered, and sold City of Mexico Beach Public Service Facilities Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Sarasota, Florida (hereinafter referred to as "Mexico Beach - Sarasota"). The face value of the bonds totaled approximately $12,305,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The KASIRER DEFENDANTS were paid to manage the facility.

87. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about July of 1998, Miller & Schroeder underwrote, offered, and sold Danforth Health Facilities Corporation Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Austin, Texas (hereinafter referred to as "Danforth - Austin"). The face value of the bonds totaled $11,090,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The KASIRER DEFENDANTS were paid to manage the facility.

88. In furtherance of the agreement and scheme to defraud Heritage Bond investors,

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beginning in or about July of 1998, Miller & Schroeder and Berean Capital, Inc., underwrote, offered, and sold City of Chicago Health Facilities Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Chicago, Illinois (hereinafter referred to as "Chicago"). The face value of the bonds totaled $17,275;000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The HERITAGE DEFENDANTS used bond proceeds to acquire the property from the KASIRER DEFENDANTS. Thereafter the KASIRER DEFENDANTS were paid to manage the facility.

89. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about August of 1998, Miller & Schroeder underwrote, offered, and sold Desert Hot Springs Public Financing Authority Certificates of Participation for the stated purpose of refunding the outstanding 1996 California Communities Local Public Improvements Financing Authority Health Care Revenue Bonds for the Rancho Cucamonga hospital. The face value of the bonds totaled $22,330,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The KASIRER DEFENDANTS were paid to manage the facility.

90. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about October of 1998, Miller & Schroeder underwrote, offered, and sold Tarrant County Health Facilities Development Corporation Revenue Notes for the purpose of refunding earlier bonds and continuing the renovation and management of the Tarrant Fort Worth facility. The face value of the bonds totaled $6,855,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The KASIRER DEFENDANTS were paid to manage the facility.

91. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about November of 1998, Miller & Schroeder underwrote, offered, and sold Tarrant County Health Facilities Development Corporation Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Houston, Texas (hereinafter referred to as "Tarrant - Houston"). The face value of the bonds totaled $11,320,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as

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borrower and promoter. The HERITAGE DEFENDANTS used bond proceeds to acquire the property from the KASIRER DEFENDANTS. Thereafter the KASIRER DEFENDANTS were paid to manage the facility.

92. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about December of 1998, Miller & Schroeder underwrote, offered, and sold City of Mexico Beach Public Service Facilities Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Seminole, Florida (hereinafter referred to as "Mexico Beach - Seminole"). The face value of the bonds totaled $7,230,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The HERITAGE DEFENDANTS used bond proceeds to acquire the property from the KASIRER DEFENDANTS. Thereafter the KASIRER DEFENDANTS were paid to manage the facility.

93. In furtherance of the agreement and scheme to defraud Heritage Bond investors, beginning in or about March 15 of 1999, Miller & Schroeder underwrote, offered, and sold Tarrant County Health Facilities Development Corporation Revenue Bonds for the stated purpose of financing the acquisition, renovation and management of a proposed Heritage facility in Brownsville, Texas (hereinafter referred to as "Tarrant - Brownsville"). The face value of the bonds totaled $11,735,000. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to participate in the offering as borrower and promoter. The HERITAGE DEFENDANTS used bond proceeds to acquire the property from the KASIRER DEFENDANTS. Thereafter the KASIRER DEFENDANTS were paid to manage the facility.

94. In each of the above-referenced Heritage Bonds, Miller & Schroeder underwrote, offered, and sold the securities for the stated purpose of financing the acquisition, renovation and management of a proposed hospital or Alzheimer facility. The HERITAGE DEFENDANTS were paid a fee, from bond proceeds, to substantially assist in each offering as the borrower and promoter. The KASIRER DEFENDANTS were paid fees from bond proceeds to manage the facility for the HERITAGE DEFENDANTS.

95. Beginning with the earliest Heritage Bonds in 1996, Defendants knew that the renovation

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projects suffered cost overruns and construction delays and losses from operations. Defendants devised a course of business to transfer bond proceeds between projects to alleviate cash flow problems.

96. Many of the proposed Alzheimer facilities never commenced operations. Defendants knew that those facilities in operation were not profitable. Nevertheless, Miller & Schroeder, under the direction of KEY EMPLOYEE DEFENDANTS, continued to underwrite successive Heritage Bond offerings without disclosing the status of the earlier offerings and the projects financed with investor proceeds.

G. MILLER & SCHROEDER DEFENDANTS' EXIT STRATEGY

97. Miller & Schroeder advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance health care facilities.

98. Based on reputation and experience, Miller & Schroeder negotiated for itself substantial fees in excess of $6.6 million for financing, structuring and marketing the Heritage Bonds. These fees were paid from Heritage Bond proceeds.

99. As Defendants became aware of cost overruns, construction delays, operational losses, cash flow problems, and looming defaults for the Heritage Bonds, the KEY EMPLOYEE DEFENDANTS and the MILLER & SCHROEDER DEFENDANTS commenced a strategy to protect and preserve their interests to the exclusion of the Heritage Bond holders.

100. While more Heritage Bonds were being sold by SALES DEFENDANTS at Miller & Schroeder, Defendant Iverson sold his stock in Miller & Schroeder in 1997 in a management buyout led by Defendant Dlugosch. Defendant Iverson continues to the present day to act as an officer, director and control person for Miller & Schroeder.

101. While continuing to underwrite and make a market for the Heritage Bonds, the KEY EMPLOYEE DEFENDANTS attempted to sell the business. Plaintiff is informed and believes that in 1999, Kinnard Investments refused to consummate a proposed merger with Miller & Schroeder after evaluating the potential liability exposure created by the Heritage Bonds.

102. In or about early 2000, Iverson and Miller & Schroeder were named as defendants in a lawsuit filed in San Bernardino county in which the county alleged corrupt "pay to play" payments from Miller & Schroeder in return for municipal bond underwriting business. Defendants Iverson and Miller

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& Schroeder settled the litigation in the fall of 2001 by agreeing to pay $350,000 to the county.

103. While continuing to make a market for the Heritage Bonds, the KEY EMPLOYEES began selling off pieces of the business. In or about January of 2001, Miller & Schroeder sold its asset management unit and 10,000 retail securities accounts to a Minnesota-based company.

104. In 2001, the MILLER & SCHROEDER DEFENDANTS entered into an Asset Purchase Agreement with the MM&S DEFENDANTS. Under the terms of the Asset Purchase Agreement, the MILLER & SCHROEDER DEFENDANTS are attempting to transfer their assets to the former executives of Miller & Schroeder now doing business as the MM&S DEFENDANTS.

105. In recent months, the liquidity and value of the Heritage Bonds collapsed in the secondary market based after Miller & Schroeder ceased acting as the lead underwriter and primary market maker for the Heritage Bonds.

H. FRAUDULENT CONVEYANCE

106. While Plaintiff Class is left with Heritage Bonds that are not marketable and of little value, the KEY EMPLOYEE DEFENDANTS continue to conduct business as usual. Plaintiff is informed and believes that the MM&S DEFENDANTS employ approximately 19 former managers and approximately 100 former employees of Miller & Schroeder. The MM&S DEFENDANTS continue to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by the MILLER & SCHROEDER DEFENDANTS to finance, structure, and market the Heritage Bonds. For example, MM&S Financial Inc. is now doing business from the former Miller & Schroeder Solana Beach office.

107. Pursuant to the Asset Purchase Agreement, MILLER & SCHROEDER DEFENDANTS' assets were transferred to MM&S DEFENDANTS in an effort to avoid obligations relating to the Heritage Bonds.

108. The MILLER & SCHROEDER DEFENDANTS structured the Asset Purchase Agreement so that the value of the assets transferred to the MM&S DEFENDANTS exceeds the value received by the MILLER & SCHROEDER DEFENDANTS. Value received does not include unperformed promises contingent upon any future success of the MM&S DEFENDANTS. The MILLER & SCHROEDER DEFENDANTS are in the process of being left insolvent for the intended

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purpose of not having the ability to meet liabilities to the Heritage Bond holders.

109. The KEY EMPLOYEE DEFENDANTS at Miller & Schroeder structured the terms of the Asset Purchase Agreement with knowledge that the MILLER & SCHROEDER DEFENDANTS would incur debts and obligations relating to the Heritage Bonds beyond their ability to pay as they became due, thereby intending to hinder, delay, or defraud Heritage Bond holder claims. See the article in *The Bond Buyer*, dated September 6, 2001 and attached hereto as Exhibit 1.

I. ROLES OF VARIOUS DEFENDANTS IN THE CONSPIRACY

110. Miller & Schroeder agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Heritage Bonds.

111. James Iverson agreed to participate with full knowledge of the conspiracy by:

a. supervising the Solana Beach office of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

b. controlling the capital of Miller & Schroeder including secret loans to the HERITAGE DEFENDANTS;

c. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

d. acting as the head of underwriting for Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds.

e. providing secret loans and advances from Miller & Schroeder for the HERITAGE DEFENDANTS to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

f. directing Heritage Bond proceeds to assist the KASIRER DEFENDANTS in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

g. instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

h. providing advice and consultation to Miller & Schroeder in furtherance of its

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exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc.; and

i. substantially assisting the fraudulent conveyance as a "key employee".

112. John Clarey agreed to participate with full knowledge of the conspiracy by:

a. acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. approving successive Heritage Bond underwritings while accumulating information of problems plaguing earlier Heritage Bond projects;

c. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

d. accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the Heritage Bond problems with investors and the media during implementation of the exit strategy;

e. substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller".

113. Jerome Tabolich agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

c. participating in the exit strategy and fraudulent conveyance as the President of the MILLER & SCHROEDER DEFENDANTS and continuing thereafter as an officer and shareholder of the MM&S DEFENDANTS; and

d. substantially assisting the fraudulent conveyance as a "key employee" and

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"knowledgeable seller".

114. Edward Hentges agreed to participate with full knowledge of the conspiracy by:

a. acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer and director of the MILLER & SCHROEDER DEFENDANTS and continuing thereafter as an officer, director and shareholder of the MM&S DEFENDANTS; and

c. assisting the fraudulent conveyance as a "key employee".

115. Kenneth Larsen agreed to participate with full knowledge of the conspiracy by:

a. acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

b. participating in the exit strategy and fraudulent conveyance as an executive officer of the MILLER & SCHROEDER DEFENDANTS signing the Asset Purchase Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MM&S DEFENDANTS; and

c. substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller".

116. Steven Erickson agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the MILLER & SCHROEDER DEFENDANTS and continuing thereafter as an executive officer and shareholder of the MM&S DEFENDANTS; and

d. substantially assisting the fraudulent conveyance as a "key employee".

117. Paul Ekholm agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with

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responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds;

c. participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the MILLER & SCHROEDER DEFENDANTS and continuing thereafter as an executive officer and shareholder of the MM&S DEFENDANTS; and

d. substantially assisting the fraudulent conveyance as a "key employee".

118. James F. Dlugosch agreed to participate with full knowledge of the conspiracy by:

a. acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and

c. participating in the exit strategy and fraudulent conveyance as an executive officer and director of the MILLER & SCHROEDER DEFENDANTS and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

119. Mark Augusta agreed to participate with full knowledge of the conspiracy by:

a. recommending, offering, and selling over $10 million of Heritage Bonds to mostly elderly investors from the Solana Beach office of Miller & Schroeder; and

b. participating as a shareholder in the MILLER & SCHROEDER DEFENDANTS.

120. Bruce Talley agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

121. Gay Reeves, formerly known as Gay Diaz, agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

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122. Jami Wagner agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

123. Daniel Osgood agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

124. Timothy Jones agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

125. Scott Penwarden agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

126. Deborah Stokes agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

127. Ronald Vanderveen agreed to participate with full knowledge of the conspiracy by recommending, offering, and selling Heritage Bonds from the Solana Beach office of Miller & Schroeder.

128. Berean Capital Inc. agreed to participate with full knowledge of the conspiracy by acting as co-underwriter and providing substantial assistance to Miller & Schroeder on at least one Heritage Bond offering known as City of Chicago 1998 Health Facilities Revenue Bonds.

129. Joel Boehm agreed to participate with full knowledge of the conspiracy by:

a. recruiting municipal conduit issuers in connection with providing financing for the HERITAGE DEFENDANTS' and the KASIRER DEFENDANTS' proposed health care facilities;

b. acting as underwriter counsel, on behalf of his law firm, for Miller & Schroeder in connection with the Heritage Bonds and drafting the Official Statements, which included misrepresentations and omissions of material fact, for distribution to prospective purchasers of the

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Heritage Bonds; and

c. providing legal services to Miller & Schroeder, on behalf of Defendant Sabo & Green, in connection with the 1996 Rancho Cucamonga bonds and the 1996 Danforth Texas City bonds before he was licensed to practice law in California in January of 1997.

130. Sabo & Green agreed to participate with full knowledge of the conspiracy by:

a. employing and supervising Joel Boehm as an unlicensed attorney providing legal services in recruiting municipal conduit issuers and providing financing for the HERITAGE DEFENDANTS' and the KASIRER DEFENDANTS' proposed health care facilities;

b. employing and supervising Joel Boehm to act as the lead attorney for the firm in its role as underwriter's counsel for Miller & Schroeder in connection with the following Heritage Bonds and drafting the Official Statement, which included misrepresentations and omissions of material fact, for distribution to prospective purchasers of the following Heritage Bonds: 1996 Rancho Cucamonga, 1996 Danforth Texas City, 1997 Mexico Beach Sarasota, 1997 Danforth Houston, 1997 Tarrant Fort Worth, 1998 Chicago, 1998 Desert Hot Springs, and 1998 Danforth Austin; and

c. representing a defendant in Platt v. Kasirer, et al., a lawsuit filed in August of 1997 in San Bernardino Superior Court by the Chief Executive Officer of the Rancho Cucamonga Heritage Hospital alleging misappropriation of bond proceeds from the 1996 Rancho Cucamonga Heritage Bonds.

131. Atkinson, Andelson, Loya, Ruud & Romo agreed to participate with full knowledge of the conspiracy by:

a. employing and supervising Joel Boehm as an attorney providing legal services in recruiting municipal conduit issuers and providing financing for the HERITAGE DEFENDANTS' and the KASIRER DEFENDANTS' proposed health care facilities; and

b. employing and supervising Joel Boehm to act as the lead attorney for the firm in its role as underwriter's counsel for Miller & Schroeder in connection with the following Heritage Bonds and drafting the Official Statement, which included misrepresentations and omissions of material fact, for distribution to prospective purchasers of the following Heritage Bonds: 1998 Tarrant Houston, 1998 Tarrant Fort Worth, 1998 Tarrant Brownsville, and 1998 Mexico Beach Seminole.

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132. Heritage Housing Development, Inc. agreed to participate with full knowledge of the conspiracy by:

a. agreeing to use its non-profit status in a scheme to provide financing for the KASIRER DEFENDANTS' proposed purchase, renovation, and management of distressed health care facilities with knowledge of the negative information regarding Robert Kasirer's background;

b. incorporating affiliate companies with the same officers and directors, collectively referred to herein as the HERITAGE DEFENDANTS, to act as promoters, borrowers, and conduit issuers for the Heritage Bonds;

c. secretly borrowing funds from Miller & Schroeder to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds;

d. using Heritage Bond proceeds to assist the KASIRER DEFENDANTS in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants;

e. collecting fees paid from Heritage Bond proceeds for purported administrative oversight services rendered in connection with the acquisition and renovation of the health care facilities; and

f. unlawfully transferring proceeds from Heritage Bond offerings.

133. Heritage Healthcare of America Inc., an affiliate of Defendant Heritage Housing Development Inc., agreed to participate with full knowledge of the conspiracy by:

a. acting as the conduit issuer borrowing proceeds from the 1998 Heritage Austin bonds, the 1998 Heritage Houston bonds, the 1998 Heritage Seminole bonds, and the 1999 Heritage Brownsville bonds to further the private development interests of the KASIRER DEFENDANTS;

b. unlawfully transferring proceeds from the Heritage Bond offerings; and

c. failing to provide ongoing disclosure of material information and events in connection with these Heritage Bonds after agreeing to do so.

134. Heritage Rancho Healthcare Inc., an affiliate of Defendant Heritage Housing Development Inc., agreed to participate with full knowledge of the conspiracy by:

a. acting as the conduit issuer borrowing proceeds from the 1996 Rancho

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Cucamonga bonds and the 1998 Desert Hot Springs bonds to further the private development interests of the KASIRER DEFENDANTS;

b. unlawfully transferring proceeds from the Heritage Bond offerings; and

c. failing to provide ongoing disclosure of material information and events in connection with these Heritage Bonds after agreeing to do so.

135. Heritage Care of Chicago Inc., an affiliate of Defendant Heritage Housing Development Inc., agreed to participate with full knowledge of the conspiracy by:

a. acting as the conduit issuer borrowing proceeds from the 1998 Chicago Heritage bonds to further the private development interests of the KASIRER DEFENDANTS;

b. unlawfully transferring proceeds from the Heritage Bond offerings; and

c. failing to provide ongoing disclosure of material information and events in connection with these Heritage Bonds after agreeing to do so.

136. Heritage Geriatric Housing Development IX Inc., an affiliate of Defendant Heritage Housing Development Inc., agreed to participate with full knowledge of the conspiracy by:

a. acting as the conduit issuer borrowing proceeds from the 1997 Tarrant Fort Worth bonds and the 1998 Tarrant Forth Worth bonds to further the private development interests of the KASIRER DEFENDANTS;

b. unlawfully transferring proceeds from the Heritage Bond offerings; and

c. failing to provide ongoing disclosure of material information and events in connection with these Heritage Bonds after agreeing to do so.

137. Heritage Geriatric Housing Development VIII Inc., an affiliate of Defendant Heritage Housing Development Inc., agreed to participate with full knowledge of the conspiracy by:

a. acting as the conduit issuer borrowing proceeds from the 1997 Danforth Houston bonds to further the private development interests of the KASIRER DEFENDANTS;

b. unlawfully transferring proceeds from the Heritage Bond offerings; and

c. failing to provide ongoing disclosure of material information and events in connection with these Heritage Bonds after agreeing to do so.

138. Heritage Geriatric Housing Development VII Inc., an affiliate of Defendant Heritage

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Housing Development Inc., agreed to participate with full knowledge of the conspiracy by:

a. acting as the conduit issuer borrowing proceeds from the 1997 Danforth Texas City bonds to further the private development interests of the KASIRER DEFENDANTS;

b. unlawfully transferring proceeds from the Heritage Bond offerings; and

c. failing to provide ongoing disclosure of material information and events in connection with these Heritage Bonds after agreeing to do so.

139. Heritage Care of Sarasota Inc., an affiliate of Defendant Heritage Housing Development Inc., agreed to participate with full knowledge of the conspiracy by:

a. acting as the conduit issuer borrowing proceeds from the Mexico Beach Sarasota bonds to further the private development interests of the KASIRER DEFENDANTS;

b. unlawfully transferring proceeds from the Heritage Bond offerings; and

c. failing to provide ongoing disclosure of material information and events in connection with these Heritage Bonds after agreeing to do so.

140. Jerold Goldstein agreed to participate with full knowledge of the conspiracy by:

a. combining his status as an officer, director, and legal counsel for the HERITAGE DEFENDANTS with his pre-existing business relationship with Robert Kasirer to further the private development interests of the KASIRER DEFENDANTS with knowledge of negative information regarding the background of Robert Kasirer.

b. structuring and agreeing to use the non-profit status of the HERITAGE DEFENDANTS as conduit issuers in a scheme to provide financing for the KASIRER DEFENDANTS' proposed purchase, renovation, and management of distressed health care facilities;

c. collecting fees paid from Heritage Bond proceeds for purported administrative oversight services rendered in connection with the acquisition and renovation of the health care facilities;

d. unlawfully directing the transfer of proceeds from the Heritage Bond offerings;

e. obtaining secret loans for the HERITAGE DEFENDANTS from Miller & Schroeder to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds; and

f. directing Heritage Bond proceeds to assist the KASIRER DEFENDANTS in

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acquiring vacant health care facilities, most of which were burdened with restrictive use covenants.

141. Emery Rubin agreed to participate with full knowledge of the conspiracy by:

a. combining his status as an officer and director for the HERITAGE DEFENDANTS with his pre-existing business relationship with Robert Kasirer to further the private development interests of the KASIRER DEFENDANTS with knowledge of negative information regarding the background of Robert Kasirer;

b. structuring and agreeing to use the non-profit status of the HERITAGE DEFENDANTS as conduit issuers in a scheme to provide financing for the KASIRER DEFENDANTS proposed purchase, renovation, and management of distressed health care facilities;

c. collecting fees paid from Heritage Bond proceeds for purported administrative oversight services in connection with the acquisition and renovation of the health care facilities;

d. unlawfully directing the transfer of proceeds from the Heritage Bond offerings

e. obtaining secret loans for the HERITAGE DEFENDANTS from Miller & Schroeder to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds; and

f. directing Heritage Bond proceeds to assist the KASIRER DEFENDANTS in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants.

142. Larry Rubin agreed to participate with full knowledge of the conspiracy by:

a. combining his status as an officer and director for the HERITAGE DEFENDANTS with his pre-existing business relationship with Robert Kasirer to further the private development interests of the KASIRER DEFENDANTS with knowledge of negative information regarding the background of Robert Kasirer;

b. structuring and agreeing to use the non-profit status of the HERITAGE DEFENDANTS as conduit issuers in a scheme to provide financing for the KASIRER DEFENDANTS proposed purchase, renovation, and management of distressed health care facilities;

c. collecting fees paid from Heritage Bond proceeds for purported administrative oversight services in connection with the acquisition and renovation of the health care facilities;

d. unlawfully directing the transfer of proceeds from the Heritage Bond offerings

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e. obtaining secret loans for the HERITAGE DEFENDANTS from Miller & Schroeder to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds; and

f. directing Heritage Bond proceeds to assist the KASIRER DEFENDANTS in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants.

143. Virgil Lim agreed to participate with full knowledge of the conspiracy by:

a. using his status as an officer and director for the HERITAGE DEFENDANTS to further the private development interests of the KASIRER DEFENDANTS;

b. collecting fees paid from Heritage Bond proceeds for purported administrative oversight services in connection with the acquisition and renovation of the health care facilities;

c. obtaining secret loans for the HERITAGE DEFENDANTS from Miller & Schroeder to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds; and

d. directing Heritage Bond proceeds to assist the KASIRER DEFENDANTS in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants

144. Onofrio Bertolini agreed to participate with full knowledge of the conspiracy by:

a. using his status as an officer and director for the HERITAGE DEFENDANTS to further the private development interests of the KASIRER DEFENDANTS;

b. structuring and agreeing to use the non-profit status of the HERITAGE DEFENDANTS as conduit issuers in a scheme to provide financing for the KASIRER DEFENDANTS' proposed purchase, renovation, and management of distressed health care facilities;

c. collecting fees paid from Heritage Bond proceeds for purported architecture and administrative oversight services in connection with the acquisition and renovation of the health care facilities;

d. unlawfully directing the transfer of proceeds from the Heritage Bond offerings;

e. obtaining secret loans for the HERITAGE DEFENDANTS from Miller & Schroeder to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds; and

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f. directing Heritage Bond proceeds to assist the KASIRER DEFENDANTS in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants

145. Berman and Bertolini Inc. agreed to participate with full knowledge of the conspiracy by

a. using the status of owner Onofrio Bertolini to direct architecture business to the Berman and Bertolini Inc. in connection with the Heritage Bonds; and

b. collecting fees paid from Heritage Bond proceeds for purported architecture and construction oversight services in connection with the acquisition and renovation of the health care facilities.

146. Robert Kasirer agreed to participate with full knowledge of the conspiracy by:

a. using his pre-existing business relationships with Defendant James Iverson Defendant Jerold Goldstein, Defendant Emery Rubin, and Defendant Larry Rubin, to obtain financing from the Heritage Bonds to further the private development interests of the KASIRER DEFENDANTS

b. using Heritage Bond proceeds to assist the KASIRER DEFENDANTS in acquiring vacant hospitals, most of which were burdened with restrictive use covenants, and then reselling the property to the HERITAGE DEFENDANTS at a profit;

c. using funds secretly loaned by Miller & Schroeder to obtain appraisal reports and feasibility studies, based on hypothetical assumptions and limiting conditions, for the proposed health care facilities to be financed by the Heritage Bonds;

d. directing fees derived from Heritage Bond proceeds to the KASIRER DEFENDANTS purportedly acting as managers of the health care facilities;

e. unlawfully directing the transfer of proceeds from the Heritage Bonds; and

f. Plaintiff alleges on information and belief that Defendant Kasirer engaged in self-dealing by misappropriating Heritage Bond proceeds for the unauthorized use of the KASIRER DEFENDANTS.

147. JDDJ Holdings L.P., under the direction and control of Defendant Robert Kasirer, agreed to participate with full knowledge of the conspiracy by locating vacant health care properties for resale at an undisclosed profit paid from proceeds of the Chicago bonds, from the Tarrant Houston bonds from the Mexico Beach Seminole bonds, and from the Tarrant Brownsville bonds.

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148. BMHC Corp., under the direction and control of Defendant Robert Kasirer, agreed to participate with full knowledge of the conspiracy by locating vacant health care properties for resale at an undisclosed profit paid from proceeds of the Tarrant Fort Worth bonds.

149. Health Care Holdings LLC, under the direction and control of Defendant Robert Kasirer, agreed to participate with full knowledge of the conspiracy by receiving fees, derived from Heritage Bond proceeds, to act as manager of the health care facilities financed by the Tarrant Brownsville bonds, the Mexico Beach Seminole bonds, the Tarrant Houston bonds, the Desert Hot Springs bonds, the Chicago bonds, the Danforth Austin bonds, Mexico Beach Sarasota bonds,

150. CareContinuum LLC, under the direction and control of Defendant Robert Kasirer, agreed to participate with full knowledge of the conspiracy by receiving fees, derived from Heritage Bond proceeds, to act as manager of the health care facilities financed by the Tarrant Brownsville bonds, the Mexico Beach Seminole bonds, the Tarrant Houston bonds, the Desert Hot Springs bonds, the Chicago bonds, the Danforth Austin bonds, the Mexico Beach Sarasota bonds,

151. IHN Health Services Group Inc., under the direction and control of Defendant Robert Kasirer, agreed to participate with full knowledge of the conspiracy by receiving fees, derived from Heritage Bond proceeds, to act as manager of the health care facilities financed by the 1997 Tarrant Fort Worth bonds, the Danforth Houston bonds, and the Danforth Texas City bonds.

IV.

COMMON MISREPRESENTATIONS AND OMISSIONS IN WRITTEN OFFICIAL STATEMENTS PREPARED AND DISTRIBUTED TO OFFEREES IN CONNECTION WITH THE OFFER AND SALE OF HERITAGE BONDS

152. In connection with the Heritage Bonds underwritten, recommended, offered, and sold by Miller & Schroeder, express and implied representations in the Official Statements, and oral communications, were false and/or misleading because they understated the true risk of the development projects and the bonds. Defendants failed to properly disclose the following material facts:

A. LOANS FROM MILLER & SCHROEDER TO THE HERITAGE DEFENDANTS

153. Miller & Schroeder failed to disclose at least two loans totaling approximately $700,000 to the HERITAGE DEFENDANTS. Money was transferred pursuant to these loans before any of the

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Heritage Bonds were underwritten. These loans provided seed money to the HERITAGE DEFENDANTS in preparation for underwriting the Heritage Bonds.

154. The Official Statements contained a section titled "Relationships Among The Parties" for the purpose of disclosing conflicts of interest and related party transactions, that stated, "[T]here is no direct or indirect relationship between any of the officers of the Company (the HERITAGE DEFENDANTS) and the officers and directors of the Manager (the KASIRER DEFENDANTS)."

155. The Official Statements' representations in the section titled "Relationships Among The Parties" was false and misleading because there was no disclosure of loans from Miller & Schroeder, no disclosure of pre-existing business relationships involving Defendants Robert Kasirer, Jerold Goldstein, Larry Rubin, Emery Rubin and James Iverson, and no disclosure of the continuing relationship between Miller & Schroeder and the HERITAGE DEFENDANTS and the KASIRER DEFENDANTS as evidenced by twelve successive Heritage Bond offerings.

156. The Official Statements contained a section titled "Estimated Sources and Uses of Funds" describing the expected application of Heritage Bond proceeds. The descriptions were false and misleading because, among other reasons, the use of Heritage Bond proceeds to repay the loans from Miller & Schroeder should have been, but was not, disclosed in the Official Statements as a conflict of interest and as a use of investor funds.

B. <u>COST OVERRUNS AND CONSTRUCTION DELAYS FOR EACH PROJECT</u>

157. The Official Statements for the Heritage Bonds contained representations regarding the use of investor proceeds to renovate the project property and operate it as a health care facility. In addition to the "Estimated Sources And Uses Of Funds" section, the Official Statements contained a section titled "Construction Contract and the Contractor" which stated, "[U]pon issuance of the (Heritage Bonds), the Company (the HERITAGE DEFENDANTS) will enter into a construction contract ... to renovate the Existing Facility, pursuant to a **guaranteed** maximum price contract in the amount of ... . In connection with the Renovation Project, the contractor will **guarantee** completion of the Renovation Project and will provide a performance bond ... . The Construction Contract requires the Contractor to complete the Renovation Project by ..., subject to certain limited extensions, and to **guarantee** completion of the Renovation Project." (emphasis added)

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158. Based on these express representations appearing in the Official Statements, prospective investors were promised that the Defendants could complete the proposed facility renovation for the stated price by the stated completion date. Accordingly, the Official Statements contained feasibility studies and debt service coverage calculations based on the stated construction cost and completion date. It was therefore known to Defendants, including Miller & Schroeder in their role of structuring each offering, that any delay or cost overruns in renovating the facility would delay operation of the facility resulting in cash flow shortages.

159. However, from the beginning in 1996, the HERITAGE DEFENDANTS and the KASIRER DEFENDANTS could not complete the renovation and thus commence operation of the proposed health care facilities within the specified time frame and within the "guaranteed" cost allocated pursuant to each Heritage Bond structured by Miller & Schroeder.

160. Knowing that the promised cost "guarantee" and completion date were not being met for the renovation projects, Miller & Schroeder continued to underwrite successive Heritage Bonds using Official Statements containing the same representations but without disclosing to prospective investors these prior cost overruns, delays, and resulting cash flow shortages.

161. Knowing that the promised cost "guarantee" and completion date were not being met for the renovation projects, Miller & Schroeder continued to underwrite successive Heritage Bonds using Official Statements containing feasibility studies and debt service ratio calculations based on progressively unreliable renovation costs and completion dates.

162. Defendants knew during the offer and sale of Heritage Bonds that the promised "performance bonds" for project renovation were illusory or nonexistent.

C. NEGATIVE INFORMATION REGARDING THE KASIRER DEFENDANTS

163. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds contained a section describing the background and accomplishments of the KASIRER DEFENDANTS as the proposed manager of each health care facility. Robert Kasirer was described as a seasoned corporate executive experienced in developing and managing retirement and health care facilities. Robert Kasirer was also described as a lawyer and member of the New York Bar Association who has lectured extensively and authored articles on the retirement housing industry. The experience

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and integrity of the KASIRER DEFENDANTS, including Robert Kasirer, was material to prospective investors because revenue derived from operation of the facility by the KASIRER DEFENDANTS was the sole source of funds available for debt service payments for each respective Heritage Bond. Representations in the Official Statements about the achievements of the developer and manager were material to Plaintiffs because without an established and reputable and financially strong developer and manager, Heritage Bond holders had little, if any, assurance that the proposed project would be developed and operated and valued as represented in the Official Statements.

164. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds failed to disclose negative information regarding the KASIRER DEFENDANTS including: (a) several lawsuits in the last eight years alleging wrongful acts, including fraud, against Robert Kasirer in various business transactions including development of real property;

(b) unpaid obligations, totaling hundreds of thousands of dollars, of Robert Kasirer arising from tax liens and unsatisfied judgments;

(c) an IRS investigation involving Robert Kasirer's participation in the tax-exempt status of municipal securities financing real property development involving defendants Emery Rubin and Jerold Goldstein;

(d) (for those Heritage Bonds marketed after August of 1997) a lawsuit filed August 7, 1997, in California, against Robert Kasirer, some of the HERITAGE DEFENDANTS, Larry Rubin, and Emery Rubin, alleging wrongful acts such as misappropriation of bond proceeds at the Rancho Cucamonga Heritage facility; or

(e) (for those Heritage Bonds marketed after July of 1998) a lawsuit was threatened and eventually filed July 22, 1998, in California, against some of the KASIRER DEFENDANTS and some of the HERITAGE DEFENDANTS alleging wrongful acts such as fraud in the management of the Rancho Cucamonga Heritage facility.

165. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds also contained a "Litigation" section stating in part, "[T]he Company (the HERITAGE DEFENDANTS) has advised that no litigation or proceedings are pending or, to its knowledge, threatened against it or the Facility or the transactions described herein **or which might have a material**

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adverse effect on it or the Facility or the transactions described herein." (emphasis added) This representation was made misleading by the Defendants' failure to disclose, in the appropriate Heritage Bond Official Statements, the litigation described in the preceding paragraph.

D. RESTRICTIVE COVENANTS BURDENING PROJECT PROPERTY

166. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds contained a section describing "Security for the Bonds" which stated in part, "[T]o further secure the payments due pursuant to the Note, the Company (the HERITAGE DEFENDANTS) will grant to the Mortgage Trustee a first mortgage lien on the land and improvements constituting the Facility and a first priority security interest in the personal property portions of the Facility and the Revenues subject only to Permitted Encumbrances, as defined in the Deed of Trust." Thus, Heritage Bond holders were the beneficiaries of a first deed of trust on the health care facility property.

167. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds also contained an "Appraisal Report" section setting forth a current "as is" appraised market value for the hospital facility securing the Heritage Bonds.

168. However, the appraiser valued the property based on the assumption that title was held in fee simple without any liens or encumbrances. Thus, the "as is" appraised market value for each hospital was based on the assumption that title was in fee simple without any liens or encumbrances.

169. Defendants knew that every distressed hospital property purchased from Columbia/HCA with Heritage Bond proceeds contained a restrictive covenant running with the land that prohibited use of the property as a hospital, surgery center, birthing facility, laboratory, or other similar ancillary medical service. This encumbrance was not considered in the "as is" appraised market value disclosed to prospective investors in certain Heritage Bonds including Danforth Texas City, Danforth Sam Houston, Tarrant Fort Worth, Mexico Beach Sarasota, City of Chicago, Tarrant Houston, Mexico Beach Seminole, and Tarrant Brownsville. Thus, the "as is" appraised market value was manipulated by Defendants in each respective Official Statement in light of the undisclosed restrictive covenants burdening the collateral.

170. Furthermore, Heritage Bond holders were not adequately advised of the recent transaction history regarding real property being sold and pledged as security for bond holders and key transaction

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terms such as price, fair market value, liens, restrictive covenants, and the identity and profit o participants to the transaction such as the KASIRER DEFENDANTS.

171. Heritage Bond holders were misled by not knowing the true and complete assumption and limiting conditions supporting the appraisals, opinions of value, and feasibility reports for the rea property purchased with bond holder proceeds and pledged as collateral to secure the bonds. The presen fair market value of the pledged property was material to prospective investors' calculation of the value to-lien ratio which measures the adequacy of the collateral securing their investment.

V.

OFFER AND SALE OF HERITAGE BONDS TO PLAINTIFF HERRMANN

172. Defendant Augusta solicited Plaintiff who purchased Heritage Danforth - Texas City bonds, from December of 1996 through March of 1999, with a face value of approximately $155,000

173. Defendant Augusta solicited Plaintiff who purchased Heritage Danforth - Houston bonds from March of 1997 through September of 1998, with a face value of approximately $55,000.

174. Defendant Augusta solicited Plaintiff who purchased Heritage Tarrant - Ft. Worth bonds from May of 1997 through March of 1999, with a face value of approximately $195,000.

175. Defendant August solicited Plaintiff who purchased Heritage Mexico City - Sarasota bonds, in or about January of 1998, with a face value of approximately $25,000.

176. Defendant August solicited Plaintiff who purchased Heritage Danforth - Austin bonds, from July of 1998 through August of 1998, with a face value of approximately $65,000.

177. Defendant Augusta solicited Plaintiff who purchased Heritage - Chicago bonds, from July of 1998 through August of 1998, with a face value of approximately $35,000.

178. Defendant Augusta solicited Plaintiff who purchased Desert Hot Springs bonds, in or about August of 1998 with a face value of approximately $265,000. Plaintiffs sold these bonds in June of 1999.

179. Defendant Augusta solicited Plaintiff who purchased Heritage Tarrant - Houston bonds, in November of 1998, with a face value of approximately $25,000.

180. Defendant Augusta solicited Plaintiff who purchased Heritage Mexico Beach - Seminole bonds, from December of 1998 through February of 1999, with a face value of approximately $140,000.

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181. Defendant Augusta solicited Plaintiff who purchased Heritage Tarrant - Brownsvill bonds in March of 1999, with a face value of approximately $125,000.

VI.

THE PLAINTIFF CLASS HAS REMAINED REASONABLY IGNORANT OF THE FRAUI

182. As passive investors in the Heritage Bonds, Plaintiff Class relied upon their broker-deale Miller & Schroeder, to advise them concerning the status of the Heritage Bond investment pursuant t the fiduciary duties owed by these defendants to Plaintiffs.

183. Miller & Schroeder undertook to advise Plaintiff Class concerning the status of th Heritage Bond investments with knowledge of the fiduciary duties owed to Plaintiffs and with reaso to believe that Plaintiffs and those similarly situated were relying upon Miller & Schroeder to keep ther updated regarding their investments.

184. Initially, Plaintiff Class received debt service payments in the form of scheduled interes drawn from interest reserves funded from Heritage Bond proceeds, as structured by Miller & Schroeder

185. Beginning in or about September of 1999, Plaintiff Class received correspondence fron the trustee for the Heritage Bonds advising that debt service payments have been timely and the that the reserve funds remain whole. The trustee questioned the lack of regularly scheduled complianc documentation from the appropriate Heritage entity. The trustee also questioned cash transfers by the HERITAGE DEFENDANTS. This correspondence included a responsive statement from the HERITAGE DEFENDANTS advising that the projects are "presently under construction" an "substantially on schedule and on budget", and that intercompany monetary transfers will cease ever though they are authorized and "strengthen the system by permitting assets to be utilized efficiently".

186. Following this correspondence from the trustee, the SALES DEFENDANTS an Defendant Clarey assured Plaintiff Class that while the allegations were being investigated, the Heritage Bonds remained safe and secure investments protected by revenues from operations and a first trust deec on the health care facility as represented in the Official Statements. Furthermore, the monthly statement sent by Miller & Schroeder to Plaintiffs continued to value the Heritage Bonds at or near face value.

187. On or about June 29, 2000, the trustee issued a "Notice Of Default And Acceleration" for the Heritage Bonds. Plaintiff Class was advised in the notice of cash flow problems anc

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commencement of proceedings to foreclose on the project property securing the Heritage Bonds. At no time did the trustee, Miller & Schroeder, the SALES DEFENDANTS, or Defendant Clarey advise Plaintiff Class of the misrepresentations and omissions alleged herein. Instead, Miller & Schroeder led Plaintiffs to believe that the Heritage Bonds were in default for economic reasons other than misrepresentations and that investors would continue to be protected from losses because principal and interest payments were secured by first mortgages or trust deeds on the various health care facility real estate projects.

188. Heritage Bond holders remain ignorant of the true and complete facts regarding Miller & Schroeder loans and advances to the HERITAGE DEFENDANTS, the extent of the cost overruns and delays, the background and role of the KASIRER DEFENDANTS, and the lack of adequate real estate values to secure repayment of the Heritage Bonds. Plaintiffs' counsel recently learned of this material information in late October, 2001.

189. As part of the effort to conceal the fraud in connection with the Heritage Bonds, KEY EMPLOYEE DEFENDANTS have fraudulently conveyed the assets of Miller & Schroeder as alleged herein. In furtherance of the agreement and scheme to defraud in connection with the Heritage Bonds, Miller & Schroeder has stated to bond holder claimants and their counsel, including during the course of arbitration hearings, that Defendant Miller & Schroeder is and has been insolvent, thus with no ability to pay judgments. With the exception of the one class member, bond holder Lundquist, the MILLER & SCHROEDER DEFENDANTS have effectively prevented the Plaintiff Class members from discovering the true nature of the fraud perpetrated by the Defendants.

VII.

DEFINITION OF THE CLASS

190. Plaintiff Herrmann purchased ten different Heritage Bonds from Miller & Schroeder.

191. Plaintiff prosecutes this action on behalf of himself and all others similarly situated. The class is defined as follows:

> All those persons who held an account with Miller & Schroeder Financial, Inc. and who purchased during the time period of January 1, 1996 through December 31, 2000, beneficial interests in any of the following Heritage Bonds:

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1. California Communities Local Public Improvements Financing Authority Health Care Revenue Bonds (Rancho Cucamonga Hospital);
2. Danforth Health Facilities Corporation Revenue Bonds (Danforth Long Term Care Facility - Texas City, Texas);
3. Danforth Health Facilities Corporation Revenue Bonds (Sam Houston Long Term Care Facility, Houston, Texas);
4. Tarrant County Health Facilities Development Corporation Revenue Bonds (St. Joseph Long Term Care Facility, Fort Worth, Texas);
5. City of Mexico Beach, Florida Public Services Facilities Revenue Bonds - Multi-Jurisdictional No-Profit Series 1997 (Heritage House of Sarasota Project);
6. Danforth Health Facilities Corporation Revenue Bonds (Heritage Duval Gardens, Austin, Texas);
7. City of Chicago, Illinois Health Facilities Revenue Bonds (Heritage Care of Chicago, Inc.);
8. Desert Springs Public Financing Authority Health Care Refunding and Improvement Certificates of Participation (Heritage Hospital Project);
9. Tarrant County Health Facilities Development Corporation Revenue Notes (St. Joseph Long Term Care Facility, Fort Worth, Texas);
10. Tarrant County Health Facilities Development Corporation Revenue Bonds (Heritage Eastwood Gardens, Houston, Texas);
11. City of Mexico Beach, Florida Public Service Facilities Revenue Bonds-Multi-Jurisdictional Non-Profit Series 1998 Heritage House of Seminole Project); and
12. Tarrant County Health Facilities Development Corporation Revenue Bonds (Heritage Valley Gardens, Brownsville, Texas).

Specifically excluded from the Plaintiff Class are all named Defendants herein and all those persons employed by or an officer or director of a named Defendant during any time from January 1, 1990 to present.

. 192. This action is brought as a class action pursuant to California Code of Civil Procedure

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Section 382. There is a community of interest amongst the class members who are so numerous an geographically dispersed so that it is impracticable to bring them all before this Court. Hundreds, if nc thousands, of persons throughout the United States are members of the Plaintiff Class, most of whor are elderly and many of whom would face physical challenges in personally prosecuting an action of thi nature. Many class members' damages are not large enough to economically justify litigation of thi nature. Heritage Bonds were sold in denominations of $5,000. Common questions or law and fac predominate over any questions affecting only individual members of the Plaintiff Class. The commo questions of law and fact that predominate include, among others:

(a) whether the Official Statements described herein contain false and misleadin statements;

(b) whether the Asset Purchase Agreement dated as of July 26, 2001, betwee MILLER & SCHROEDER DEFENDANTS as "Sellers" and MM&S DEFENDANTS as "Buyers", represents a fraudulent conveyance of assets tc avoid liabilities to the Plaintiff Class;

(c) whether a lien upon the assets transferred and a restraining order or injunctior against further transfer of the assets transferred pursuant to the July 26, 2001 Asset Purchase Agreement should be imposed; and

(d) whether the MM&S DEFENDANTS are liable as successor corporations and/o alter egos of Defendant Miller & Schroeder Financial, Inc.

Plaintiff's claims are typical of the absent class members and Plaintiff will adequately and fairl represent the Plaintiff Class.

VIII.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Untrue and misleading statements of material fact in the offer and sale of securities in violation of sections 12(a)(2) and 15 of the 1933 Securities Act

193. Plaintiffs reallege and incorporate by reference all previous allegations of this complaint and prosecute this claim for relief against Miller & Schroeder, Berean Capital Inc., the KEY EMPLOYEE DEFENDANTS, the SALES DEFENDANTS, the HERITAGE DEFENDANTS, and Does

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1-100 pursuant to Section 12(a)(2) of the 1933 Securities Act.

193. As alleged in this complaint, by reason of issuing, underwriting, offering, or selling municipal securities in this state by means of untrue statements and statements that are misleading because of the omission of material facts as alleged herein, these defendants violated section 12(a)(2) of the 1933 Securities Act. Defendants Miller & Schroeder, Berean Capital Inc., and the SALES DEFENDANTS are liable as sellers as alleged in this complaint. The KEY EMPLOYEE DEFENDANTS are liable as control persons of Miller & Schroeder and the SALES DEFENDANTS pursuant to section 15 of the 1933 Securities Act, with knowledge of the false and misleading statements alleged herein. The Heritage entities (Heritage Housing Development Inc., Heritage Healthcare of America Inc., Heritage Rancho Healthcare Inc., Heritage Care of Chicago Inc., Heritage Geriatric Housing Development IX Inc., Heritage Geriatric Housing Development VIII Inc., Heritage Geriatric Housing Development VII Inc. and Heritage Care of Sarasota) were issuers and sellers liable pursuant to section 12(a)(2) of the 1933 Securities Act. The Heritage control persons (Jerold Goldstein, Emery Rubin, Larry Rubin, Virgil Lim, and Onofrio Bertolini) are liable pursuant to Section 15 of the 1933 Securities Act, with knowledge of the false and misleading statements alleged herein.

194. Plaintiff, on behalf of himself and all others similarly situated who continue to hold Heritage Bonds, hereby tender back the Heritage Bonds to these defendants in exchange for these defendants paying back to Plaintiffs the purchase price plus legal interest thereon. If any member of the Plaintiff Class has sold his or her Heritage Bonds, then they are entitled to their damages plus interest thereon.

SECOND CAUSE OF ACTION

Untrue and misleading statements of material fact in the offer and sale of securities in violation of Corporations Code Sections 25401, 25501, 25504, and 25504.1

195. Plaintiffs reallege and incorporate by reference all previous allegations of this complaint and prosecute this claim for relief against Miller & Schroeder, Berean Capital Inc., the KEY EMPLOYEE DEFENDANTS, the SALES DEFENDANTS, the HERITAGE DEFENDANTS, Joel Boehm, Sabo & Green, Atkinson, Andelson, Loya, Ruud & Romo, and Does 1-100 pursuant to Corporations Code sections 25401, 25501, 25504 and 25504.1.

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196. By reason of issuing, underwriting, offering, or selling municipal securities in this stat by means of untrue statements and statements that are misleading because of the omission of materia facts as alleged herein, these defendants violated Corporations Code section 25401 and as a resul Plaintiff and all those similarly situated have been damaged in an amount to be determined at tria pursuant to Corporations Code section 25501. Defendants Miller & Schroeder, Berean Capital Inc., an the SALES DEFENDANTS are liable as sellers as alleged in this complaint. The KEY EMPLOYE DEFENDANTS are liable as control persons of Miller & Schroeder and the SALES DEFENDANT pursuant to Corporations Code section 25504, with knowledge of the false and misleading statement alleged herein. The KEY EMPLOYEE DEFENDANTS are liable for materially assisting in the violations alleged herein pursuant to Corporations Code section 25504.1, with intent to deceive o defraud. The Heritage entities (Heritage Housing Development Inc., Heritage Healthcare of Americ Inc., Heritage Rancho Healthcare Inc., Heritage Care of Chicago Inc., Heritage Geriatric Housing Development IX Inc., Heritage Geriatric Housing Development VIII Inc., Heritage Geriatric Housing Development VII Inc. and Heritage Care of Sarasota) were issuers and sellers liable pursuant to Corporations Code section 25501. The Heritage control persons (Jerold Goldstein, Emery Rubin, Larry Rubin, Virgil Lim, and Onofrio Bertolini) are liable pursuant to Corporations Code section 25504, with knowledge of the false and misleading statements alleged herein. The Heritage control persons, Berman and Bertolini Inc., Joel Boehm, Sabo & Green, and Atkinson, Andelson, Loya, Ruud & Romo are liable for materially assisting in the violations alleged herein pursuant to Corporations Code section 25504.1, with intent to deceive or defraud.

THIRD CAUSE OF ACTION
Fraud and Deceit

197. Plaintiff realleges and incorporates by reference all previous allegations of this complaint and prosecute this claim for relief against all Defendants.

198. Defendants engaged in a course of business to deceive investors such as Plaintiffs, as alleged herein, by understating and inadequately disclosing, in each respective official statement, the true risks of using municipal bond proceeds to provide financing for speculative real estate development projects by non-governmental participants whose history and ability and financial status is inadequately

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disclosed.

199. Defendants knew, or should have known, or recklessly disregarded Plaintiffs' need t know, among other things, the complete material facts regarding loans from Miller & Schroeder to th HERITAGE DEFENDANTS, the KASIRER DEFENDANTS financial limitations and ability to perform and make debt service payments as promised, actual or fair market value of project properties, an conflicts and self-dealing by project participants, all as alleged herein.

200. Plaintiff and all those similarly situated justifiably relied on the false and misleadin statements alleged herein in purchasing the Heritage Bonds and Plaintiffs did not know and in th exercise of diligence could not have known of the true facts.

201. Defendants, and each of them, did the wrongful acts alleged herein maliciously and wit the intent to defraud and oppress Plaintiffs. Plaintiffs are therefore entitled to punitive and exemplar damages in such amount as may abide in the discretion of the trier of fact.

202. As a result, Defendants are liable to Plaintiffs for damages according to proof at trial.

FOURTH CAUSE OF ACTION
Negligent Misrepresentation

203. Plaintiffs reallege and incorporate by reference all previous allegations of this complain and prosecute this claim for relief against all Defendants for negligent misrepresentation of fact.

204. At the time Defendants made the misrepresentations described herein, they lacked reasonable grounds for believing them to be true, and failed to use diligence to ascertain the true facts and circumstances regarding the Heritage Bonds recommended, offered, and sold to Plaintiffs.

205. Plaintiff and all those similarly situated justifiably relied on the misrepresentations and omissions of material information by Defendants as described herein, and did not know, and in the exercise of diligence could not have known, the true facts.

206. As a result, these defendants are liable to Plaintiffs for damages according to proof at trial.

FIFTH CAUSE OF ACTION
Breach of Fiduciary Duty and Conspiracy to Breach Fiduciary Duty, and Constructive Fraud

207. Plaintiffs reallege and incorporate by reference all previous allegations of this complaint

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and prosecute this claim for relief against all Defendants and Does 1-100 for breach of fiduciary dut and conspiracy to breach fiduciary duty in connection with defendants duty to properly advise Plaintiff regarding the bonds.

208. At all times herein Defendants Miller & Schoeder and the SALES DEFENDANTS owe Plaintiff and all those similarly situated a fiduciary duty.

209. Defendants breached their fiduciary duty by recommending, offering, and sellin unsuitable Heritage Bonds to Plaintiffs, effected through the use of misrepresentations and omission of material information, as described herein.

210. By reason of the breach of fiduciary duty in connection with the sale of Heritage Bonds these Defendants are liable to Plaintiffs for damages according to proof at trial.

211. Defendants, and each of them, did the wrongful acts alleged herein maliciously and with the intent to defraud and oppress Plaintiffs. Plaintiffs are therefore entitled to punitive and exemplary damages in such amount as may abide in the discretion of the trier of fact.

SIXTH CAUSE OF ACTION

Avoidance of transfer of property, attachment, temporary restraining order, preliminary and permanent injunction, and appointment of a receiver

212. Plaintiff prosecutes this cause of action on behalf of himself and all others similarly situated pursuant to the Uniform Fraudulent Transfer Act, California Civil Code Section 3439 et. seq., against the MM&S DEFENDANTS and the MILLER & SCHROEDER DEFENDANTS. Plaintiff incorporates by reference all preceding allegations of this Class Action Complaint.

213. The transfer of assets from the MILLER & SCHROEDER DEFENDANTS to the MM&S DEFENDANTS and their principals was: (a) not in good faith nor for a reasonably equivalent value; (b) with actual intent to hinder, delay and defraud creditors; (c) without receipt of reasonably equivalent value in exchange for the transfer; (d) was a transaction intended to render the MILLER & SCHROEDER DEFENDANTS and the MM&S DEFENDANTS judgment proof, with an apparent inability to satisfy liabilities to the Plaintiff Class.

214. If this transfer of assets, including cash, is not subject to an avoidance to the extent necessary to satisfy claims of the Plaintiff and all those similarly situated, these Defendants will further encumber or transfer the transferred assets frustrating any effort by Plaintiff and all those similarly

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situated to satisfy a judgment herein.

215. If injunctive relief is not granted, these Defendants will further encumber or transfer the transferred assets frustrating any effort by Plaintiff and all those similarly situated to satisfy a judgment herein. Plaintiff, on behalf of himself and all others similarly situated, are entitled to a temporary restraining order, preliminary and permanent injunctions preventing these Defendants from further encumbering or transferring the transferred assets.

216. If a receiver is not appointed to take charge of the assets transferred, these Defendants will further encumber or transfer the transferred assets frustrating any effort by Plaintiff and all those similarly situated to satisfy a judgment herein.

217. If the assets transferred are not subject to an attachment, these Defendants will further encumber or transfer the transferred assets frustrating any effort by Plaintiff and all those similarly situated to satisfy a judgment herein.

SEVENTH CAUSE OF ACTION
Successor Liability

218. Plaintiff realleges and incorporates by reference all previous allegations of this complaint and prosecute this claim for relief for successor liability against the MM&S DEFENDANTS..

219. Plaintiff is informed and believes that in or about early 2001, the KEY EMPLOYEES and Does 1-100 implemented a plan to divest the municipal bond underwriting department from Miller & Schroeder by selling the institutional bond business to a small group of Miller and Schroeder employees and an investor named Marshall Financial Group. This transaction resulted in the formation of the MM&S DEFENDANTS.

220. Plaintiff is informed and believes that in 2001 the MM&S DEFENDANTS acquired approximately 100 Miller & Schroeder employees and its offices, including the Solana Beach office, leaving Defendant Miller & Schroeder insolvent with only a research department of approximately 15 employees.

221. Plaintiff is informed and believes that the MM&S DEFENDANTS are successor corporations to the MILLER & SCHROEDER DEFENDANTS and are thus liable for all damages inflicted on Plaintiffs by Miller & Schroeder and Does 1-100.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

UPON THE FIRST CAUSE OF ACTION

1. For rescission of Plaintiffs' Heritage Bond investments underwritten and sold by Miller & Schroeder Financial Inc., as described herein.

2. For damages in an amount exceeding $144,000,000 with interest as provided by law.

UPON THE SECOND CAUSE OF ACTION

3. For rescission of Plaintiffs' Heritage Bond investments underwritten and sold by Miller & Schroeder Financial Inc., as described herein.

4. For damages in an amount exceeding $144,000,000 with interest as provided by law.

UPON THE THIRD CAUSE OF ACTION

5. For damages in an amount exceeding $144,000,000 with interest as provided by law.

6. For punitive and exemplary damages.

UPON THE FOURTH CAUSE OF ACTION

7. For damages in an amount exceeding $144,000,000 with interest as provided by law.

UPON THE FIFTH CAUSE OF ACTION

8. For damages in an amount exceeding $144,000,000 with interest as provided by law.

9. For punitive and exemplary damages.

UPON THE SIXTH CAUSE OF ACTION

10. For an Order and Judgment setting aside the transferred assets as identified in the Asset Purchase Agreement to the extent necessary to satisfy the Plaintiffs' claims.

11. For injunctive relief in the form of a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction restraining Miller & Schroeder Financial Inc., Miller & Schroeder Inc., Miller & Schroeder Investments Corporation, Miller & Schroeder Small Business Capital Corporation, Miller & Schroeder Mortgage Corporation, Pooled Loan Marketing Corporation, PLMC-I Inc., MM&S Financial Inc., Marshall Miller & Schroeder Inc., MM&S Investments Corporation and each of them, their attorneys, officers, employees, agents, and those persons acting in concert or participation with them from directly or indirectly causing the transferred assets of Miller & Schroeder

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Financial Inc., identified in the Asset Purchase Agreement, or any proceeds therefrom, to be transferred conveyed, encumbered, sold, or assigned.

12. For appointment of a Receiver and attachment against the transferred assets and all other relief provided by California Civil Code section 3439.07(a).

UPON THE SEVENTH CAUSE OF ACTION

13. For damages in an amount exceeding $144,000,000 with interest as provided by law.

UPON ALL CAUSES OF ACTION

14. For costs of suit.

15. For such further relief as the Court deems proper and just.

MILLER MILOVE & KOB

DATE: November 20, 2001

By: W. Richard Sintek
W. Richard Sintek
Attorneys for Plaintiff

COMPAINT.WPD

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News

Group Closes Purchase of Miller & Schroeder Entities

By Yvette Shields

CHICAGO -- A group of investors led by Marshall Financial Group has completed its acquisition of parts of Minneapolis-based Miller & Schroeder Financial Inc., including its institutional broker-dealer business, company officials announced Wednesday.

The transaction, first announced in April, closed Aug.31, according to Jerry Tabolich, president of the newly organized company geared to the institutional market, which will be known as Marshall Miller & Schroeder. "We believe there is a lot of brand equity in the name," said Tabolich, a 15-year veteran of the firm who has worked a banker on the corporate side. Marshall Miller & Schroeder's broker-dealer arm will be known as MM & S Financial Inc. and is awaiting regulatory approval.

The current broker-dealer license will be retained by a firm that will operate for the time being as Miller & Schroeder Financial Inc., which will later get a new name and focus on retail buyers of taxable products. It will initially work to reach agreements with investors and issuers on $130 million of defaulted debt issued on behalf of Heritage Health Care of America.

The group will employ approximately 30 professionals, with six to seven public finance bankers. The parent company will maintain offices in Atlanta, Chicago, Dallas, and San Diego with a total of 100 employees.

The new company will focus on taxable and tax-exempt products marketed to institutional buyers, with a focus on the same sectors served by its 36-year-old predecessor: housing, health care, and casinos. The firm had built a niche crafting deals for Native American-run casinos since 1991.

The $15 million deal, which includes the assumption of debt, also involves the transfer of Miller's loan origination and syndication business and the bank sales group, according to Tabolich.

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EXHIBIT 1

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Miller & Schroeder's current broker-dealer license will be retained by the remaining company, which will hold on to the Miller & Schroeder Financial Inc. name for at least the next few weeks. Dave Reinhart, a lawyer who has worked on arbitration issues related to the bond defaults and other lawsuits for Miller & Schroeder, will serve as president.

"Their first priority is to address defaulted bond issues of the past," Tabolich said of the other firm. "The firm name dates back to 1965 and has a rich history. You don't want to leave a bad taste in everyone's mouth."

Heritage Health Care of America has defaulted on 11 issues totaling $130 million. They were sold over the last decade to finance Heritage's nursing home and assisted-living operations in a handful of states, including California, Illinois, and Texas. Miller & Schroeder underwrote the deals, several of which are now the subject of arbitration.

That firm will also work on the retail side, marketing taxable products. Miller & Schroeder late last year pulled the plug on its tax-exempt retail business, attributing the move to increased competition, low spreads, and low profitability in that sector.

The deal was completed just weeks after the firm agreed to pay $350,000 to settle charges by San Bernardino County of a breach of fiduciary duty, unjust enrichment, and unfair competition for allegedly giving gifts to former county officials to win municipal bond business from 1995 to 1998.

Tabolich said the firm agreed to a settlement that suited the issuer and the firm but acknowledged no wrongdoing. "We were not guilty of the things we were accused of," he said.

Dennis Mathisen, a former securities lawyer, is the owner ofs Marshall Financial and the chairman of the new company.

---- INDEX REFERENCES ----

EWS SUBJECT: English language content; Branding; Corporate/Industrial News; orporate Actions; Markets/Marketing (ENGL CBRAND CCAT CAC C31)

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NATIONAL ASSOCIATION OF SECURITIES DEALERS
ARBITRATION DIVISION

Recd 2/4/02
by US Mail from
NASD.

NASD ARBITRATION NO.

ERWIN J. SHUSTAK and ANDREA M. SHUSTAK,	:
Claimants,	:
-against-	:
JOHN M. CLAREY, JR., KENNETH E. DAWKINS, JAMES F. DLUGOSCH, THOMAS S.NELSON, RICHARD T. PLUMSTEAD, JOSEPH K. HALLORAN, EDWARD J. HENTGES, JUDITH M. McKEAND, BRADLEY MEHLHAFF, and JENNY F. LIND,	:
Respondents.	:

STATEMENT OF CLAIM

Claimants Erwin J. Shustak and Andrea M. Shustak, by and through their attorneys, Shustak Jalil & Heller, respectfully submit the following as their Statement of Claim against Respondents.

THE PARTIES

1. Claimants Erwin J. Shustak and Andrea M. Shustak are husband and wife, residing now and at all times herein concerned in San Diego, California, and therefore request that the hearings in this arbitration be conducted in **San Diego, California**.

2. Each of the respondents listed below was associated with and most were "control persons" of the now defunct investment banking and brokerage firm of Miller & Schroeder Financial, Inc. ("Miller & Schroeder), which firm at all times concerned was registered with the

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EXHIBIT M

National Association of Securities Dealers ("NASD") and had a firm CRD number 7119.

3. Respondent John M. Clarey, CRD number 47319, according to publicly available records of the NASD, was associated with Miller & Schroeder from January of 1992 to October of 2001, and for some or all of that time served as an Executive Vice President and Chief Operating Officer of Miller & Schroeder, and was listed as a "control person" on the firm's Form BD.

4. Respondent Kenneth E. Dawkins, CRD number 62841, according to publicly available records of the NASD, was associated with Miller & Schroeder from July of 1997 to January of 2001, and for some or all of that time served as an Executive Vice President and a Director of Miller & Schroeder, and was listed as a "control person" on the firm's Form BD.

5. Respondent James F. Dlugosch, CRD number 873490, according to publicly available records of the NASD, was associated with Miller & Schroeder from February of 1991 to October of 2001, and for some or all of that time served as President and a Director of Miller & Schroeder, and was listed as a "control person" on the firm's Form BD.

6. Respondent Thomas S. Nelson, CRD number 1108782, according to publicly available records of the NASD, was associated with Miller & Schroeder from October of 1997 to October of 2000, and for some or all of that time served as an Executive Vice President, Chief Financial Officer and Chief Compliance Officer, and Chief Operating Officer of Miller & Schroeder, and was listed as a "control person" on the firm's Form BD.

7. Respondent Richard T. Plumstead, CRD number 364737, according to publicly available records of the NASD, was associated with Miller & Schroeder from November of 1995 to June of 1998, and for some or all of that time served as a Vice President of Miller &

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Schroeder, and was listed as a "control person" on the firm's Form BD.

8. Respondent Joseph K. Halloran, CRD number 1062541, according to publicly available records of the NASD, was associated with Miller & Schroeder from January of 1998 to October of 2000, and for some or all of that time served as a Vice President of Sales of Miller & Schroeder, and was listed as a "control person" on the firm's Form BD.

9. Respondent Edward T. Hentges, CRD number 729166, according to publicly available records of the NASD, was associated with Miller & Schroeder from April of 1981 to September of 2000, and for some or all of that time served as a Vice President and Chief Compliance Officer of Miller & Schroeder, and was listed as a "control person" on the firm's Form BD.

10. Respondent Judith M. McKeand, CRD number 359476, according to publicly available records of the NASD, was associated with Miller & Schroeder from March of 1973 to August of 1999, and for some or all of that time served as a Vice President and Deputy Compliance Officer of Miller & Schroeder, and was listed as a "control person" on the firm's Form BD.

11. Respondent Bradley R. Mehlhaff, according to a January 6, 1998 amendment to Miller & Schroeder's Schedule of Form BD, served then as the Chief Financial Officer of Miller & Schroder and was listed as a "control person" on the firm's Form BD.

12. Respondent Jenny F. Lind, according to publicly available records of the NASD, was associated with Miller & Schroeder from October 1999 to June of 2001, and for some or all of that time served as the senior Compliance Officer for Miller & Schroeder.

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CLAIMANTS' INVESTMENT OBJECTIVES

13. In the spring of 1998, Claimants relocated from New York City, where they had lived for many years, to San Diego, California. They have been married since 1980 and have one child, now age 7. Prior to moving to San Diego in late April, 1998, Claimants sold their Manhattan cooperative apartment and entered into a two year lease for a home in La Jolla, which lease began May 1, 1998 through the end of April, 2000. Claimants' plan was to rent that home for two years during which time they would search for and purchase a home in San Diego once they were established and knew the area better.

14. Aside from their other, long term investments, Claimants had realized net proceeds from the sale of their Manhattan home of approximately $700,000. Their plan was to temporarily invest those funds in short term, conservative and liquid investments, principally tax free municipal bonds and bond funds, until they located a suitable home to purchase in San Diego. Although the stock market was skyrocketing in 1998, Claimants eschewed placing their housing money in anything volatile, preferring to trade off high returns for security and liquidity.

MILLER & SCHROEDER'S "COLD CALL"

15. Shortly after moving to San Diego, Claimant Erwin Shustak received a "cold call" from an investment advisor at Miller & Schroeder's Solana Beach, California, office. As an attorney, Mr. Shustak was used to receiving numerous "cold calls", most of which he ignored. Mr. Shustak took the call from Miller & Schroeder, however, for two reasons. First, he was familiar with the Miller & Schroeder firm and knew that they were a principal underwriter and retailer of tax free municipal bonds and enjoyed a national reputation in that field. Second, he and his wife had the sale proceeds from their sale of the Manhattan cooperative apartment, which

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they wanted to invest principally in high-quality, short-term California municipal bonds. Being new to California, Claimants did not have any relationship with any local brokerage firm that could provide them the kind of California municipal bonds claimants needed.

16. During the course of several conversations with the Miller & Schroeder representative, Ms. Gay Diaz, Mr. Shustak explained that he and his wife were newly relocated from New York; would be renting a house in San Diego for about two years during which time they intended to purchase a home, using the proceeds from the sale of their Manhattan coop; that claimants were fiscally very conservative and had some money to invest in short-term, quality tax-free municipal bonds. Mr. Shustak also explained that he had purchased bonds in the past from a number of brokerage firms, most of which were New York issues, and he would be interested in hearing about California bonds that fit his described investment criteria and objectives. Mr. Shustak emphasized that safety of principal and short-term investment were of paramount concern. Ms. Diaz said she would attempt to locate bonds to suit claimants' objectives and would call back if she could.

17. Over the next several weeks, Ms. Diaz contacted Mr. Shustak on several occasions and offered him several bonds, most of which he declined either because the maturity dates were too distant or the bonds did not fit his investment objectives. In every conversation, Mr. Shustak emphasized that he wanted only short-term, quality bonds that would preserve his and his wife's principal and would be available for their anticipated housing needs.

SALE OF THE PARTICULAR BONDS IN ISSUE

18. In late June, 1998, Claimants opened a joint account with Miller & Schroeder. Months later, they opened a second account in the sole name of Mrs. Shustak, who had her own

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portfolio of quality, mostly New York municipal bonds with staggered maturity dates.

19. Attached hereto as Exhibit "A" is a copy of the June 30, 1998 cover letter to Claimants confirming he opening of their initial account with Miller & Schroeder, as well as a copy of the account agreement which contains the relevant arbitration clause. As the cover letter recites:

> You may be aware that Miller & Schroeder has been in the investment banking business for more than thirty years. We are very proud of our experience in the underwriting of tax-exempt and taxable municipal investments. We feel our fixed-income selections and service are among the best in the industry. We welcome the opportunity to service your investment needs.

20. Approximately one month later, in early August, 1998, the Miller & Schroeder investment advisor contacted Mr. Shustak and described a new bond issue Miller & Schroeder was in the process of underwriting. She explained that the issue, "Chicago Illinois Health Facilities Revenue Bonds" would be serviced by Heritage Healthcare, which she described as "one of the most highly regarded, successful operators" of health care facilities in the country, geared to geriatric and Alzheimer patients. She said Miller & Schroeder had done multiple, prior offerings for the same operator, all of which were successful and none of which had any problems. She assured Mr. Shustak the value of the project far exceeded the amount of the bonds: that there was going to be a substantial "hold-back" reserve to pay interest and retire the early maturity bonds and, in her opinion, the bonds were "perfect" for claimants and fit their investment needs. She did not mention any risk whatsoever.

21. Mr. Shustak asked what maturities were available. He was told the safest bonds to purchase in the total issue of approximately $16 million, was the one $5,000 bond which matured

in less than 2 years, July 2001. When Mr. Shustak asked about the safety of the bond and the rating, he was told:

> i) The bond issue was too small ($16 million) to pay for a rating from one of the major rating firms (i.e. S& P, Moody's, etc.), but that the quality of the operator and the facility was excellent and, if the bonds were rated, they would be the equivalent of "triple A".
>
> ii) The money to pay the interest and retire the early tranche of the issue (which included the one $5,000 bond that matured in 2001) would be escrowed;
>
> iii) That Miller & Schroeder was the underwriter, and had not only worked with this particular hospital in the past but had conducted "extensive" underwriting investigation, for which the firm was well known; and,
>
> iv) The value of the project was a multiple of the total amount of the debt being issued and secured by a first lien of the project and, in her words "you are more than adequately protected and virtually assured your bond, one of the first to mature, will be paid."

The Miller & Schroeder representative did not mention any risks whatsoever regarding these bonds and, instead, only touted them as "excellent" bonds that met all of claimants' investment objectives and criteria.

22. Based on those representations and assurances, Mr. Shustak committed to purchasing $5,000 of the Chicago Healthcare Facility Bonds which matured in two years. Attached hereto as Exhibit "B" is a schedule reflecting the various maturities of that bond. The bond claimants' purchased, as reflected in the schedule, was the third tranche to mature. Attached as Exhibit "C" is a copy of the confirmation, which claimants paid upon receipt.

23. Five days later, August 10, 1998, the Miller & Schroeder representative faxed a letter to Mr. Shustak regarding the Desert Hot Springs bonds. A copy of that letter is attached hereto as exhibit "D". The note reads as follows:

> Hi Mr. Shustak. Here is a new bond that we underwrote for Desert Hot Springs Financing Authority. This bond is advanced-refunding a bond issue from 1996 for Rancho Cucamonga Hospital. As you can see, the serial bond are structured like the Chicago bonds - with only 5 in each Maturity. **This hospital is doing very well, is among the top 2% of best run hospitals in the US.** Please call me if you would like more information. We are in an order period until tomorrow or Wednesday. (Emphasis added.)

24. The next day, the Miller & Schroeder representative called Mr. Shustak again to discuss the new bond issue her firm was underwriting for the Desert Hot Springs Financing Authority. She explained that it was virtually identical to the Chicago Health Care bond he had purchased two weeks previously and would be operated by the same operator, Heritage Healthcare. As she had with the Chicago bond, she assured Mr. Shustak that, by purchasing the 3 year bond, one of the first to mature and due in 2001, he was assured of repayment since, she said, the Desert Hot Springs bonds were partially pre-refunded; the facility would be operated by the same operator, Heritage Healthcare, which had an "excellent track record"; Miller & Schroeder, who was the underwriter, had "performed extensive due diligence" on the project; the value to loan ratio was substantial, which offered complete protection. She said the bond was another perfectly suitable investment for claimants.

25. Based on those representations and assurances, claimants purchased $5,000 of the Desert Hot Springs California issue which matured 3 years later, in August, 2001. Attached as Exhibit "E" is the confirmation of that bond.

PROBLEMS SURFACE

26. Between the Spring of 1998 and the summer of 1999, claimants continued to

purchase other municipal bonds through the same investment advisor at Miller & Schroeder. At no time, until July of 2000, did claimants have any idea there were any problems whatsoever with the Chicago or Palm Springs bonds. By letter dated July 13, 2000, from a Miller & Schroeder executive vice-president, however, claimants finally received notice of problems, *even though they had been in default since September, 1999*, some ten months earlier. A copy of the July 13, 2000 letter is attached hereto as Exhibit "F".

27. Upon receiving the July 13, 2000 letter, which makes reference to prior letters to all bond holders... none of which letters claimants had received, seen or heard of...Mr. Shustak immediately contacted Miller & Schroeder and asked the investment advisor why he had not been notified earlier of the bond default, or of the defalcation of funds by Heritage Healthcare which had been discovered in September of 1999. The Miller & Schroeder representative apologized, said she "assumed" claimants knew about the defaults (although she had never mentioned them in any of the dozens of phone calls she had with Mr. Shustak in the prior 10 months) and either that day or the next sent Mr. Shustak copies of all prior notices regarding the problems with these bonds which had been known as early as September, 1999, and possibly earlier.

28. Upon realizing that two of the first bonds he had purchased from Miller & Schroeder had "tanked" less than a year after purchase, without even being notified thereafter for months, Mr. Shustak called the Miller & Schroeder representative to express his extreme dissatisfaction, especially since Mrs. Shustak had continued, during the period claimants were kept in the dark about the problem, to purchase tens of thousands of dollars of other bonds from Miller & Schroeder. Mr. Shustak explained that, had he known of the defaults earlier, he would

have reconsidered doing any more business with Miller & Schroeder and would have scrutinized the bonds and the information relating thereto much more carefully. The Miller & Schroeder representative, in turn, sheepishly apologized and said "there may have been some problems in communicating with all bond holders."

29. Shocked by the performance of these bonds which he'd been assured were "excellent" and "safe" and "would be serviced by a top-flight operator", and shocked by the conduct of Miller & Schroeder in failing to advise him earlier, Mr. Shustak began to investigate some of the information he had been provided by Miller & Schroeder. Based thereon, claimants determined that most of the information they had been provided was either false or misleading and the bonds were not, in fact, suitable investments for claimants.

RESPONDENTS' FRAUDULENT UNDERWRITING AND MARKETING CAMPAIGN

30. Claimants are informed and believe, and intend to prove herein, that Miller & Schroeder engaged in a reckless and fraudulent underwriting campaign, for twelve separate bond issues for the acquisition of distressed hospital properties (including the bond issues in which claimants purchased bonds as herein above alleged.)

31. Plaintiffs are informed and believe that all the respondents named herein participated in the fraudulent campaign to underwrite and sell to the public the bonds in these twelve bond issues, (hereinafter, "the Heritage Bonds"), whether or not they joined that conspiracy at its outset, in or about 1996, or thereafter.

32. Claimants are informed and believe that the Heritage Bonds were each underwritten and sold by Miller & Schoeder, operating out of its Solana Beach, California, office

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(the same office from which claimants were solicited to purchase the Chicago Healthcare Facility Bond and Desert Hot Springs Bond identified above, which were among the Heritage Bonds.)

33. Claimants are informed and believe that all twelve of the Heritage Bond issues are now in default.

34. With respect to each of the Heritage Bonds, Miller & Schroeder, in furtherance of their fraudulent campaign and conspiracy, caused to be prepared a primary disclosure document known as an Official Statement. Miller & Schroeder, and respondents herein, on information and belief, knew that these Official Statements contained common and typical misrepresentations of material facts and omitted to state other material facts necessary to be disclosed so that other facts stated would not be misunderstood. Generally, on information and belief, the misrepresentations concerned: (1) overstating the value of the collateral represented by the underlying real estate projects securing the Heritage Bonds; (2) the background and experience of the Heritage Bond promoters and managers; (3) an undisclosed financial relationship between the Heritage Bond promoters and Miller & Schroeder in the form of undisclosed loans from Miller & Schroeder and their repayment from bond proceeds; and, (4) a course of business to conceal development delays and cost overruns that were extraordinary in light of promised construction cost "guarantees" in the Official Statements, and defaults in connection with prior Heritage Bond offerings structured, financed, and marketed by Miller & Schroeder.

35. Claimants reasonably relied upon these misrepresentations in making their decision to purchase the Heritage Bonds they purchased, and would not have purchased the bonds but for the misrepresentations and non-disclosures.

36. Claimants are informed and believe that Miller & Schroeder, and the respondents

named herein, conspired together to operate a "boiler room" sales force from Miller & Schroeder's Solana Beach office, to market the Heritage Bonds to the unwitting public, using the misrepresentations and non-disclosures identified above. Claimants believe they were contacted as a result of respondents campaign to market the Heritage Bonds using misrepresentations and non-disclosures.

CAUSES OF ACTION

37. Claimants believe that the wrongdoing of respondents, as alleged above, gives rise to various causes of action against all respondents, including but not limited to: 1) Common Law Fraud; 2) Negligent Misrepresentation; 3) Breach of Fiduciary Duty; 4) Untrue and misleading statements of material fact in the offer and sale of securities in violation of sections 12(a)(2) and 15 of the 1933 Securities Act; 5) Untrue and misleading statements of material fact in the offer and sale of securities in violation of California Corporations Code Sections 25401, 25501, 25504 and 25504.1; 6) Violation of Section 10 (b) of the Securities Exchange Act of 1934, and Rule 10(b)(5) promulgated thereunder; 7) Violation of Section 20 (a) of the Securities Exchange Act of 1934; 8) Negligence; and 8) Unsuitability.

RELIEF SOUGHT

38 Based on the foregoing, claimants are seeking the following damages and relief: 1) money damages for their lost investment of $10,000, plus interest; 2) attorney fees; 3) punitive damages; and, costs of arbitration, including but not limited to filing and hearing fees.

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MG016181

DATED: January 16, 2002 SHUSTAK JALIL & HELLER

By: _____

Stephen S. Lux, Esq.
Attorneys for Claimants
401 West "A" Street, Suite 2330
San Diego, CA 9210
Tel. (619) 696-9500
Fax. (619) 615-5290

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VERIFICATION

We, Erwin J. Shustak and Andrea M. Shustak, declare, under penalty of perjury:

1. We are the claimants in this action. We have read the Statement of Claim and the facts stated therein are true to the best of our knowledge and belief.

Dated: 1/17/02

Erwin J. Shustak

Dated: 1/17/02

Andrea M. Shustak

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Contact Us

E-mail your questions and comments to us.

Have a question, comment, or need information? Send it to us **here**.

FAQs
Frequently Asked Questions

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DUTIES AND TITLES DURING SALES TO MORELANDS
EDWARD J. HENTGES

TIME PERIOD INVOLVED

First sale was made to the Morelands on February 28, 1996, and the second sale was on May 20, 1996. However the bond in each of the these sales appreciated in value, according to the complaint.The third sale was on February 4, 1997, and this bond declined in value. So the time period we are concerned with starts on February 4, 1997 and ends on the date of the last sale, July 24, 1998.

MY DUTIES AND TITLES DURING THE TIME PERIOD INVOLVED

I was employed by Miller & Schroeder (M & S) in February, 1981, and terminated on September 28, 2000. My duties initially were as Chief Financial Officer and Compliance Officer.

I started sick leave on December 11, 1996 and returned on July 1, 1997.When I returned it was on a part time basis-two days a week.

On M & S Form B/D I was removed as Chief Financial Officer on a filing on January 30, 1996. I remained a Vice President and Chief Compliance Officer.

On M & S Form B/D I was removed as Vice President and Chief Compliance Officer on a filing dated January 6, 1998.

On October 31, 1988 Brad Mehlhaff joined M & S, and in effect took over the duties as Chief Financial Officer. I am not sure of the date Brad officially became Chief Financial Officer, but he was replaced by Tom Nelson on September 30, 1997-as stated in the minutes.

On the B/D filing of January 1, 1998 Tom Nelson was named Senior Vice President, Chief Financial Officer and Chief Compliance Officer.

I was not a member of the M & S credit committee at any time after 1994.

While it should not be pertinent to the arbitration case I was President of Miller & Schroeder Investments Corporation until August 8, 2000. I didn't have any particular duties for this company, but was named as President and Director because of the amount of financial disclosure required under the state gaming laws, which would have been very difficult for Roger Wikner to furnish. It was not that anyone had any relationships that would have been problems, but just the amount of disclosure required. Eventually the gaming regulators caught on to who really controlled the company and started interviewing Roger Wikner.

Jim Dlugosch replaced me on August 8, 2000.

DUTIES OF COMPLIANCE DEPARTMENT
AT MILLER & SCHROEDER FINANCIAL, INC.

The duties of the Compliance Department and the Compliance Officer varies in different firms. At Miller & Schroeder the duties were:

Responsibility to file the B/D Form, and keep same current.

Responsibility to maintain the registration of the Firms agents (Registered Representatives) with both the NASD and various states.

Maintenance of the Firms registration in the various states in which it conducted securities business.

Fulfilling the requirement to have a Compliance Meeting at least annually for all sales Reps.

Conduct compliance related training of Reps at various times during the year. Included notification of new rules that pertained to the Firms operations.

Answer customer complaints. Refer to legal counsel as necessary.

Probably most important in the context we are concerned with are duties Compliance was not responsible for. These included:

Any responsibility for supervision of Registered Representatives. This was the responsibility of the Sales Manager.

Any responsibility for proper disclosure in the Official Statement. This was the responsibility of Bond Counsel And Underwriters Counsel.

Any involvement in the underwriting process. This was the responsibility of the Underwriter involved.

IN ARBITRATION UNDER THE CODE OF ARBITRATION
BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

JAMES D. MORELAND, DORIS N. MORELAND, and DONALD MORELAND, Claimants, vs. MILLER & SCHROEDER FINANCIAL, INC., MARGARET MARY WEBB, ROGER JAMES WIKNER, JAMES FRANCIS DLUGOSCH, EDWARD JOEL HENTGES, BRADLEY RAE MEHLAFF, JUDITH MARIE McKEAND, THOMAS STEVEN NELSON, JOHN MARLEY CLAREY, JAMES EDWARD IVERSON, and STEVEN WESLEY ERICKSON, Respondents.	)	File No. (Hearing Requested in Chicago)

STATEMENT OF CLAIM

NOW COME Claimants, James D. Moreland, Doris N. Moreland and Donald Moreland, by and through their attorney, PAUL J. SUSSMAN, and state as follows:

1. This arbitration proceeding is brought pursuant to the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration.

2. Claimants, James D. Moreland and Doris N. Moreland, husband and wife, are residents of the State of Illinois, and during all relevant periods herein, were public customers of Miller & Schroeder Financial, Inc. ("Miller"). Donald Moreland is their son who also maintained an account at Miller. Claimant James Moreland is 75 years old. Doris Moreland is 73 years old. Claimants have both been retired since approximately 1992. Claimants previous investment experience was highly conservative. Many years ago Claimants purchased a bond from Respondent Miller. Over the years there was very little activity in their account at Miller.

In or about 1996 Respondent Margaret Webb started to call with investment recommendations. Please note James Moreland has been ill for years with a serious medical condition of which Respondent Webb was well aware.

3. Respondent Miller, at all relevant times was a registered broker-dealer and member of the NASD. Respondents hold themselves out to the public as experts in bonds and especially in municipal bonds.

4. Respondent Margaret Webb ("Webb") at all relevant times was an employee and authorized agent of Miller, acting in the capacity of account executive and sales representative. Webb was the sales representative who handled Claimants' accounts during all relevant periods. Webb has a checkered regulatory history for the identical conduct alleged herein. See Exhibit A attached hereto. Respondent, Roger James Wikner ("Wikner") was at all relevant times President, a Director , shareholder and control person for Miller. Respondent, James Francis Dlugosch ("Dlugosch") at all relevant times was also President, a Director and control person of Miller. Respondent, Edward Joel Hentges ("Hentges") at all relevant times was an officer and control person of Miller. Respondent, Bradley Rae Mehlaff ("Mehlaff") at all relevant times was an officer and control person of Miller. Respondent, Judith Marie McKeand ("McKeand") at all relevant times was an officer and control person of Miller. Respondent, Thomas Steven Nelson ("Nelson") at all relevant times was a Senior Vice President and control person of Miller. Respondent, John Marley Clarey ("Clarey") at all relevant times was an officer and control person of Miller. Respondent, James Edward Iverson ("Iverson") at all relevant times was a Director and control person of Miller. Respondent, Steven Wesley Erickson at all relevant times was an officer, Senior Vice President and control person of Miller. See Form B/D attached hereto as Exhibit B.

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5. At all relevant times, all Respondents were engaged in the business of buying, selling, and otherwise dealing in securities, and were further engaged in the business of rendering investment advice to public customers, including Claimants.

6. This Claim alleges violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, violations of the Illinois Securities Law of 1953, Illinois Uniform Deceptive Trade Practices Act, common law fraud, breach of fiduciary duty, negligence and violations of Section 15 (b) (4) (E) of the Securities Exchange Act of 1934 (as control persons within the meaning of Section 20 (a) of the Exchange Act), and negligence, failure to supervise, as well as respondeat superior liability against all Respondents. In addition, Respondents sold Claimants unsuitable investments through misrepresentations and omissions.

Respondents' Vicious Abuse Of Claimants

7. Claimants continually stressed to Respondents that they desired safe and conservative investments. Claimants advised and Respondents were well aware Claimants were elderly and retired and prior investment experience was of a conservative nature. Respondent Webb informed Claimants that investments she would recommend would meet Claimants' conservative investment objectives. Respondents recommended all investments–Claimants know nothing about different opportunities available to them regarding bonds. Claimants completely relied on Respondents' expertise and recommendations. Claimants opened five accounts with Respondents–two Trust Accounts, one IRA for Donald, a personal account and a Pension And Profit Sharing Account.

8. As part of Respondents' fraudulent scheme Respondents recommended the poorest quality, most highly speculative securities–non-rated municipal revenue bonds. Specifically, the following bonds were purchased for Claimants' accounts:

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SCHEDULE OF BONDS PURCHASED FOR ACCOUNT OF
JAMES D. MORELAND TRUST
AT MILLER & SCHROEDER, FINANCIAL, INC.
ACCOUNT NUMBERS 18010454 AND Ri 24661 B5

BOND	DATE BOUGHT	PRICE	TOTAL COST	PRESENT VALUE	GAIN (LOSS)
25,000 St. Paul, Mn. PortAuthHotelFac. 10.00% 8-01-21 Cusip 793042AJ1	2-28-96	100.00	25,229.17	25,500.00	270.83
50,000 Seattle Wa. Hsg Auth. Mtg Rev Bds 0.00% 2-01-15 Cusip 812635BK5	5-20-96	23.075	11,541.50	17,750.00	6,208.50
20,000 Danforth, TX Hith Fac Rev Bds. 8.125% 12-01-26 Cusip 236 14IAQO	2-04-97	100.00	20,248.26	4,000.00	(16,248.26)
20,000 Tarrant Cty TX Hith Fac Rev. 8.50% 05-01-19 Cusip 87638LBQ2	5-13-97	100.00	20,061.39	4,000.00	(16,061.39)
15,000 PDS Financial Corporation Investment Units 10.00% 7-01-04 Cusip 69329TAA3	5-07-98	100.00	15,012.50	14,700.00	(312.50)
15,000 Chicago, IL Health Facs. Rev Bds Heritage Care of Chicago, Inc. 7.625% 7-01-28 Cusip 16753AAQ5	7-24-98	100.00	15,050.83	3,000.00	(12,050.83)
TOTAL LOSS					(38,193.65)

MG013859

SCHEDULE OF BONDS PURCHASED FOR ACCOUNT OF
DORIS N. MORELAND TRUST
AT MILLER & SCHROEDER, FINANCIAL, INC.
ACCOUNT NUMBERS 18010447 AND Ri 24660 B5

BOND	DATE BOUGHT	PRICE	TOTAL COST	PRESENT VALUE	GAIN (LOSS)
25,000 St. Paul, Mn. Port Auth Hotel Fac. 10.00% 8-01-21 Cusip 793042AJ1	2-28-96	100.00	25,229.17	25,500.00	270.83
10,000 Seattle Wa. Hsg Auth. MtgRevBds 0.00% 2-01-15 Cusip 812635BK5	5-20-96	23.075	2,311.50	3,550.00	1,238.50
10,000 Minneapolis, MN Health Fac Rev Bds. 7.50% 12-01-26 Cusip 60374RAP7	3-05-97	100.00	10,000.00	5,000.00	(5,000.00)
15,000 Beech grove, IN Econ. Dev. Bds. 7.00% 01-01-28 Cusip 076698CB3	10-24-97	97.537	14,715.13	6,000.00	(8,715.13)
20,000 United Homes, Inc. Redemption Debentures Taxable 11.00%3-15-05 Cusip 910608AA6	11-20-97	98.50	19,700.00	3,000.00	(16,700.00)
15,000 PDS Financial Corporation Investment Cusip 69329TAA3	5-07-98	100.00	15,012.50	14,700.00	(312.50)
15,000 Chicago, IL Health Facs. Rev Bds Heritage Care of Chicago, Inc. 7.625% 7-01-28 Cusip 16753AAQ5	7-24-98	100.00	15,050.83	3,000.00	(12,050.83)
TOTAL LOSS					(41,269.13)

MG013860

SCHEDULE OF BONDS PURCHASED FOR ACCOUNT OF ACCU CRAFT
PROFIT SHARING PLAN
AT MILLER & SCHROEDER FINANCIAL, INC.

BOND	DATE BOUGHT	PRICE	TOTAL COST	PRESENT VALUE	GAIN (LOSS)
20,000 United Homes Inc. Mandatory Redemption 11.00% 3-15-05 Cusip 910608AA6	12-01-97	98.50	19,700.00	3,000.00	(16,700.00)
TOTAL LOSS					(16,700.00)

SCHEDULE OF BONDS PURCHASED FOR ACCOUNT OF DONALD E. MORELAND
AT MILLER & SCHROEDER, FINANCIAL, INC.
ACCOUNT NUMBERS 17251604 AND Ri 22729 B5

BOND	DATE BOUGHT	PRICE	TOTAL COST	PRESENT VALUE	GAIN (LOSS)
10,000 United Homes, Inc. Redemption Debentures Taxable 11.00% 3-15-05 Cusip 910608AA6	12-01-97	98.50	9,871.39	1,500.00	(8,371.39)
15,000 PDS Financial Corporation Investment Units 10.00% 7-01-04 Cusip 69329TAA3	5-07-98	100.00	15,012.50	14,700.00	(312.50)
15,000 Chicago, IL Health Facs. Rev. Bds. Heritage Care of Chicago Inc. 7.625% 7-01-28 Cusip 16753AAQ5	7-31-98	100.00	15,050.83	3,000.00	(12,050.83)
10,000 Mexico Beach, FL Pub Svc. Facs. 7.50% 12-01-28 Cusip 59283TBJ8	1-19-98	100.00	10,070.83	2,000.00	(8,070.83)
TOTAL LOSS					(28,805.55)

MG013861

SCHEDULE OF BONDS PURCHASED FOR ACCOUNT OF DONALD E. MORELAND IRA
AT MILLER & SCHROEDER FINANCIAL, INC.
ACCOUNT NUMBERS 51002574 AND RI 70119 B5

BOND	DATE BOUGHT	PRICE	TOTAL COST	PRESENT VALUE	GAIN (LOSS)
10,000 United Homes Inc. Mandatory Redemption 11.00% 3-15-05 Cusip 910608AA6	11-01-97	98.50	9,871.39	1,500.00	(8,371.39)
TOTAL LOSS					(8,371.39)

The identical or similar highly speculative bonds were purchased for all of Claimants' accounts including Trust, Pension and IRA. There was no diversification, many of the bonds were under the Heritage Bond umbrella, a troubled company, and most were for even more highly speculative health facilities. Further, these toxic bonds constituted the very great majority or the only investments in these accounts. These bonds are even more speculative than junk bonds which at least are labeled "high yield bonds." Claimants have been advised that the very great majority of these bonds or projects are in difficulty, have defaulted or are about to default and their value is a fraction of purchase price. For example, see Exhibit C attached hereto. Please note present value is based on Prudential American Securities, Financial Information Center and that at least five issues are in default. See Exhibit D attached hereto. In addition, Claimants have lost substantial interest with they could have received. See Exhibit E attached hereto. Claimants' subsequent account executive at Miller, Doisey A. Landry, who inherited these accounts advised Claimants they should have never had such bonds purchased for their accounts and that Respondent Webb improperly handled Claimants' funds.

9. Respondents advised that the securities they recommended would be safe and an excellent opportunity, that all Respondents' customers and the Respondent account executive

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herself were purchasing the identical bonds, that Respondents had visited the facilities, knew the Heritage people and management of the facilities and as advisors to these companies Respondents had important information and that such investments were perfectly safe and secure. Respondents failed to advise regarding the highly surrealistic speculative nature of the bonds purchased for all Claimants' accounts. Claimants were never advised as to the different types of bonds an investor could purchase such as General Obligation Bonds ("GO's") which have the protection of the full faith and credit of the underlying municipality, or other types of bonds they could have purchased such as Government Bonds, Federal Bonds guaranteed by the United States Government, FHA or FNMA Bonds, Treasury Bonds or high grade corporate bonds. Claimants were not presented a menu of other investment or bond opportunities–as previously stated Respondents choose all investments for Claimants.

10. As a further part of Respondents' fraudulent scheme, Respondents did not even recommend rated bonds like the majority of revenue bonds–if such bonds would be rated the worse than junk rating would at least have been apparent. Respondents' recommendation of such garbage for these particular accounts and retired Claimants to the complete exclusion of other types of investments or bonds should subject Respondents to severe punitive damages.

11. For defrauding Claimants and numerous other investors and dumping investments which Respondents knew were surrealistically speculative Respondents received substantial underwriting fees and commissions, and owned the particular bonds previously purchased as underwriters or sole underwriters. Respondents received substantial remuneration which was their motivation in destroying Claimants' retirement. For example, see Exhibit F attached hereto. As previously stated Claimants know little about securities or investments, are retired, and trusted their life savings to Respondents.

MG013863

12. Respondents further engaged in the following undesirable and fraudulent business practices, materially misrepresented, made false statements, and omitted to disclose material information about such investments including:

(a) The dangers and risks associated and involved in such highly speculative non-rated bonds;

(b) The dangers and risks associated and involved with purchasing such bonds in relation to GO's or other conservative, safe and secure investments;

(c) The amount of money that would be made by investing pursuant to Respondents' recommendations;

(d) Consistently misrepresented the status of the bonds; for example, at a dinner meeting with Respondent Webb at Bob Chinn's Restaurant on March 29, 1999 Claimants were advised all investments were doing well. Subsequent conversations with Miller's sales manager Mr. Halloran also confirmed all was well;

(e) Failed to inform Claimants and disclose to Claimants the poor financial condition and problems of the ventures recommended by Respondents;

(f) Respondents failed to mitigate damages; and

(g) Failed to advise regarding the risks of non-rated revenue bonds and advised Claimants not to worry about the status of the investments.

13. These practices, statements or omissions were made or done with the specific intent to deceive or defraud Claimants or in reckless disregard of the truth and were reasonably relied upon by Claimants.

14. As a direct and proximate result thereof, Claimants were deceived and defrauded and sustained severe financial loss in the amount of $161,528.23 due to Respondents' misconduct, which was in violation of the anti-fraud provisions of the Federal Securities Acts, various state and

MG013864

federal statutes and violations of the common law including common law fraud, breach of fiduciary obligation, Illinois State Securities Act, and the Illinois Uniform Deceptive Trade Practices Act.

15. During the life of the accounts, Respondents engaged in a pattern of trading in Claimants' accounts which was excessive in view of the nature of the accounts and Claimants' investment objectives for the accounts in that:

(a) Respondents made excessive purchases of highly speculative securities;

(b) Contrary to their representations, traded in securities in a highly risky and speculative manner; and

(c) Employed a pattern of purchasing securities in Claimants' accounts designed solely to generate income to Respondents in disregard of the investment objectives and financial needs of Claimants.

16. Respondents' actions were knowingly and intentionally done with full knowledge such investments were contrary to Claimants' investment objectives.

17. As a direct and proximate result of Respondents' actions Claimants sustained severe financial loss in the amount of $161,528.23 due to Respondents' misconduct.

18. Claimants reallege and reincorporate Paragraphs 1-17.

19. During the period of Claimants' accounts, Respondents traded in securities which were unsuitable for Claimants in that:

(a) Respondents failed to inform Claimants of the risks involved in their program or of the speculative nature of the securities purchased;

(b) Respondents purchased highly speculative securities for Claimants' accounts in such a manner as to create highly excessive and unsuitable transactions; and

(c) Respondents did not handle Claimants' investment in a manner suitable to their investment needs or objectives.

MG013865

20. As a direct and proximate result of Respondents' misconduct, Claimants suffered losses in the amount of $161,528.23.

21. Miller failed to adequately or properly supervise the activities of Respondents and aided and abetted the fraud perpetrated by Respondents in that they:

(a) Failed to give Claimants' accounts the necessary supervisory reviews with respect to the investments in said accounts;

(b) Failed to discover or halt the excessive and highly speculative investments being purchased for Claimants' accounts;

(c) Failed to keep or follow written procedures regarding the supervision of such accounts; and

(d) Failed to utilize due diligence to learn the essential facts relative to Claimants' accounts, circumstances and investment objectives.

22. As a result thereof, and as a result of the trading activities of Respondents and mismanagement of Claimants' accounts, Claimants sustained severe financial losses in the amount $161,528.23.

23. Such undesirable practices were done with the specific intent to deceive or defraud Claimants and were, in fact, reasonably relied upon by Claimants.

24. At all times, Claimants reposed Respondents with confidence and trust and there existed on Respondents' fiduciary duties and obligations.

25. As fiduciaries of Claimants, each Respondent was obligated at all times to act in the best interest of Claimants and in accordance with their obligations for the reasons stated herein, Respondents singly and in concert, aiding and abetting each other, willfully and maliciously breached their fiduciary duties; and the actions delineated above place Respondents squarely in violation of state and federal laws.

MG013866

26. It was the duty of Miller and/or their agents, servants, employees, and representatives to exercise ordinary care over Claimants' accounts. Miller refused to take any action to revise the manner in which the accounts were handled although they were in a position to monitor the accounts. Instead, Respondents violated laws, statutes, and rules of a state and federal nature.

Causes Of Action
Section 10 (b) and Rule 10b-5

27. The aforesaid acts, practices, representations and omissions by Respondents constitute fraud within the meaning of the federal securities laws, Section 10 (b) of the Exchange Act and Rule 10b-5 promulgated thereunder. In addition, all Respondents, except account executive Webb, are liable as controlling persons under the Act or as directors and officers of Miller. Miller is also liable as a controlling person. Respondents had the power to direct or control the direction of management and actions of Miller's employees.

28. The aforesaid acts, practices, misrepresentations and omissions by Respondents tended to work a fraud and involved statements that lacked reasonable grounds. This conduct also violated the Illinois Securities Law of 1953.

29. Claimants reasonably relied upon the representations and omissions made by Respondents and have been damaged as a direct and proximate cause thereof.

Fraud

30. As more fully described above, Respondents made misrepresentations and omissions of material facts to Claimants and engaged in a pattern of fraudulent conduct. Respondents knew these acts or representations to be false, deceitful and fraudulent, but made them to induce Claimants to reasonably rely on them, which they did , to their financial detriment. As a direct and proximate cause thereof, Claimants have suffered serious financial damages. In additional, all control persons aided and abetted Miller and Webb in their fraudulent conduct.

MG013867

31. The acts, misrepresentations and omissions previously described constitute a constructive fraud and breach of their fiduciary duty, showing complete indifference and conscious disregard for the best interest of Claimants. As a direct and proximate result of said breach, Claimants have suffered serious financial damages.

Negligence

32. Respondents had a duty to act in the best interest of their clients and not of themselves. As previously described, Respondents breached this duty. Respondents did not exercise the degree of reasonable care and skill required of them. Their course of conduct constitutes negligence, and as a direct and proximate cause thereof, Claimants have been financially damaged.

33. All of the statements, acts and omissions described herein were made by all Respondents and other employees of Miller while acting within the scope of their employment at Miller. As a result, all Respondents are liable for said statements, acts and omissions, and consequent damages, under the theory of respondeat superior.

Negligence And Breach Of Fiduciary Duty (Failure To Supervise)

34. Respondents are liable for their own negligence and have breached their duties in failing to adequately supervise Respondents (and any others in connection with Claimants' accounts). Respondents did not maintain a reasonably adequate system of supervision and control or did not enforce such system with reasonable diligence.

35. Respondents should have among other things noticed the outrageous conduct of Webb as specified above in this Statement of Claim–especially in light of Claimants elderly and retired status.

36. Respondents had a duty to act in the best interest of their clients but breached this duty: they did not exercise the degree of reasonable care and skill required of them in their position.

MG013868

Their course of conduct constitutes negligence, and a breach of their fiduciary duties, and as a direct and proximate cause thereof, Claimants have been financially damaged.

Section 15 (b) (4) (E)

37. Respondents Miller, Wikner, Dlugosch, Hentges, Mehlaff, McKeand, Nelson, Clarey, Iverson and Erickson are Control Persons within the meaning of Section 20 (a) of the Securities Exchange Act. Many of the above Respondents are listed as "Control Persons" on Schedule A of Form BD of Miller & Schroeder Financial, Inc., Exhibit B attached hereto.

WHEREFORE, Claimants, James Moreland, Doris Moreland and Donald Moreland, request this panel of arbitrators to find in their favor and against all Respondents and pray for judgment against Respondents for the following joint and several relief:

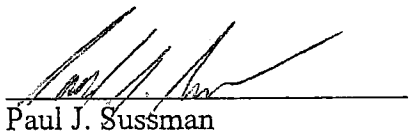
(a) Compensatory damages for all losses Claimants suffered as a result of Respondents' misconduct; or in the alternative recission of the investments;

(b) Any additional and consequential damages Claimants may establish at the arbitration hearing including $300,000 in punitive damages due to Respondents' flagrant abuse of Claimants;

(c) Interest at the legal rate, forum fees, costs and attorney's fees; and

(d) Other proper and just relief.

Respectfully submitted,



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Attorney for Claimants

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IN ARBITRATION

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Grace E. English Betty Jo Morse Ellis L. Lewellen **CLAIMANTS** Miller & Schroeder Financial, Inc. Ronald Van Der Veen John Doe #1 and John Doe # 2 **RESPONDENTS**	NASD Case No. 01-01056 **AMENDED STATEMENT OF CLAIMS**

PARTIES

1. **Grace E. English,** a widow, 82 years of age, was a customer of respondent Miller & Schroeder Financial, Inc. for many years until late in the year 2000 when her account was transferred to PaineWebber, Inc. Her account numbers with Miller & Schroeder Financial, Inc. were as follows:

   RI 28025
   RI 28026

   Mrs. English's accounts were at all relevant times managed by Miller & Schroeder investment executive, Ronald Van Der Veen.

2. **Betty Jo Morse**, now deceased, was a customer of respondent Miller & Schroeder Financial, Inc. for many years until late in the year 2000 when her account was transferred to PaineWebber, Inc. Her account numbers with Miller & Schroeder Financial, Inc. were as follows:

   RI 70275
   RI 25001

   Ms. Morse's accounts were at all relevant times managed by Miller & Schroeder investment executive, Ronald Van Der Veen. The personal representative of her estate is Gaye Nancy Greeves.

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Seattle, Washington

EXHIBIT O

3. **Ellis L. Lewellen,** 79 years of age, was a customer of respondent Miller & Schroeder Financial, Inc. for several years until late 2000 when his account was transferred to PaineWebber, Inc. His account numbers with Miller & Schroeder, Inc. were as follows:

RI 26403

Mr. Lewellen's account(s) were at all relevant times managed by Miller & Schroeder Financial, Inc. investment executive, Ronald Van Der Veen

4. **Miller & Schroeder Financial, Inc.** is a Securities Broker and a member of NASD.

5. **MM&S Financial, Inc.** is a is a Securities Broker and a member of NASD. MM&S acquired the operations from Miller & Schroeder, including the office that processed the transactions that are at issue.

6. **Ronald Van Der Veen** at all material times was an employee broker of Miller & Schroeder Financial, Inc.. Mr. Van Der Veen was the designated investment executive for Mrs. English, Ms. Morse, and Mr. Lewellen, and had responsibility for the management of the above accounts.

7. **John M. Clarey** at all material times was an officer, director, owner and supervisor of defendant Miller & Schroeder. Mr. Clarey is a NASD member.

8. **Edward J. Hentges,** at all material times was an officer, director, owner and supervisor of defendant Miller & Schroeder and MM&S Financial. Mr. Hentges is a NASD member.

9. **Kenneth R. Larsen** at all material times was an officer, director, owner and supervisor of defendant Miller & Schroeder and MM&S Financial. Mr. Larsen is a NASD member.

10. **James F. Dlugosch** at all material times was an officer, director, owner and supervisor of defendant Miller & Schroede. Mr. Dlugosch is a NASD Member.

FACTS

11. The funds that became the corpus of the above accounts were created through the lifelong labors of Mrs. English and her deceased husband. R. Van Der Veen was Mr. English's investment counselor and broker prior to his death. Thereafter, the above accounts were established to provide for claimants whose investment objectives were all conservative, to preserve capital and to provided income.

12. From approximately 1996 through the year 2000, Miller and Schroeder and broker Ronald Van Der Veen engaged in the practice of yield swaps that gradually lengthened the duration and reduced the safety of the portfolios owned by Claimants.

13. The end result of the above practice was to leave the Claimants with a portfolio of high yield junk bonds and defaulted municipal bonds heavily concentrated in a handful of securities. A review of the Claimants Miller & Schroeder statements, copies of which are submitted herewith, shows that the losses resulting from these practices were at least as follows in the

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portfolios owned by these three investors with limited income and an average age of 74 years:

Grace E. English	$370,565
Betty Jo Morse	$ 96,745
Ellis L. Lewellen	$ 81,291
Total:	$548,601

14. The speculative investment practices intensified following the sudden death of Mrs. English's husband and, at times corresponding with hospitalizations of Ms. Morse.

15. Portfolio turnover rates in some of the above accounts approached 100% on an annualized basis; transaction costs to Claimants appear to be over 5% on an annualized basis. Churning of these accounts and other improper transactions in these accounts were in breach of Respondents' fiduciary and contractual duties to Claimants resulting in losses to Claimants and unjust enrichment of Respondents.

16. Respondent Miller & Schroeder Financial, Inc. and John Does #1 and # 2 failed to meet their obligations to supervise the handling of the above accounts.

RELIEF REQUESTED

17. **ACCOUNTING:** Claimants request the Respondents be required to render an accounting to Claimants disclosing and documenting all remuneration received by Claimants, respectively from all transactions conducted with respect to the above accounts from January 1, 1996 through December 31, 2000.

DAMAGES:

Losses and interest: Claimants request that they be awarded damages to reimburse them, respectively, for all losses suffered in their accounts on account of the wrongful conduct of Respondents, together with interest thereon from the date(s) of the respective losses.

Disgorgement of fees, commissions or other remuneration: Claimants request that they be awarded damages in a sum equal to all remuneration realized by Respondents from the transactions conducted in the above accounts, as such remuneration was realized through breach of Respondents contractual and fiduciary duties to Claimants.

Punitive damages. Claimants request that the award for the above damages be trebled to dissuade Respondents from similar conduct in the future and to encourage Respondent Miller & Schroeder Financial, and others similarly situated, to implement and enforce supervisory protocols to prevent similar broker misconduct in the future.

Costs and attorneys fees. Claimants request that they be awarded Forum fees; attorneys' fees; witness and production fees; and other case-related costs.

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SUMMARY OF CLAIMS

1. Direct account losses:	$ 548,601	
2. Disgorgement of remuneration	$ 70,000	[estimated]
3. Interest	$ 70,000	[estimated]
subtotal	$ 688,601	
4. Punitive [damages trebled component] (2 x actual damages)	$1,377,202	
TOTAL	$2,065,803	

5. Plus, costs and attorneys' fees as determined in the discretion of the Arbitrators.

Dated this 28th day of May, 2002.

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Don Paul Badgley, attorney for Claimants

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Dispute Resolution Office

Attorneys for Claimants
GEORGE MCCAULEY
PEARL ZIEBARTH
OPAL MCCAULEY
RUE VILLARS, LP
SAN PABLO DRIVE LP

BEFORE THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS

GEORGE E. MCCAULEY On Behalf Of The GEORGE E. MCCAULEY IRA And As Trustee For The GEORGE E. MCCAULEY REVOCABLE TRUST UAD 12/29/87; PEARL ZIEBARTH As Trustee For The PEARL ZIEBARTH TRUST UAD 2/13/86; OPAL MCCAULEY As Trustee For The OPAL MCCAULEY REVOCABLE TRUST UAD 7/27/95; RUE VILLARS LP; And SAN PABLO DRIVE LP;	**NASD Case No.: 01-01348**
Claimants,	**CLAIMANTS' AMENDED STATEMENT OF CLAIM**
vs.	
MILLER & SCHROEDER FINANCIAL, INC. And MARK F. AUGUSTA	
Original Respondents,	
MM&S FINANCIAL, INC.; JAMES IVERSON; JEROME A. TABOLICH; EDWARD J. HENTEGES; KENNETH R. LARSEN; STEVEN W. ERICKSON; PAUL R. EKHOLM; JAMES F. DLUGOSCH; KENNETH HALLORAN; KENNETH DAWKINS; TOM S. NELSON; JAMES CLAREY; VICTOR DHOOGIE; MARY JO BRENDEN; And DANIEL DILL,	
Amended Respondents.	

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EXHIBIT P

Claimants GEORGE MCCAULEY, PEARL ZIEBARTH, OPAL MCCAULEY, RUE VILLARS LP AND SAN PABLO DRIVE LP (collectively referred to as CLAIMANTS) state their amended claim against the "Original Respondents" MILLER & SCHROEDER FINANCIAL, INC. and MARK AUGUSTA (referred to as RESPONDENT), and the "Amended Respondents" **MM&S FINANCIAL, INC.; JAMES IVERSON; JEROME A. TABOLICH; EDWARD J. HENTEGES; KENNETH R. LARSEN; STEVEN W. ERICKSON; PAUL R. EKHOLM; JAMES F. DLUGOSCH; KENNETH HALLORAN; KENNETH DAWKINS; TOM S. NELSON; JAMES CLAREY; VICTOR DHOOGIE; MARY JO BRENDEN; And DANIEL DILL**, jointly and severally, as follows:

THE ORIGINAL PARTIES

1. CLAIMANT GEORGE MCCAULEY ("MCCAULEY") is a 69 year old retired gentleman and, at all times material hereto, was a resident of Newport Beach, California.

2. CLAIMANT PEARL ZIEBARTH ("PEARL") is a 91 year old lady and, at all times material hereto, was a resident of Newport Beach, California. PEARL is MCCAULEY'S mother.

3. CLAIMANT OPAL MCCAULEY ("OPAL") is a 92 year old lady and, at all times material hereto, was a resident of San Marcos, California. OPAL is MCCAULEY'S aunt.

4. CLAIMANT RUE VILLARS LP ("RUE") is a California limited partnership. The general partners are MCCAULEY and PEARL.

5. CLAIMANT SAN PABLO DRIVE LP ("SAN PABLO") is a California limited partnership. The general partners are MCCAULEY and OPAL.

6. RESPONDENT MILLER & SCHROEDER FINANCIAL, INC. ("MILLER") was qualified and licensed to do business in the State of California and was a registered securities broker-dealer with the National Association of Securities Dealers, Inc. ("NASD") but has withdrawn its registration and no longer is a member of the NASD.

7. RESPONDENT MARK F. AUGUSTA ("AUGUSTA") was employed by and under the control of MILLER at all times during the relevant period, as a registered representative at its Solana Beach, California branch office but has filed personal bankruptcy.

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THE AMENDED PARTIES

8. AMENDED RESPONDENT MM&S FINANCIAL, INC., ("MMS") holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Beginning in 2000, RESPONDENT MILLER, began divesting portions of its business and businesses to various individuals and entities, including AMENDED RESPONDENT MMS, which is conducting business from it's Solana Beach, California location as the successor in interest to RESPONDENTS MILLER. Any and all references herein to MMS shall be as successor to MILLER. Any and all references herein to MILLER shall be as predecessor to MMS.

9. AMENDED RESPONDENTS, JAMES IVERSON ("IVERSON"); JEROME A. TABOLICH (TABOLICH"); EDWARD J. HENTEGES ("HENTEGES"); KENNETH R. LARSEN ("LARSEN"); STEVEN W. ERICKSON ("ERICKSON"); PAUL R. EKHOLM ("ELKHOLM"); JAMES F. DLUGOSCH ("DLUGOSCH"); KENNETH HALLORAN"(HALLORAN"); KENNETH DAWKINS ("DAWKINS"); TOM S. NELSON ("NELSON"); JAMES CLAREY (CLAREY"); VICTOR DHOOGIE ("DHOOGIE"); MARY JO BRENDEN ('BRENDEN"); and DANIEL DILL ("DILL") are and were at all relevant times, officers, underwriters, directors, members of the credit committee, and supervisors at MILLER, which filed bankruptcy on or about January 21, 2002. CLAIMANTS believe that these named individuals are members of the NASD and or the Municipal Bond Securities group giving the NASD jurisdiction in this case.

10. AMENEDED RESPONDENTS IVERSON, CLAREY TABOLICH, HENTEGES, LARSEN, ERICKSON, ELKHOLM, DILUGOSCH, HALLORAN, DAWKINS, NELSON, DHOOGIE, BRENDEN, and DILL were at all relevant times herein key officers, underwriters, directors, members of the credit committee, and supervisors of RESPONDENT MILLER, predecessor to AMENDED RESPONDENT MMS and it's associated entities with responsibility for the due diligence for the Heritage Health Care Bonds, and other investments including Boston Chicken, Jackson County Bonds, Service Merchandise bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo bonds, Dakota Colorado bonds, Tillman Co. bonds, and others which were sold to the public including the claimants, causing the substantial losses to the

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claimants because of the actions of these "CONTROL PERSON AMENDED RESPONDENTS" and RESPONDENTS MILLER and AUGUSTA. At all times during the actions alleged herein, CONTROL PERSON AMENDED RESPONDENTS were agents of each other in the activities alleged.

THE AMENDED CLAIMS

A. AL TER EGO ALLEGATIONS

11. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all AMENDED RESPONDENTS and all ORIGINAL RESPONDENTS, such that any individuality and separateness between them has ceased to exist, and RESPONDENT corporate entities are the alter egos of all AMMENDED RESPONDENTS in that CLAIMANTS allege that each of the individual AMENDED RESPONDENTS used the assets of the RESPONDENT corporate entities to cause the losses to CLAIMANTS.

12. Adherence to the fiction of the separate existence of any third party respondent corporate entity as an entity distinct from any of the other third party respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that such asserting third party respondents, and each of them, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith without financial liability.

B. CONSPIRACY TO DEFRAUD CLAIMANTS THROUGH OFFER & SALE OF HERITAGE BONDS AND VARIOUS OTHER BONDS

13. Commencing in or during 1996, and continuing on throughout the relevant time period, AMENDED RESPONDENTS, entered into agreements and a scheme to defraud investors by effecting transactions in Heritage and Various Other Bonds through the use of (1) negligent due diligence, (2) improper underwriting practices, And (3) false and misleading statements of material facts. CLAIMANTS had no knowledge of this scheme to defraud investors at any time.

14. Pursuant to the agreement and scheme to defraud, RESPONDENT MILLER, predecessor to AMENDED RESPONDENT MMS, acted as the investment banker and lead underwriter for all Heritage and Various Other Bond offerings. Under the direction of

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RESPONDENT MILLER, predecessor to AMENDED RESPONDENT MMS, MILLER raised the capital for purported health care facility development by structuring securities offerings utilizing a municipal entity as the stated issuer and raised capital through the sale of various other bonds such as Boston Chicken, Jackson County Bonds, Service Merchandise Bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo Bonds, Dakota Colorado Bonds, Tillman Co. Bonds, and others. The Heritage Bonds were structured by MILLER as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. Eventually, these investments would either default, enter bankruptcy, or their underlying value became worthless.

15. RESPONDENT MILLER, predecessor to AMENDED RESPONDENT MMS, knew or should have known that the bonds were of questionable viability and further knew or should have known, due to their due diligence, underwriting research, and position as investment bankers and underwriters that the various entities' issuing the bonds financial condition was tenuous, and the offerings were not financially feasible.

C. RESPONDENT MILLER'S EXIT STRATEGY

16. MILLER advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance various public facilities and businesses. Based on reputation and experience, MILLER negotiated for itself substantial fees in excess of many millions of dollars for financing, structuring and marketing the Heritage Bonds, Boston Chicken Bonds, Jackson County Bonds, Service Merchandise Bonds, Globalstar Bonds, Beech Grove Bonds: Housing Authority of City of Tupelo Bonds, Dakota Colorado Bonds, Tillman Co. Bonds, and others investments. These fees were paid from the proceeds of the sale of these bonds to CLAIMANTS and others.

17. As MILLER became aware of cost over-runs, construction delays, operational losses, cash flow problems, and looming defaults for these Bonds and other investments, MILLER commenced a strategy to protect and preserve the interests of the AMENDED RESPONDENTS to the exclusion of CLAIMANTS.

18. While the ORIGINAL RESPONDENTS were soliciting purchases from CLAIMANTS and others of Heritage Bonds, Boston Chicken Bonds, Jackson County Bonds,

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Service Merchandise Bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo Bonds, Dakota Colorado Bonds, Tillman Co. Bonds, and other Bonds and other investments AMENDED RESPONDENT IVERSON sold his stock in MILLER in 1997 in a management buyout led by AMENDED RESPONDENT DLUGOSCH. IVERSON continues to the present day to act as an officer, director, underwriter and control person for AMENDED RESPONDENT MMS.

19. The AMENDED RESPONDENTS advanced in excess of$700,000 to the promoters of the Heritage Bonds so that MILLER could underwrite the Heritage Bonds. AMENDED RESPONDENTS also were found to have been in a corrupt business arrangement with County of San Bernadino, California settling with the county by paying $350,000 in 2001. Sometime in 2000, the AMENDED RESPONDENTS started trying to sell pieces of MILLER, knowing of their false dealings with their customers, culminating in the transfer of MILLER to MMS in August 2001, and the filing of bankruptcy by MILLER in January 2002.

20. RESPONDENT AUGUSTA has alleged that at all material times mentioned herein, the various AMENDED RESPONDENTS represented to him that all the Bonds sold to CLAIMANTS were solvent; that all the proper "due diligence" had been done by the MILLER and that AUGUSTA should sell and continue to sell the various issues of the bonds to his clientele, and tell his clientele that the bonds were good investments. Purportedly, AUGUSTA had no knowledge of the fatal "due diligence" flaws of the bonds. However, said flaws were at all times known to the AMENDED RESPONDENTS.

D. FRAUDULENT CONVEYANCE

21. CLAIMANTS allege that the AMENDED RESPONDENTS continue to conduct business as usual. CLAIAMNTS are informed and believes that MMS employs approximately 19 former managers and approximately 100 former employees of MILLER and continues to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by to finance, structure, and market bonds. For example, MMS is now doing business from the former RESPONDENTS MILLER and AUGUSTA Solana Beach office.

22. Pursuant to the Agreement, MILLER's assets were transferred to MMS in an effort to avoid obligations relating to the previous fraudulent sale of the bonds by MILLER, which structured the Agreement so that the value of the assets transferred to the MMS exceeded the value received by

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MILLER. The structure of the Agreement left MILLER insolvent for the intended purpose of not having the ability to meet liabilities, such as those that will be owed to CLAIMANTS, related to its fraudulent bond sales.

23. The AMENDED RESPONDENTS structured the terms of the Agreement with knowledge that the ORIGINAL RESPONDENTS would incur the debts and obligations relating to the fraudulent bond sales.

E. ROLES OF VARIOUS AMENDED RESPONDENTS IN THE CONSPIRACY

24. The CONTROL PERSON AMENDED RESPONDENTS and MILLER agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Bonds.

25. AMENDED RESPONDENT IVERSON agreed to participate with full knowledge of the conspiracy by:

a. Supervising the Solana Beach office of MILLER during the financing, structuring, and marketing of the Bonds;

b. Controlling the capital of MILLER including secret loans to Heritage;

c. Acting as an officer, director, underwriter and shareholder of MILLER during the financing, structuring, and marketing of the various Bonds;

d. Providing secret loans and advances from MILLER for Heritage to obtain appraisals and feasibility studies needed by MILLER to underwrite the proposed Heritage Bonds;

e. Directing Heritage Bond proceeds to assist in acquiring vacant health care facilities, most of which. were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer;

f. Instructing investment bankers at MILLER under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer;

g. Providing advice and consultation to the AMENDED RESPONDENTS and MILLER in furtherance of its exit strategy and fraudulent conveyance, including selling his MILLER stock in August of 1997 and then continuing as a control person of MILLER until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MMS.

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h. Substantially assisting the fraudulent conveyance as a "control person.

26. AMENDED RESPONDENT CLAREY agreed to participate with full knowledge of the conspiracy by:

a. Acting as chairman of the credit committee at MILLER with responsibility for reviewing the proposed HeritageBonds, Boston Chicken Bonds, Jackson County Bonds, Service Merchandise Bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo Bonds, Dakota Colorado Bonds, Tillman Co.B bonds, and other Bond underwritings and documentation including the Official Statements;

b. Approving successive Bond underwritings while accumulating information of problems plaguing earlier Bond projects;

c. Acting as an officer, director, and shareholder of MILLER during the financing, structuring, and marketing of the various Bonds;

d. Accepting a promotion from Chief Operating Officer to Executive Vice President of MILLER and thereafter acting as a key MILLER executive officer responsible for controlling the various Bond problems with investors and the media during implementation of the exit strategy; and

e. Substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller."

27. AMENDED RESPONDENT TABOLICH agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at MILLER with responsibility for reviewing the proposed Bond underwritings and documentation including the Official Statements;

b. Acting as an officer and shareholder of MILLER during the financing, structuring, and marketing of the Bonds;

c. Participating in the exit strategy and fraudulent conveyance as the President of MILLER, and continuing thereafter as an officer and shareholder, of MMS;

d. Substantially assisting the fraudulent conveyance as a "control person" and exit strategy and fraudulent conveyance, including selling his MILLER stock in August, 1997 and then continuing as a control person of MILLER until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MMS; and

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e. Substantially assisting the fraudulent conveyance as a "control person."

28. AMENDED RESPONDENT HENTEGES agreed to participate with full knowledge of the conspiracy by :

a. Acting as a compliance officer, an executive officer, and shareholder at MILLER during the financing, structuring, and marketing of the various Bonds;

b. Participating in the exit strategy and fraudulent conveyance as an executive officer and director of the MILLER and continuing thereafter as an officer, director and shareholder of the MM&S; and

c. assisting the fraudulent conveyance as a control person.

29. AMENDED RESPONDENT LARSEN agreed to participate with full knowledge of the conspiracy by:

a. Acting as the Chief Financial Officer at MILLER during the financing, structuring, and marketing of the various Bonds;

b. Participating in the exit strategy and fraudulent conveyance as arl executive officer of the MILLER by signing the Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MMS; and

c. Substantially assisting the fraudulent conveyance as a control person and knowledgeable seller .

30. AMENDED RESPONDENT ERICKSON agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at MILLER with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. Acting as an officer, director, and shareholder of MILLER during the financing, structuring, and marketing of the various Bonds;

c. Participating in the exit strategy and fraudulent conveyance as a Senior Vice President of MILLER and continuing thereafter as an executive officer and shareholder of the MMS; and

d. Substarltially assisting the fraudulent conveyance as a control person.

31. AMENDED RESPONDENT ELKHOLM agreed to participate with ful knowledge of the conspiracy by :

a. Acting as a member of the credit committee at MILLER with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. Acting as an executive officer of MILLER during the financing, structuring, and marketing of the various Bonds;

c. Participating in the exit strategy and fraudulent conveyance as a Senior Vice President of MILLER and continuing thereafter as an executive officer and shareholder of the MMS; and

d. Substantially assisting the fraudulent conveyance as a control person.

32. AMENDED RESPONDENT DLUGOSCH agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at MILLER with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements;

b. Acting as an officer, director, and shareholder of MILLER during the financing, structuring, and marketing of the Heritage Bonds; and

c. Participating in the exit strategy and fraudulent conveyance as an executive officer and director of MILLER and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

33. AMENDED RESPONDENTS DILL, BRENDEN, DHOOGIE, NELSON, DAWKINS, and HALLORAN, agreed to participate with full knowledge of the conspiracy by:

a. Acting as a member of the credit committee at MILLER with responsibility for reviewing the proposed various Bond underwritings and documentation including the Official Statements;

b. Acting as an officer, director, underwriters and shareholder of MILLER during the financing, structuring, and marketing of the various Bonds; and

c. Participating in the exit strategy and fraudulent conveyance as control persons of MILLER and substantially assisting the fraudulent conveyance as a "knowledgeable seller."

F. COMMON MISREPRESENTATIONS AND OMISSIONS BY ALL RESPONDENTS TO CLAIMANTS

34. In connection with the various Bonds underwritten, offered and sold by all RESPONDENTS express and implied representations in the Official Statements, and oral

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communications to CLAIMANTS were false and/or misleading statements. The true facts were deliberately withheld from CLAIMANTS including, but not limited to, the facts listed below:

a) Loans were made to promoters to get the various deals.

b) Promoters were not financially viable.

c) Promoters had various past records of fraudulent activities.

d) Official statements of bonds were not complete and were not true.

e)Various deals had operational and financial problems after funding.

f)Various bonds were not financially viable from the beginning

g) Various bonds were based on improper appraisals.

35. Furthermore, CLAIMANTS were not adequately advised of the recent transaction history regarding real property being sold and pledged as security for bondholders and key transaction terms such as price, fair market value, liens, restrictive covenants, and the identity and profit of participants to the transaction. CLAIMANTS were misled by all RESPONDENTS by not knowing the true and complete facts regarding the bonds they purchased.

CLAIMANTS ARE NOW ENTITLED TO PUNITIVE DAMAGES

36. While most claimants would like to be awarded punitive damages, few cases actually warrant them. It is submitted, however, that this is one of those cases. RESPONDENTS' "shell game" has cost CLAIMANTS significant delay and expense in resolving their dispute and is a blatant fraud perpetrated on CLAIMANTS and MILLER's other creditors. From the very outset, RESPONDENTS orchestrated a convoluted corporate shell game intended for the sole purpose of obfuscating MILLER's and the AMENDED RESPONDENTS' identity to hide from claims such as those alleged here. RESPONDENTS have acted in such blatant self-interest and with such a conscious disregard of the fiduciary duties and the rights owing to CLAIMANTS to be treated fairly, as to shock the conscience.

37 Federal policy supports vesting arbitrators with the authority to award punitive damages if the parties agreement contemplates such an award[1]. The clauses in the account

[1] Todd Shipyars Corp. v. Cunard Line, Ltd. (9th Cir. 1991) 943 F.2d 1062-1063.

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agreements signed by CLAIMANTS have been held to be sufficiently broad to encompass awards of punitive damages[2]. The New York choice of law provision contained in CLAIMANTS' account agreements does not deprive the arbitrators of their authority to award punitive damages[3].

38. By reason of the foregoing, CLAIMANTS are entitled to have and receive from RESPONDENTS, and each of them, punitive and exemplary damages in an amount sufficient to punish and to set an example of RESPONDENTS.

SUMMARY OF DAMAGES

39. The exact amount of damages will be determined at the hearing; however, CLAIMANTS requests an award that will "make CLAIMANTS whole" by:

a) Recovering his losses of approximately $448,771;

b) Adding loss of opportunity for profits in a period of very favorable market conditions for bonds.

c) Adding punitive damages sufficient to punish and set an example of RESPONDENTS;

d) Adding prejudgment and postjudgment interest at the highest legal rate;

e) Adding all costs of suit including attorneys and consulting fees; and

f) Other and further relief the Arbitration Panel deems just and proper.

Dated: July 31 2002

Respectfully submitted,

GREENBAUM & FERENTZ, LLP

By: _____
JEFF DENNIS FERENTZ, ESQ.
Attorneys for CLAIMANTS

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[2] See e.g., Raytheon Co. v. Automated Business Systems, Inc., supra, 882 F2d. at pp. 7, 10-12.

[3] Bonar v. Dean Witter Reynolds, Inc., (11th Cir. 1988) 835 F.2d 1387.

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Heritage Bond 01-F

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

In re HERITAGE Bond LITIGATION David Sinow, Howard Preston, Langdon Parrill, Ray Stits, Barrett Anderson, Laurence Pilgeram, Scott McKenry, Ralph Allman, and Gilbert Kivenson, On behalf of themselves and all others similarly situated, Plaintiffs, v. U.S. Trust Company of Texas, N.A., U.S. Trust Corporation, Tarrant County Health Facilities Development Corporation, Jerold Goldstein, Onofrio V. Bertolini, Stephen P. Goodman, Evan Greenspan, Estate of Andrew Kornreich, Deceased, Cary Medill, Estate of Emery Rubin, Larry A. Rubin, Herbert Saltzman, Virgil Lim, Clarke Underwood, Donald B. Chalker, Marshall Wexler, Robert Kasirer, Debra Kasirer, Bistra & Munkacs Holdings, Inc., JDDJ Holdings, L.P., Health Care Holdings, LLC, CareContinuum, LLC, Louis Pontarelli, William Filippone, Leo Dierckman, Alan Pollak, Geri Ostlund, Richard Kuhl, James E. Iverson, Victor P. Dhooge, John M. Clarey, James F. Dlugosch, Edward J. Hentges, Kenneth R. Larsen, Jerome E. Tabolich, Steven W. Erickson, Paul R. Ekholm, Kenneth E. Dawkins, Joel T. Boehm, Sabo & Green, Atkinson, Andelson, Loya, Ruud & Romo, Valuation Counselors Group, Inc., Capital Consulting Group, Inc., Healthcare Financial Solutions Group, Inc., Zelenofske, Axelrod & Co., Ltd., Berman and Bertolini, Inc. aka Berman & Associates, Michael Sobelman, Sobelman Cohen & Sullivan LLP, Foley & Lardner as Doe No. 2 and Wildman, Harrold Allen & Dixon as Doe No.3 and Does 4-10, Defendants.	02 ML Docket No. 1475 DT (RCx) Consolidated With Case Nos: CV 01-5752 DT (RCx) CV 02-382 DT (RCx) CV 02-993 DT (RCx) CV 02-6484 DT (RCx) CV 02-6841DT (RCx) CV 02-2745 DT (RCx) CV 02-9221 DT (RCx) Companion Case CV 02-6512 DT This Document Relates To: CV 02-382 DT (RCx) **FOURTH AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

MG022509

EXHIBIT Q

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[Against Kasirer, Goldstein[124], Lim, Tarrant and the Miller& Schroeder Principals][125]

441. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

442. According to section 20(a) of the Securities Exchange Act of 1934:

> "Every person who, directly or indirectly, controls any person liable under any provision of this Act or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action."

443. As alleged above, Kasirer (see, among others, ¶¶ 138-39, 151-52, 169, 171, 191-92, 197-198, 382), and the identified Heritage Officers (see ¶¶153, 214, 237, 256, 396 re Goldstein) were Principals of the Heritage organization and shaped the direction of Heritage's management and policies. Kasirer had extensive dealings with Miller & Schroeder to determine a strategy for the structure and marketing of the Heritage bonds. Through his management companies, HCH, CareContinuum, and Iatros, and by virtue of his control over Heritage's investment opportunities, Kasirer exercised further control over the Heritage Entities, including financial and operational management. Goldstein and Lim exercised control over the Heritage Entities through their positions as Principal executive Officers and Directors of HHD and the Heritage Entities.

444. In addition, Kasirer and Goldstein actively promoted the Heritage bonds in conjunction with Miller & Schroeder. They, and representatives of the

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[124] Goldstein is sued for actions taken as an executive and as counsel to the Heritage Entities.

[125] This claim relates to all offerings for Lim and Tarrant for both subclasses as they answered the previous complaint. For all other Defendants, it is for the final two offerings for both sub-classes unless the Plaintiffs' motion for reconsideration is granted (in which case, it is for the final three).

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Municipal Issuers, reviewed and approved the Official Statements, along with the agreements and other matters affecting the Heritage Entities. Goldstein signed the Official Statements. Their high-level actions subject them to "control person" liability under Section 20 for the primary violations of the Heritage Entities.

445. Although, no claim for violation of Rule 10(b) is asserted against Miller & Schroeder due to its bankruptcy, Plaintiffs contend that Miller & Schroeder violated Rule 10(b).

446. Miller & Schroeder Principals influenced Miller & Schroeder's underwriting of the Heritage bonds, as follows:

a. James E. Iverson was an Executive Vice President of Miller & Schroeder and the branch manager of Miller & Schroeder's Solana Beach office. Iverson supervised, and was knowledgeable about and responsible for, the financing, structuring, and marketing of the Heritage bonds. Correspondence to him also show that Iverson ratified the concealment of problems related to the Heritage offerings, including problems brought to his attention through dealings with Kasirer and through his supervision of Dhooge.

b. Victor P. Dhooge was the lead investment banker for Miller & Schroeder in connection with the Heritage bonds. He was principally responsible for conducting due diligence documentation, preparing the Official Statements and presenting the underwriting" deal to Miller & Schroeder's Credit Committee. Miller & Schroeder documents show Dhooge to have had extensive communications with Heritage Principals, particularly Kasirer, on promotion and marketing of the Heritage bonds.

c. John M. Clarey was, at all relevant times, an Executive Vice President and the Chief Operating Officer of Miller & Schroeder. He also served as Chairman of Miller & Schroeder's Credit Committee. Through the Credit

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Committee, Clarey had "gatekeeper" responsibility for reviewing Iverson and Dhooge's due diligence, documentation, the Official Statements, and approving the offer and sale of the Heritage bonds.

d. James F. Dlugosch was the Chief Executive Officer of Miller & Schroeder and a member of its Credit Committee, which reviewed and approved the due diligence documents, the Official Statements, and the offer and sale of Heritage bonds.

e. Edward J. Hentges was an Executive Vice President and the Chief Compliance Officer of Miller & Schroeder. He was responsible for ensuring Miller & Schroeder's compliance with securities laws, including its compliance in connection with the Heritage offerings.

f. Kenneth R. Larsen was the Chief Financial Officer of Miller & Schroeder with knowledge and ability to influence corporate affairs in connection with the financing, structuring, and marketing of the Heritage bonds.

g. Jerome E. Tabolich was an Officer of Miller & Schroeder and a member of the Credit Committee with responsibility for reviewing the due diligence documentation, the Official Statements, and approving the offer and sale of the Heritage bonds.

h. Steven W. Erickson was an employee of Miller & Schroeder and a member of its Credit Committee with the responsibility for reviewing the due diligence documentation, the Official Statements, and approving the offer and sale of the Heritage bonds.

i. Paul R. Ekholm was a Senior Vice President of Miller & Schroeder and a member of its Credit Committee with responsibility for reviewing the due diligence documentation, the Official Statements, and approving the offer and sale of the Heritage bonds.

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j. Kenneth E. Dawkins was a Director and control person of Miller & Schroeder with knowledge and ability to influence corporate affairs in connection with the financing, structuring, and marketing of the Heritage bonds.

447. As alleged above, the Miller Schroeder Principals exercised "control" over Miller & Schroeder's management policy. The conduct and influence of the Miller & Schroeder Principals was a primary factor in the decision to underwrite the Heritage offerings. As such, the Principals listed above bear "control-person" liability for their company's primary violations of Section 10(b) and Rule 10b-5 in the preceding paragraphs, as if fully set forth herein.

THIRD CAUSE OF ACTION
CONTROL PERSON LIABILITY UNDER CALIFORNIA CORPORATIONS CODE SECTION 25504
[Against Kasirer, Goldstein[126], Goodman, Emery Rubin, Lim, Bertolini and Miller& Schroeder Principals][127]

448. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

449. According to California Corporations Code Section 25504:

> Every person who directly or indirectly controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal executive Officer or Director of a corporation so liable, every person occupying a similar status or performing similar functions, every employee of a person so liable who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent

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[126] This claim is asserted against Goldstein for actions taken in his role as an Officer and executive of the Heritage Entities.

[127] This claim is for all offerings for both subclasses for the final eight offerings for E. Rubin and Lim as they answered the previous complaint. As for people who did buy the bonds from Miller & Schroeder it is limited to the final eight offerings as to Goldstein, Kasirer, and the Miller & Schroeder Principals. It is limited to the final four offerings for the subclass of people who did not buy the bonds from Miller & Schroeder unless the Plaintiffs' motion for reconsideration is granted. It is limited as to Goodman to the three offerings that took place while he was CFO for both subclasses. It is limited to Bertolini in that the final offering is excluded in the claim against him, and as to the seven offerings that took place when he was with Heritage, only three cover all bondholders, the first four cover only people who acquired the bonds from Miller & Schroeder.

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> who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the other person who is so liable had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

450. No claim is plead in this complaint for violation of § 25501 by the Heritage Entities because they are suspended corporations . However, Plaintiffs contend that the Heritage Entities violated § 25501. As alleged above, the identified Defendants exercised "Control" over the Heritage Entities. They shaped the direction of management and policies. Kasirer through his daily oversight responsibilities, Goldstein, Bertolini, and E. Rubin through supervision of high-ranking personnel, and Goodman (see ¶¶ 299, 342) and Lim as the principal accounting personnel. These Defendants reviewed and approved the Official Statements, along with the agreements and other matters affecting the Heritage Entities. In addition, Goldstein and Bertolini signed the Official Statements, acted as Principal executive Officers and Directors of the Heritage Entities, actively promoted the Heritage bonds, and participated in the strategy and structuring of the offerings. As such, these Defendants bear "control" person liability under section 25504 for the violations of Section 25501 by the Heritage Entities.

451. No claim is plead in this complaint for violation of § 25501 as the claim is barred against Miller & Schroeder, due to its bankruptcy. However, Plaintiffs contend that Miller & Schroeder violated § 25501. The Miller & Schroeder Principals bear liability under Section 25504 for Miller & Schroeder's violation of Section 25501. These Principals exercised "control" over Miller & Schroeder's management and policy, and served as, or performed functions similar to, principal executive Officers or Directors of Miller & Schroeder, as alleged above. Given their positions of influence, the Miller & Schroeder Principals bear

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"control" person liability under Section 25504 for Miller & Schroeder's violations of Section 25501.

FOURTH CAUSE OF ACTION
JOINT AND SEVERAL LIABILITY UNDER CALIFORNIA CORPORATIONS CODE SECTION 25504.1
[Against Kasirer, Dierckman, Goldstein[128], Bertolini, Iverson, Dhooge, and The Attorney Defendants][129]

452. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

453. According to California Corporations Code section 25504.1:

> "Any person who materially assists in any violation of Section . . . 25401, . . . with the intent to deceive or defraud, is jointly and severally liable with any other person liable under this chapter for such violation."

454. Kasirer (see, among others, ¶¶ 5-8, 70, 129, 131, 151, 171-74, 232), Goldstein (¶¶138, 169, 197, 224, 382, 396), and Bertolini (¶¶ 57, 138, 153, 172), materially assisted in the solicitation of the Heritage bonds. They communicated with Iverson, Dhooge, and other Miller & Schroeder Principals. They reviewed and approved marketing materials and gave presentations at "road shows" in support of the offerings. In addition, they materially contributed to the preparation of the Official Statements that contained important information they knew to be false and misleading, as alleged above, in an attempt to both deceive and defraud investors.

455. Iverson and Dhooge materially assisted in the offer and sale of the Heritage bonds with similar intent to deceive or defraud. For example, they knew

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[128] Goldstein is being sued for actions taken as a Heritage executive and as counsel to the Heritage Entities.

[129] This claim is limited to the final 8 offerings for all people who purchased from Miller & Schroeder, and final four for all others as to the individuals. As to the law firms, there is no claim against Sabo for those who did not purchase from Miller & Schroeder, and the claims for those that did applies only to Sarasota, Austin and Chicago. For Atkinson, the claim is for both subclasses for all offerings they were involved in.

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Mark F. Augusta

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In The Matter of The Arbitration Between : BILLY K. LENSER AND DEBORAH LENSER, individually , and BILLY K. LENSER as Trustee of the KURT W. LENSER & MILDRED LENSER TRUST DENA A. LENSER, NATALIE A. LENSER, Claimants, vs. MARK AUGUSTA AND MILLER & SCHROEDER FINANCIAL, INC., Respondents.	CASE NO. 01-00113 RESPONDENT MARK AUGUSTA'S CROSS CLAIM
MARK AUGUSTA, Cross-Claimant, vs. MILLER & SCHROEDER FINANCIAL, INC., JAMES IVERSON, JEROME A. TABOLICH, EDWARD J. HENTGES, KENNETH A. LARSEN, STEVEN W. ERICSON, PAUL A. EKHOLM, JAMES F. DLUGOSCH, JOHN CLAREY, THOMAS S. NELSON, TED GLASRUD, III, KENNETH HALLORAN, ROGER WILKNER, BEREAN CAPITAL, INC.; THE CHAPMAN COMPANY, Cross-Respondents.	

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EXHIBIT R

Cross-Claimant alleges:

PARTIES

CROSS-CLAIMANT

1. Cross-Claimant Mark Augusta (Augusta) is at all relevant times mentioned herein a resident of San Diego County, California, and the holder of a Series 7 brokers license. At all relevant times mentioned herein, Cross-Claimant Augusta was an agent and employee of Cross-Respondent Miller & Schroeder Financial, Inc.

CROSS-RESPONDENTS

2. Cross-Claimant Augusta is informed and believes, and thereupon alleges that Cross-Respondent Miller & Schroeder Financial, Inc., is a corporation duly organized and existing under the laws of the State of Minnesota, and is doing business in San Diego County, California, from offices on Solana Beach, California, as a securities firm which was/is underwriting and selling municipal bonds. Miller & Schroeder was issued a broker-dealer certificate in California in 1984, authorizing it to offer and sell securities in compliance with the law. Miller & Schroeder has been a member of the National Association of Securities Dealers (NASD), since 1976. Miller & Schroeder has at all times mentioned herein, held itself out to the public as a regulated entity composed of securities professionals specializing in the sale of municipal bonds.

3. Cross-Claimant Augusta is informed and believes, and thereupon alleges that Cross-Respondents Miller & Schroeder, Inc., Miller & Schroeder Investments Corporation, Miller & Schroeder Small Business Capital Corporation, Miller & Schroeder Mortgage Corporation, Pooled Loan Marketing Corporation, and PLMC-I, are Minnesota corporations affiliated with Miller & Schroeder through common ownership and control. The Cross-Respondents in

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Paragraphs 2 and 3 are sometimes collectively referred to as Miller & Schroeder Cross-Respondents.

4. Cross-Claimant Augusta is informed and believes, and thereupon alleges that Cross-Respondent Marshall, Miller & Schroeder Financial, Inc., (MM&S) is a corporation duly organized and existing under the laws of the State of Minnesota, and is doing business in San Diego County, California, from offices in Solana Beach, California, as a securities firm underwriting and selling municipal bonds. Following the recent acquisition of assets from the Miller and Schroeder Cross-Respondents, MM&S became a licensed broker-dealer in California, and a member of NASD in October, 2001, thereby authorizing it to offer and sell securities in compliance with the law. MM&S holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Cross-Claimant Augusta is informed and believes, and based thereupon alleges that Cross-Respondent MM&S is operating as a successor corporation of Miller & Schroeder. Beginning in 2001, the Miller & Schroeder Cross-Respondents began divesting portions of its business to employees and others. Cross-Claimant Augusta is informed and believes, and based thereupon alleges that Miller & Schroeder continues to conduct business, in some form, from its Solana Beach, California office, using the name of MM&S.

5. Cross-Claimant is informed and believes, and thereupon alleges that Respondents Marshall Miller & Schroeder, Inc., and MM&S Investments Corporation are Minnesota corporations affiliated with MM&S through common ownership and control. These two corporate respondents, plus MM&S, are sometimes collectively referred to as MM&S Respondents.

MILLER & SCHROEDER INDIVIDUAL KEY RESPONDENTS

6. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent JAMES IVERSON is, and at all relevant times was a resident of San Diego County, California, a former Securities & Exchange Commission enforcement attorney, and an officer, director, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

7. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent JEROME A. TABOLICH is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Tabolich was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

8. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent EDWARD J. HENTGES is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Hentges was an officer, director, owner, and supervisor of MILLER & SCHROEDER Cross-Respondents.

9. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent KENNETH R. LARSEN is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Larsen was an officer, owner, and supervisor of MILLER & SCHROEDER Cross-Respondents.

10. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent STEVEN W. ERICKSON is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Erickson was an officer, owner, credit committee member and supervisor of MILLER & SCHROEDER Cross-Respondents.

11. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent PAUL R. EKHOLM is, and at all relevant times was a resident of Minnesota. At all

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relevant times mentioned herein, Cross-Respondent Ekholm was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

12. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent JAMES F. DLUGOSCH is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Dlugosch was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

13. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent JOHN CLAREY is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Clarey was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

14. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent THOMAS S. NELSON is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Nelson was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

15. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent TED GLASRUD, III is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Glasrud was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

16. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent KENNETH HALLORAN is, and at all relevant times was a resident of Minnesota. At all relevant times mentioned herein, Cross-Respondent Halloran was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

17. Cross-Claimant is informed and believes, and thereupon alleges that Cross-Respondent ROGER J. WILKNER is, and at all relevant times was a resident of Minnesota. At

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all relevant times mentioned herein, Cross-Respondent Wilkner was an officer, owner, credit committee member, and supervisor of MILLER & SCHROEDER Cross-Respondents.

18. Cross-Respondents Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, Nelson, Wilkner, Halloran, and Dlugosch were at all relevant times herein key employees of the MILLER & SCHROEDER Cross-Respondents and/or members of Miller & Schroeder's credit committee with responsibility for reviewing and approving the Heritage Bonds for sale to the investing public, and are sometimes herein collectively referred to as "KEY EMPLOYEE RESPONDENTS."

UNDERWRITER RESPONDENTS:

19. Cross-Respondent Berean Capital, Inc. is a Delaware corporation doing business in California as a securities firm underwriting and selling municipal bonds. Berean Capital Inc. has been a member of the NASD since 1989. Berean Capital Inc's broker-dealer certificate was revoked in California in 1999. At all times herein, Berean Capital Inc. has held itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Cross- Respondent Berean Capital, Inc. participated with Miller and Schroeder as co-underwriters in the Heritage Care-Chicago bonds.

20. Respondent The Chapman Company is a Maryland corporation doing business in California as a securities firm underwriting and selling municipal bonds. The Chapman Company was issued a broker dealer certificate in California in 1994. Cross-Respondent The Chapman Company participated with Miller & Schroeder as co-underwriters in the CME-Jackson Avenue Apartment bonds.

KASIRER PARTIES

21. Cross-Claimant is informed and believes, and thereupon alleges that Robert A. Kasirer is a resident of Los Angeles County, California, and an attorney licensed to practice in

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the State of New York. Kasirer is in the business of buying, selling, and renovating distressed or vacant health care properties with funds raised from the public sale of municipal bonds.

22. Cross-Claimant is informed and believes, and thereupon alleges that Robert A. Kasirer dominates and controls various limited partnerships, limited liability corporations, and other corporations which receive fees from bond proceeds to manage the daily operations of proposed health care facilities financed by the Heritage Bonds. These entities, together with Mr. Kasirer are collectively referred to as the Kasirer Parties.

Conspiracy to Defraud Through the Offer and Sale of Heritage Bonds

General Description of the Scheme to Defraud.

23. Commencing in or during 1996, Cross-Respondents, entered into an agreement and scheme to defraud investors by effecting transactions in "Heritage bonds" and other offerings through the use of false and misleading statements of material facts.

24. Pursuant to the agreement and scheme to defraud, Miller & Schroeder acted as the investment banker and lead underwriter for most Heritage Bond offerings. Under the direction of the Key Employee Respondents, and others presently unknown to Cross-Claimant, Miller & Schroeder raised capital for health care facility development by structuring securities offerings using a municipal entity as the stated issuer.

25. The Heritage Bonds, underwritten by Miller & Schroeder, share these characteristics: the stated issuer was a local governmental or non-profit corporation created to address health care needs; the governmental entity did not have the taxing power and lacked assets to secure the bonds; the ultimate obligors responsible for debt service payments to investors are the Heritage Parties, and others presently unknown, in their respective roles as promoter and manager of the proposed real estate project; the Heritage Bonds were unrated and without meaningful credit enhancements; most of the Heritage Bonds were presented as tax

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exempt; Miller & Schroeder, and its legal counsel drafted the primary disclosure document for each offering, known as an Official Statement, for use in soliciting prospective investors; as municipal bonds, the Heritage Bonds are exempt from the registration provisions of the securities law; the Heritage bonds were marketed as secured municipal bonds; payment for fees of the participants, such as the promoter, manager, stated issuer, and the legal and securities professionals, was contingent upon the sale of the municipal bonds.

26. Cross-Respondent Miller & Schroeder acquired the Heritage Bonds at a discount from the stated issuers. Miller & Schroeder realized a profit by immediately reselling the municipal bonds to the public at or near the face amount of the bonds. Cross-Claimant is informed, that Miller & Schroeder also extracted other fees for their professional services. All revenue received by Miller & Schroeder for financing, structuring, and distributing the Heritage Bonds was derived from investor proceeds.

Proposed Development of Heritage Health Care Facilities

27. Commencing in 1996, Miller & Schroeder underwrote and sold the Heritage Bonds, in denominations of $5,000 per bond to provide financing for the HERITAGE PARTIES' proposed business of acquiring, developing, renovating, and operating health care facilities such as Alzheimer care facilities.

28. The Heritage Bonds were structured by Miller & Schroeder as conduit financing for the proposed development of health care facilities in California, Texas, Illinois, and Florida. The stated issuer was a quasi-governmental agency that disclaimed any responsibility for debt service and project oversight. The stated issuer acted as a conduit to facilitate mostly tax-exempt financing to private developers such as the HERITAGE PARTIES and the KASIRER PARTIES.

29. The success of each proposed health care facility financed by the Heritage Bonds, and thus the repayment of principal and interest to bond holders, was dependent upon the

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experience, skill, competence, efforts and integrity of the promoters and managers. The Heritage Bonds were in effect providing financing for private real estate development projects of the HERITAGE PARTIES and the KASIRER PARTIES. The development projects were speculative start-up real estate ventures financed by Miller & Schroeder's sale of Heritage Bonds.

Seed Money Provided by Miller & Schroeder Respondents

30. The MILLER & SCHROEDER RESPONDENTS agreed to loan seed money to the HERITAGE PARTIES and the KASIRER PARTIES before the Heritage Bonds were structured and marketed to the investing public. The purpose of the loans was to provide bridge financing for preliminary work such as property appraisals and feasibility studies.

31. This seed money took the form of at least two loans, totaling approximately $700,000. The loans were secured by investor proceeds derived from the anticipated public sale of Heritage Bonds.

32. The seed money loans from Miller & Schroeder to the HERITAGE PARTIES and KASIRER PARTIES as a conflict of interest were not disclosed to investors in the Heritage Bonds.

Structuring the Bonds

33. Miller & Schroeder assembled a "working group" of bond professionals who recruited the municipal issuers and commenced drafting the agreements and documents necessary to make the proposed Heritage Bonds marketable to investors.

34. The KASIRER PARTIES located distressed hospitals and negotiated for their purchase with anticipated proceeds from the proposed sale of Heritage Bonds.

35. The HERITAGE PARTIES participated as the promoter by borrowing Heritage Bond proceeds to provide funds to purchase and renovate the hospital property.

36. The HERITAGE PARTIES and the KASIRER PARTIES were paid "fees" from bond proceeds to oversee the renovation of the proposed hospital or Alzheimer licensure to operate as a hospital or Alzheimer facility, and to manage the daily operations of the facilities.

37. Each of the Heritage Bond offerings involved the services of an institutional trustee pursuant to a written trust indenture to facilitate the flow of money in each Heritage Bond offering.

38. Miller & Schroeder, and the Key Employee Respondents structured the Heritage Bonds so that the trustees allocated bond holder proceeds to establish reserve funds, working capital funds, and funded interest. Miller & Schroeder intended that these reserves, composed of investors' funds, be used to make initial debt service payments in lieu of project revenues.

39. Miller & Schroeder also structured the Heritage Bonds so that substantial principal payments were not due until many years later. By "back loading" principal payments and using investor-funded reserves to make interest payments, Miller & Schroeder were able to mask cash flow problems and delay defaults for the Heritage Bonds.

40. The trustees have declared the Heritage Bonds to be in default, and are in the process of gathering, conserving, and if necessary, foreclosing the hospital property to secure the bonds.

41. In each of the above-referenced Heritage Bonds, Miller & Schroeder underwrote, offered, and sold the securities for the stated purpose of financing the acquisition, renovation and management of a proposed hospital or Alzheimer facility. The HERITAGE PARTIES were paid a fee, from bond proceeds, to substantially assist in each offering as the borrower and promoter. The KASIRER PARTIES were paid fees from bond proceeds to manage the facility for the HERITAGE PARTIES.

42. Beginning with the earliest Heritage Bonds in 1996, Respondents knew that the renovation projects suffered cost overruns and construction delays and losses from operations.

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Respondents devised a course of business to transfer bond proceeds between projects to alleviate cash flow problems.

43. Many of the proposed Alzheimer facilities never commenced operations. Respondents knew that those facilities in operation were not profitable. Nevertheless, Miller & Schroeder, under the direction of KEY EMPLOYEE RESPONDENTS, continued to underwrite successive Heritage Bond offerings without disclosing the status of the earlier offerings and the projects financed with investor proceeds.

MILLER & SCHROEDER RESPONDENTS' EXIT STRATEGY

44. Miller & Schroeder advertised itself as a national expert assembling a working group of professionals to structure tax-exempt revenue bonds to finance health care facilities.

45. Based on reputation and experience, Miller & Schroeder negotiated for itself substantial fees in excess of $6.6 million for financing, structuring and marketing the Heritage Bonds. These fees were paid from Heritage Bond proceeds.

46. As Respondents became aware of cost overruns, construction delays, operational losses, cash flow problems, and looming defaults for the Heritage Bonds, the KEY EMPLOYEE RESPONDENTS and the MILLER & SCHROEDER RESPONDENTS commenced a strategy to protect and preserve their interests, leaving Heritage Bond holders, and Cross-Claimant Augusta holding the bag.

47. While more Heritage Bonds were being sold by Miller & Schroeder, Cross-Respondent Iverson sold his stock in Miller & Schroeder in 1997 in a management buyout led by Cross-Respondent Dlugosch. Respondent Iverson continues to the present day to act as an officer, director and control person for Miller & Schroeder.

48. While continuing to underwrite and make a market for the Heritage Bonds, the KEY EMPLOYEE RESPONDENTS attempted to sell the business. Cross-Claimant Augusta is

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informed that in 1999, Kinnard Investments refused to consummate a proposed merger with Miller & Schroeder after evaluating the potential liability exposure created by the Heritage Bonds.

49. In early 2000, Iverson and Miller & Schroeder were named as respondents in a lawsuit filed in San Bernardino County, California, in which the county alleged corrupt "pay to play" payments from Miller & Schroeder in return for municipal bond underwriting business, Cross-Respondents Iverson and Miller & Schroeder settled the litigation in the fall of 2001 by agreeing to pay $350,000 to San Bernardino County, California.

50. While continuing to make a market for the Heritage Bonds, the KEY EMPLOYEES began selling off pieces of the business. In January, 2001, Miller & Schroeder sold its asset management unit and 10,000 retail securities accounts to a Minnesota-based company.

51. In 2001, the MILLER & SCHROEDER RESPONDENTS entered into an Asset Purchase Agreement with the MM&S RESPONDENTS. Under the terms of the Asset Purchase Agreement, the MII.LER & SCHROEDER RESPONDENTS are attempting to transfer their assets to the former executives of Miller & Schroeder now doing business as the MM&S RESPONDENTS, and escape liability for wrongdoing.

52. In recent months, the liquidity and value of the Heritage Bonds collapsed in the secondary market based after Miller & Schroeder ceased acting as the lead underwriter and primary market maker for the Heritage Bonds.

53. Various officers, directors, and MILLER & SCHROEDER KEY EMPLOYEES directly stated to Cross-Claimant that all the Heritage bonds were solvent; that all the proper "due diligence" had been done by the Miller & Schroeder Respondents and the Miller & Schroeder Key Employees; and that Cross-Claimant Augusta should sell and continue to sell the

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various issues of Heritage bonds to his clientele, and tell his clientele that the Heritage bonds were good investments. Cross-Claimant Augusta had no knowledge of the fatal "due diligence" flaws of the Heritage bonds. Said flaws were known to Cross-Respondent.

FRAUDULENT CONVEYANCE

54. Cross-Claimant is informed that the KEY EMPLOYEE RESPONDENTS continue to conduct business as usual. Cross-Claimant is informed and believes that the MM&S RESPONDENTS employ approximately 19 former managers and approximately 100 former employees of Miller & Schroeder. The MM&S RESPONDENTS continue to underwrite bonds and loan participations, including Indian gambling financing, using the same locations and phone numbers used by the MILLER & SCHROEDER RESPONDENTS to finance, structure, and market the Heritage Bonds. For example, MM&S Financial Inc. is now doing business from the former Miller & Schroeder Solana Beach office.

55. Pursuant to the Asset Purchase Agreement, MILLER & SCHROEDER RESPONDENTS' assets were transferred to MM&S RESPONDENTS in an effort to avoid obligations relating to the Heritage Bonds.

56. The MILLER & SCHROEDER RESPONDENTS structured the Asset Purchase Agreement so that the value of the assets transferred to the MM&S RESPONDENTS exceeds the value received by the MILLER & SCHROEDER RESPONDENTS. The value received does not include unperformed promises contingent upon any future success of the MM&S RESPONDENTS. The MILLER & SCHROEDER RESPONDENTS are in the process of being left insolvent for the intended purpose of not having the ability to meet liabilities to the Heritage Bond holders.

57. The KEY EMPLOYEE RESPONDENTS at Miller & Schroeder structured the terms of the Asset Purchase Agreement with knowledge that the MILLER & SCHROEDER

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RESPONDENTS would incur debts and obligations relating to the Heritage Bonds beyond their ability to pay as they became due, thereby intending to hinder, delay, or defraud Heritage Bond holder claims.

ROLES OF VARIOUS RESPONDENTS IN THE CONSPIRACY

58. Miller & Schroeder agreed to participate in the conspiracy by acting as the lead underwriter responsible for financing, structuring, and marketing the fraudulent Heritage Bonds.

59. Cross-Respondent JAMES IVERSON agreed to participate with full knowledge of the conspiracy by:

supervising the Solana Beach office of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; controlling the capital of Miller & Schroeder including secret loans to the HERITAGE PARTIES; acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; acting as the head of underwriting for Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; providing secret loans and advances from Miller & Schroeder for the HERITAGE PARTIES to obtain appraisals and feasibility studies needed by Miller & Schroeder to underwrite the proposed Heritage Bonds; directing Heritage Bond proceeds to assist the KASIRER PARTIES in acquiring vacant health care facilities, most of which were burdened with restrictive use covenants, with knowledge of the undisclosed negative information regarding the background of Robert Kasirer; instructing investment bankers at Miller & Schroeder under his supervision to ignore material information regarding the Heritage Bonds such as restrictive use covenants burdening some of the health care facilities and negative information regarding the background of Robert Kasirer; providing advice and consultation to Miller & Schroeder in furtherance of its exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August of 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S, Inc.; and substantially assisting the fraudulent conveyance as a "key employee".

60. JOHN CLAREY agreed to participate with full knowledge of the conspiracy by:

acting as chairman of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements; approving successive Heritage Bond underwritings while accumulating information of problems plaguing earlier Heritage Bond projects; acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; accepting a promotion from Chief Operating Officer to Executive Vice President of Miller & Schroeder and thereafter acting as a key Miller & Schroeder executive officer responsible for controlling the Heritage Bond problems with investors and the media during implementation of the exit strategy; substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller".

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61. JEROME TABOLICH agreed to participate with full knowledge of the conspiracy by:

acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements; acting as an officer and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; participating in the exit strategy and fraudulent conveyance as the President of the MILLER & SCHROEDER PARTIES, and continuing thereafter as an officer and shareholder of the MM&S RESPONDENTS; by substantially assisting the fraudulent conveyance as a "key employee" and exit strategy and fraudulent conveyance, including selling his Miller & Schroeder stock in August, 1997 and then continuing as a control person of Miller & Schroeder until the fraudulent conveyance resulted in him presently acting as a shareholder and consultant of MM&S Inc.; and substantially assisting the fraudulent conveyance as a "key employee",

62. EDWARD HENTGES agreed to participate with full knowledge of the conspiracy by:

acting as a compliance officer, an executive officer, and shareholder at Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; participating in the exit strategy and fraudulent conveyance as an executive officer and director of the MILLER & SCHROEDER RESPONDENTS and continuing thereafter as an officer, director and shareholder of the MM&S RESPONDENTS; and assisting the fraudulent conveyance as a "key employee".

63. KENNETH LARSEN agreed to participate with full knowledge of the conspiracy by:

acting as the Chief Financial Officer at Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; participating in the exit strategy and fraudulent conveyance as an executive officer of the MILLER & SCHROEDER RESPONDENTS signing the Asset Purchase Agreement dated July 26, 2001, and continuing thereafter as an executive officer of the MM&S RESPONDENTS; and substantially assisting the fraudulent conveyance as a "key employee" and "knowledgeable seller.

64. STEVEN ERICKSON agreed to participate with full knowledge of the conspiracy by:

acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements; acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the MILLER & SCHROEDER RESPONDENTS and continuing thereafter as an executive officer and shareholder of the MM&S RESPONDENTS; and substantially assisting the fraudulent conveyance as a "key employee".

65. PAUL EKHOLM agreed to participate with full knowledge of the conspiracy by:

acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements; acting as an executive officer of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; participating in the exit strategy and fraudulent conveyance as a Senior Vice President of the MILLER & SCHROEDER RESPONDENTS and continuing thereafter as an executive officer and shareholder of the MM&S RESPONDENTS; and substantially assisting the fraudulent conveyance as a "key employee".

66. JAMES F. DLUGOSCH agreed to participate with full knowledge of the conspiracy by:

acting as a member of the credit committee at Miller & Schroeder with responsibility for reviewing the proposed Heritage Bond underwritings and documentation including the Official Statements; acting as an officer, director, and shareholder of Miller & Schroeder during the financing, structuring, and marketing of the Heritage Bonds; and participating in the exit strategy and fraudulent conveyance as an executive officer and director of the MILLER & SCHROEDER RESPONDENTS and substantially assisting the fraudulent conveyance as a "knowledgeable seller".

ALTER EGO ALLEGATIONS

67. Cross-Claimant Augusta is informed and believes, and thereupon alleges that Key Employee Respondents, and the MM&S Respondents are, and were the owners of a majority of the shares of stock of Miller & Schroeder Respondents.

68. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all Cross-Respondents, and each of them, and all the other Cross-Respondents, and each of them, such that any individuality and separateness between all Cross-Respondents, and each of them, and the Cross-Respondent corporate entities have ceased to exist, and all the Cross-Respondent corporate entities are the alter egos of Cross-Respondents, and each of them, in that Cross-Claimant is informed and believes, and based thereupon alleges that each of the individual Cross-Respondents used the assets of the Cross-Respondent corporate entities for their personal uses, caused assets of the corporation to be transferred to him without adequate compensation, and for fraudulent purposes.

69. Adherence to the fiction of the separate existence of any Cross-Respondent corporate entity as an entity distinct from any of the other Cross-Respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that

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Cross-Respondents, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith without financial liability.

COMMON MISREPRESENTATIONS AND OMISSIONS BY CROSS-RESPONDENTS TO CROSS-CLAIMANT

70. In connection with the Heritage Bonds underwritten, offered and sold by Miller & Schroeder, express and implied representations in the Official Statements, and oral communications to Cross-Claimant Augusta were false and/or misleading statements, and the true facts were deliberately withheld from Cross-Claimant Augusta.

Loans from Miller & Schroeder to the Heritage Parties.

71. Miller & Schroeder failed to disclose to Cross-Claimant Augusta approximately $700,000 in loans to the Heritage Parties. Cross-Claimant is informed that money was transferred pursuant to these loans before any of the Heritage Bonds were underwritten. These loans provided seed money to the HERITAGE PARTIES in preparation for underwriting the Heritage Bonds.

72. The Official Statements contained a section titled "Relationships Among The Parties" for the purpose of disclosing conflicts of interest and related party transactions, that stated, "[T]here no direct or indirect relationship between any of the officers of the Company (the HERITAGE PARTIES) and the officers and directors of the Manager (the KASIRER PARTIES)."

73. The Official Statements' representations in the section titled "Relationships Among The Parties" was false and misleading because there was no disclosure of loans from Miller & Schroeder, disclosure of pre-existing business relationships involving Robert Kasirer and others, and no disclosure of the continuing relationship between Miller & Schroeder and the

HERITAGE PARTIES and the KASIRER PARTIES as evidenced by twelve successive Heritage Bond offerings.

74. The Official Statements contained a section titled "Estimated Sources and Uses of Funds," describing the expected application of Heritage Bond proceeds. The descriptions were false and misleading because, among other reasons, the use of Heritage Bond proceeds to repay the loans from, Miller & Schroeder should have been, but was not, disclosed in the Official Statements as a conflict of interest and as a use of investor funds.

COST OVERRUNS AND CONSTRUCTION DELAYS FOR EACH PROJECT

75. The Official Statements for the Heritage Bonds contained representations regarding the use of investor proceeds to renovate the project property and operate it as a health care facility. In addition to the "Estimated Sources And Uses Of Funds" section, the Official Statements contained a section titled "Construction Contract and the Contractor" which stated, "[U]pon issuance of the (Heritage Bonds), the Company (the HERITAGE RESPONDENTS) will enter into a construction contract ... to renovate the Existing Facility, pursuant to a guaranteed maximum price contract in the amount of ... . In connection with the Renovation Project, the contractor will guarantee completion of the Renovation Project and will provide a performance bond... . The Construction Contract requires the Contractor to complete the Renovation Project by .... subject to certain limited extensions, and to guarantee completion of the Renovation Project." (emphasis added)

76. Based on these express representations appearing in the Official Statements, prospective investors were promised that the Cross-Respondents could complete the proposed facility renovation for the stated price by the stated completion date. Accordingly, the Official Statements contained feasibility studies and debt service coverage calculations based on the stated construction cost and completion date. It was therefore known to Cross-Respondents,

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including Miller & Schroeder in their role of structuring each offering, that any delay or cost overruns in renovating the facility would delay operation of the facility, resulting in cash flow shortages.

77. However, from the beginning in 1996, the HERITAGE PARTIES and the KASIRER PARTIES could not complete the renovation and thus commence operation of the proposed health care facilities within the specified time frame and within the "guaranteed" cost allocated pursuant to each Heritage Bond structured by Miller & Schroeder.

78. Knowing that the promised cost "guarantee" and completion date were not being met for the renovation projects, Miller & Schroeder continued to underwrite successive Heritage Bonds using Official Statements containing the same representations but without disclosing to prospective investors these prior cost overruns, delays, and resulting cash flow shortages.

79. Knowing that the promised cost "guarantee" and completion date were not being met for the renovation projects, Miller & Schroeder continued to underwrite successive Heritage Bonds using Official Statements containing feasibility studies and debt service ratio calculations based on progressively unreliable renovation costs and completion dates.

80. Cross-Respondents, knew during the offer and sale of Heritage Bonds that the promised "performance bonds" for project renovation were illusory or nonexistent.

NEGATIVE INFORMATION REGARDING THE KASIRER PARTIES

81. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds contained a section describing the background and accomplishments of the KASIRER PARTIES as the proposed manager of each health care facility. Robert Kasirer was described as a seasoned corporate executive experienced in developing and managing retirement and health care facilities. Robert Kasirer was also described as a lawyer and member of the New York Bar Association who has lectured extensively and authored articles on the

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retirement housing industry. The experience and integrity of the KASIRER PARTIES, including Robert Kasirer, was material to prospective investors because revenue derived from operation of the facility by the KASIRER PARTIES was the sole source of funds available for debt service payments for each respective Heritage Bond. Representations in the Official Statements about the achievements of the developer and manager were material to Claimants because without an established and reputable and financially strong developer and manager, Heritage Bond holders had little, if any, assurance that the proposed project would be developed and operated and valued as represented in the Official Statements.

82. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds failed to disclose negative information regarding the KASIRER PARTIES including: (a) several lawsuits in the last eight years alleging wrongful acts, including fraud, against Robert Kasirer in various business transactions including development of real property; (b) unpaid obligations, totaling hundreds of thousands of dollars, of Robert Kasirer, arising from tax liens and unsatisfied judgments; (c) an IRS investigation involving Robert Kasirer's participation in the tax-exempt status of municipal securities financing real property development; (d) (for those Heritage Bonds marketed after August of 1997) a lawsuit filed August 7, 1997, in California, against Robert Kasirer, some of the HERITAGE PARTIES, and others, alleging wrongful acts such as misappropriation of bond proceeds at the Rancho Cucamonga Heritage facility; or (e) (for those Heritage Bonds marketed after July of 1998) a lawsuit was threatened and eventually filed July 22,1998, in California, against some of the KASIRER PARTIES and some of the HERITAGE PARTIES alleging wrongful acts such as fraud in the management of the Rancho Cucamonga Heritage facility.

83. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds also contained a "Litigation" section stating in part, "[T]he Company

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(the HERITAGE PARTIES) has advised that no litigation or proceedings are pending or, to its knowledge, threatened against it or the Facility or the transactions described herein or which might have a material adverse effect on it or the Facility or the transactions described herein." (emphasis added) This representation was made misleading by the Cross- Respondents' failure to disclose, in the appropriate Heritage Bond Official Statements, the litigation described in the preceding paragraph.

RESTRICTIVE COVENANTS BURDENING PROJECT PROPERTY

84. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds contained a section describing "Security for the Bonds" which stated in part, "[T]o further secure the payments due pursuant to the Note, the Company (the HERITAGE PARTIES') will grant to the Mortgage Trustee a first mortgage lien on the land and improvements constituting the Facility and a first priority security interest in the personal property portions of the Facility and the Revenues subject only to Permitted Encumbrances, as defined in the Deed of Trust." Thus, Heritage Bond holders were the beneficiaries of a first deed of trust on the health care facility property.

85. The Official Statements prepared and used by Miller & Schroeder in connection with the Heritage Bonds also contained an "Appraisal Report" section setting forth a current "as is" appraised market value for the hospital facility securing the Heritage Bonds.

86. However, the appraiser valued the property based on the assumption that title was held in fee simple without any liens or encumbrances. Thus, the "as is" appraised market value for each hospital was based on the assumption that title was in fee simple without any liens or encumbrances.

87. Cross-Respondents knew that every distressed hospital property purchased from Columbia/HCA with Heritage Bond proceeds contained a restrictive covenant running with the

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land that prohibited use of the property as a hospital, surgery center, birthing facility, laboratory, or other similar ancillary medical service. This encumbrance was not considered in the "as is" appraised market value disclosed to prospective investors in certain Heritage Bonds including Danforth Texas City, Danforth Sam Houston, Tarrant Fort Worth, Mexico Beach Sarasota, City of Chicago, Tarrant Houston, Mexico Beach Seminole, and Tarrant Brownsville. Thus, the "as is" appraised market value was manipulated by Cross-Respondents in each respective Official Statement in light of the undisclosed restrictive covenants burdening the collateral.

88. Furthermore, Cross-Claimant Augusta was not adequately advised of the recent transaction history regarding real property being sold and pledged as security for bondholders and key transaction terms such as price, fair market value, liens, restrictive covenants, and the identity and profit of participants to the transaction such as the KASIRER PARTIES.

89. Cross-Claimant Augusta was misled by not knowing the true and complete assumption and limiting conditions supporting the appraisals, opinions of value, and feasibility reports for the property purchased with bond holder proceeds and pledged as collateral to secure the bonds. The present fair market value of the pledged property was material to prospective investors' calculation of the value to-lien ratio which measures the adequacy of the collateral securing their investment.

FIRST CAUSE OF ACTION
Fraud
By Cross-Claimant as Against All Cross-Respondents

90. Cross-Claimant Augusta refers to and realleges Paragraphs 1 through 89, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

91. The representations made by Cross-Respondents, were false and fraudulent.

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92. The true facts were that the real financial condition of the Heritage Bonds was intentionally hidden from Cross-Claimant Augusta by Cross-Respondents. Further, the Miller & Schroeder Cross-Respondents and the individual Cross-Respondents intentionally hid their plan to sell off or otherwise hide or sequester their assets so as to allow Cross-Claimant Augusta to be the only person involved not be judgment-proof.

93. When Cross-Respondents made the fraudulent representations, they knew them to be false, and these representations were made by Cross-Respondents with the intent to defraud and deceive Cross-Claimant Augusta, and with the intent to induce Cross-Claimant Augusta to act in the manner herein alleged.

94. Cross-Claimant Augusta, at the time the representations were made by Cross-Respondents, and at the time Cross-Claimant Augusta took the actions herein alleged, was ignorant of the falsity of Cross-Respondents' representations, and believed them to be true. In reliance on these representations, Cross-Claimant was induced to and did sell the Heritage Bonds to his customers, including the Claimant herein. Had Cross-Claimant Augusta known the actual facts, he would not have taken such actions. Cross-Claimant Augusta's reliance upon the Cross-Respondents' representations was justified because of the long-term relationship he had with the Miller & Schroeder Cross-Respondents, and the Key Employee Cross-Respondents, and Cross-Claimant Augusta's knowledge of the fiduciary duty owed to him by the Cross-Respondents.

95. As a direct and proximate result of the Cross-Respondents' fraud and deceit, and the facts herein alleged, Cross-Claimant Augusta has been damaged to include loss of business, loss of income, loss of reputation, physical and emotional distress, all to his general damage in an amount to be determined, according to proof.

96. The acts of Cross-Respondents were willful, wanton, malicious, and in conscious and wanton disregard of the rights and safety of Cross-Claimant Augusta, knowing their acts

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would put tremendous financial pressure upon him, and cause him acute mental distress. In doing so, Cross-Respondents, meant to oppress Cross-Claimant Augusta, and their acts were despicable conduct which deliberately subjected Cross-Claimant Augusta to cruel and unjust hardship in conscious disregard of Cross-Claimant Augusta's rights. As such, Cross-Claimant Augusta is entitled to punitive and exemplary damages against Respondents, in an amount sufficient to punish and make an example of Cross-Respondents.

SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
By Cross-Claimant as Against all Cross-Respondents

97. Cross-Claimant Augusta refers to and realleges Paragraphs 1 through 96, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

98. At all material times mentioned herein, Cross-Respondents owed a fiduciary duty to Cross-Claimant Augusta.

99. Cross-Respondents breached their fiduciary duty to Cross-Claimant Augusta by intentionally and fraudulently failing to inform him that the Heritage Bonds he sold to consumers would not pass a due diligence test, and that said bonds were going to default, and that there were material conflicts of interest between Miller & Schroeder and the Heritage Parties, and that the Miller & Schroeder Cross-Respondents, and the Key Employee Cross-Respondents falsely and affirmatively represented to Cross-Claimant Augusta that the Heritage bonds were solvent and a good and suitable investment for his clients.

100. As a direct and proximate result of the Cross-Respondents' breach of fiduciary duty, Cross-Claimant Augusta has been damaged to include loss of business, loss of income, loss of reputation, physical and emotional distress, all to his general damage in an amount to be determined, according to proof.

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101. The acts of Cross-Respondents were willful, wanton, malicious, and in conscious and wanton disregard of the rights and safety of Cross-Claimant Augusta, knowing their acts would put tremendous financial pressure upon him, and cause him acute mental distress. In doing so, Cross-Respondents meant to oppress Cross-Claimant Augusta, and their acts were despicable conduct which deliberately subjected Cross-Claimant Augusta to cruel and unjust hardship in conscious disregard of Cross-Claimant Augusta's rights. As such, Cross-Claimant Augusta is entitled to punitive and exemplary damages against Respondents, in an amount sufficient to punish and make an example of Cross-Respondents.

THIRD CAUSE OF ACTION
Constructive Fraud
By Cross-Claimant as Against Cross-Respondents

102. Cross-Claimant Augusta refers to and realleges Paragraphs 1 through 101, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

103. By virtue of Cross-Complainant's employment by Cross-Respondents, the Cross-Respondents owed Cross-Complainant a fiduciary duty, and by virtue of Cross-Complainant having placed confidence in the fidelity and integrity of Cross-Respondents, a confidential relationship existed at all times mentioned herein.

104. Despite having voluntarily accepted the trust and confidence reposed in them by the Cross-Complainant, and in violation of this relation of trust and confidence, Cross-Respondents, made material misstatements of facts regarding the Heritage bonds, as set forth above.

105. As a direct and proximate result of the Cross-Respondents' constructive fraud and deceit, and the facts herein alleged, Cross-Complainant Augusta has been damaged to include

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loss of business, loss of income, loss of reputation, physical and emotional distress, all to his general damage in the amount to be determined, according to proof.

106. The acts of Cross-Respondents were willful, wanton, malicious, and in conscious and wanton disregard of the rights and safety of Cross-Complainant Augusta, knowing their acts would put tremendous financial pressure upon him, and cause him acute mental distress. In doing so, Cross-Respondents meant to oppress Cross-Complainant Augusta, and their acts were despicable conduct which deliberately subjected Cross-Complainant Augusta to cruel and unjust hardship in conscious disregard of Cross-Complainant Augusta's rights. As such, Cross-Complainant Augusta is entitled to punitive and exemplary damages against Respondents, in an amount sufficient to punish and make an example of Cross-Respondents,.

FOURTH CAUSE OF ACTION
Control Person Liability Pursuant to Section 20 of the Securities Exchange Act of 1934, Section 15 of the Securities Act of 1933, and California Corporations Code §25504 By Cross-Complainant as Against all Cross-Respondents

107. Cross-Complainant refers to and realleges Paragraphs 1 through 106, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

108. Cross-Respondents and their officers, directors, partners, and principles, directly and indirectly controlled Cross-Complainant in connection with the sale of the bonds described herein.

109. As a direct and proximate result of the facts, Cross-Complainant Augusta has been damaged to include loss of business, loss of income, loss of reputation, physical and emotional distress, all to his general damage in an amount to be determined, according to proof.

110. The acts of Cross-Respondents, were willful, wanton, malicious, and in conscious disregard of the rights and safety of Cross-Complainant Augusta, knowing their acts would put tremendous financial pressure upon him, and cause him acute mental distress. In doing so,

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Cross-Respondents, meant to oppress Cross-Complainant Augusta, and their acts were despicable conduct which deliberately subjected Cross-Complainant Augusta to cruel and unjust hardship in conscious disregard of Cross-Complainant Augusta's rights. As such, Cross-Complainant Augusta is entitled to punitive and exemplary damages against Respondents, in an amount sufficient to punish and make an example of Cross-Respondents..

FIFTH CAUSE OF ACTION
Successor Liability
By Cross-Complainant as Against MM&S Cross-Respondents

111. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 110, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

112. Cross-Complainant is informed and believes, that in or during 2001, the Key Employee Cross-Respondents implemented a plan to divest the municipal bond underwriting department from Miller & Schroeder by selling the institutional bond business to a small group of Miller & Schroeder employees, and an investor named Marshall Financial Group. This transaction resulted in the formation of the MM&S Cross-Respondents.

113. Cross-Complainant is informed that in or during 2001, the MM&S Cross-Respondents acquired approximately 100 Miller & Schroeder employees, and its offices, including, but not limited to the Solana Beach, California office, leaving Cross-Respondent Miller & Schroeder insolvent.

114. As a direct and proximate result hereof, Cross-Complainant Augusta alleges that MM&S Cross-Respondents are successor corporations to the Miller & Schroeder Cross-Respondents, and are thus liable to Cross-Complainant Augusta for any liability or judgments he may incur as a result of the events complained of.

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SIXTH CAUSE OF ACTION
Negligent Misrepresentation
By Cross-Complainant as Against all Cross-Respondents

115. Cross-Complainant Augusts refers to and realleges Paragraphs 1 through 114, inclusive, of this Complaint, and incorporates the same by reference as though fully set forth at length herein.

116. At the time the Cross-Respondents made the misrepresentations described herein, they lacked reasonable grounds for believing them to be true, and failed to use diligence to ascertain the true facts and circumstances before urging, importuning, and instructing Cross-Complainant to sell the Heritage Bonds to customers.

117. Cross-Complainant justifiably relied upon the misrepresentations and omissions of material information by the Cross-Respondents, as described herein, and did not know, and in the exercise of reasonable diligence could not have known the true facts.

118. As a direct and proximate result, the Cross-Respondents are liable to Cross-Complainant in an amount according to proof at trial.

SEVENTH CAUSE OF ACTION
Breach of Written and Oral Contract
By Cross-Complainant as Against the Cross-Respondents

119. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 118, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

120. In or during 1986, Cross-Complainant and the Miller & Schroeder Cross-Respondents entered into a written employment contract.

121. Cross-Complainant Augusta has performed all the covenants, conditions, and promises on his part to be performed under the terms of the written agreement, except as to those covenants, conditions, and promises which were excused by the breaches of Cross-Respondents.

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122. Beginning in or during 1996, and in a continuous course of conduct which extended until, in, or during 2000, Cross-Respondents M&S Respondents breached the employment contract with Cross-Complainant by the acts as set forth above.

123. As a direct and proximate result of the breach of the employment contract by Cross-Respondents, Cross-Complainant has been damaged in an amount to be determined, according to proof at trial, together with interest thereon at the maximum legal rate; together with reasonable attorneys fees pursuant to the contract under Civil Code §1717.

EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
By Cross-Complainant as Against all Cross-Respondents

124. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 123, inclusive, and incorporates the same by reference as though fully set forth at length herein.

125. Cross-Respondents' conduct, and as a continuing course of conduct to the present time, was intentional and malicious, extreme and outrageous, and, done for the purpose of causing Cross-Complainant to suffer humiliation, mental anguish, and emotional and physical distress. Cross-Respondents' conduct in confirming and ratifying that conduct was done with the knowledge that Cross-Complainants emotional and physical distress would thereby increase, and was done with a wanton and reckless disregard of the consequences to Cross-Complainant.

126. As the direct and proximate result of the aforementioned acts, Cross-Complainant suffered severe emotional and mental distress, including but not limited to frustration, depression, nervousness, and anxiety and has incurred general damages in an amount to be determined according to proof at trial.

127. As a further direct and proximate result of the acts of Cross-Respondents, as aforesaid, Cross-Complainant has incurred medical and related expenses in an amount according to proof at trial.

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128. As a further direct and proximate result of the acts of Cross-Respondents, as aforesaid, Cross-Complainant has incurred lost wages in an amount according to proof at trial.

129. The acts of Cross-Respondents, as aforesaid, were willful, wanton, malicious, and in conscious and wanton disregard of the rights and safety of Cross-Complainant, knowing his acts would put tremendous pressure upon him, and cause him acute mental distress. In doing so, Cross-Respondents meant to oppress Cross-Complainant, and their acts were despicable conduct which deliberately subjected Cross-Complainant to cruel and unjust hardship in conscious disregard of Cross-Complainant's rights. As such, Cross-Complainant is entitled to punitive and exemplary damages against Cross-Respondents, in an amount sufficient to punish and make an example of Cross-Respondents.

NINTH CAUSE OF ACTION
Unfair Business Practices
By Cross-Complainants as Against all Cross-Respondents

130. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 129, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

131. Cross-Complainant Augusta is informed that Cross-Respondents, performed the above-mentioned acts for the purpose of injuring Cross-Complainant, and for their own financial benefit.

132. As a direct and proximate result of the above-mentioned acts of Cross-Respondents, Cross-Complainant has been deprived of the patronage of a large number of his actual and potential customers, all to his general damage in a sum to be determined at trial, trebled.

133. As a further direct and proximate result of the above-mentioned acts of Cross-Respondents, Cross-Complainant has been required to retain legal counsel to assert and defend

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his rights, and is entitled to reasonable attorneys fees in an amount according to proof at trial, pursuant to the provisions of Business and Professions Code §17082.

TENTH CAUSE OF ACTION
Aiding, Abetting, and Assisting
Corporations Code §§25504.1 and 25403

134. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 133, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

135. Cross-Respondents, engaged in a course of business to deceive their employee Cross-Complainant Augusta, by understating in each respective official statement, the true risks of using municipal bond proceeds to finance speculative real estate development projects by non-governmental participants whose history, ability, and financial status is misrepresented.

136. These Cross-Respondents, knew, or should have known, or recklessly disregarded Cross-Complainant's need to know, among other things, the complete material facts regarding the Heritage bonds, all as alleged herein.

137. These Cross-Respondents, provided material and/or substantial assistance to acts in furtherance of violations of the anti-fraud provisions of the securities laws, and are therefore liable to Cross-Complainant in an amount to be determined, according to proof at trial.

ELEVENTH CAUSE OF ACTION
Negligence
As Against all Cross-Respondents

138. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 137, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

139. Cross-Complainant Augusta is informed and alleges that the acts of Cross-Respondents, were acts which fell below the requisite standard of care for persons and entities

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who are required to do the "due diligence" required for the issuance of the subject Heritage bonds.

140. As a direct and proximate result of the negligent and careless conduct of Cross-Respondents, Cross-Complainant Augusta has been damaged in an amount according to proof at trial.

TWELFTH CAUSE OF ACTION
Civil Conspiracy
As Against Cross-Respondents, and each of them

141. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 140, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

142. Cross-Complainant Augusta is informed that on or before the Cross-Complainant Augusta sold the bonds in issue, these Cross-Respondents, agreed, and conspired among themselves to fraudulently induce Cross-Complainant to sell the bonds in issue by understating the true risks of the bonds through the use of misrepresentations and omissions of material information, as described herein.

143. As a result, Cross-Respondent is liable to Cross-Complainant in an amount to be determined, according to proof at trial.

144. The acts of Cross-Respondents, were willful, wanton, malicious, and in conscious and wanton disregard of the rights and safety of Cross-Complainant, knowing his acts would put tremendous pressure upon him, and cause him acute mental distress. In doing so, Cross-Respondents meant to oppress Cross-Complainant, and their acts were despicable conduct which deliberately subjected Cross-Complainant to cruel and unjust hardship in conscious disregard of Cross-Complainant's rights. As such, Cross-Complainant is entitled to punitive and exemplary

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damages against Cross-Respondents, in an amount sufficient to punish and make an example of Cross-Respondents.

THIRTEENTH CAUSE OF ACTION
Violation of Labor Code §2802
As Against all Cross-Respondents

145. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 144, inclusive, of this Cross-Complaint, and incorporates by reference as though fully set forth at length herein.

146. California Labor Code §2802, provides, in pertinent part:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.
>
> All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.
>
> For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

147. At all relevant times mentioned herein, this statute has been in full force and effect, and is applicable to Cross-Respondents.

148. California Labor Code §2802 has been interpreted by the Courts of Appeal of the State of California to require an employer to indemnify an employee for attorneys fees necessarily expended in the retention of independent counsel necessary to defend the employee in an action challenging the conduct within the course and scope of the employee's employment.

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149. In the instant matter, Cross-Complainant Augusta was required to obtain independent legal counsel for the defense of the claims brought against him due to the sale of the Heritage bonds. The sale of these products was done by Augusta as a Miller & Schroeder Financial, Inc., employee, and at the direct request of Miller & Schroeder Financial, Inc.

150. Cross-Complainant Augusta is entitled to an award of the sums he will be required to expend for the defense provided by the attorney of his choice in an amount according to proof. Cross-Complainant is entitled to an award of these sums, together with interest at the maximum legal rate.

FOURTEENTH CAUSE OF ACTION
Indemnity
As Against All Cross-Respondents

151. Cross-Complainant Augusta refers to and realleges Paragraphs 1 through 150, inclusive, of this Cross-Complaint, and incorporates the same by reference as though fully set forth at length herein.

152. Claimant herein filed a Statement of Claim against Cross-Complainant Augusta. This claim alleges that Cross-Complainant Augusta is in some manner at fault, and responsible for the damages alleged in the complaint on file herein.

153. Cross-Complainant Augusta denies that he caused these damages and injuries alleged by the Claimant in the main action. If contrary to these denials, Cross-Complainant Augusta is found liable to the Claimant for damages, then Cross-Complainant Augusta alleges that such liability will be predicated and founded upon the fault of Cross-Respondents.

154. By reason of the foregoing, if Cross-Complainant Augusta is held liable to the Claimant under the Statement of Claim, Cross-Complainant Augusta is entitled to indemnity from Cross-Respondents, for that portion of Claimant's damages as were caused by the fault of the Cross-Respondents.

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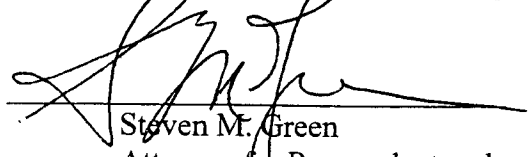
RELIEF AS TO ALL COUNTS

WHEREFORE, Respondent and Cross-Claimant Mark Augusta requests the following:

1. Under all counts, that the panel grant judgment against Cross-Respondents, and each of them, and award general damages to Cross-Claimant in an amount determined to have been sustained by Cross-Claimant, together with interest and costs of suit;
2. Under the First, Second, Third, Fourth, Eighth, and Twelfth Causes of Action, that the panel grant judgment and assess punitive and exemplary damages against Cross-Respondents, and each of them, in an aggregate amount to be determined at the hearing;
3. Under the Eighth Cause of Action that the panel grant Cross-Claimant medical and related expenses, and lost wages;
4. Under the Ninth Cause of Action that the panel grant Cross-Claimant triple damages;
5. Under the Fifth and Fourteenth Causes of Action that the panel grant Cross-Claimant indemnity for any damages arising from the sale of financial products during his employment with Miller & Schroeder and it's successors, plus interest at the legal rate;
6. Under the Seventh (pursuant to CC 1717), Ninth (pursuant to B & P Code 17082), and Thirteenth Causes of Action that the panel grant Cross-Claimant his costs and disbursements together with reasonable attorney's fees; and
7. That the panel order such other and further relief as may be necessary and appropriate.

Dated: January 15, 2002



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Attorney for Respondent and
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BEFORE THE ARBITRATION PANEL OF THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS

STEVEN ONDERWYZER, TRUSTEE, CLAIRE ONDERWYZER TR, UAD 8/14/78; CLAIRE ONDERWYZER LIVING TR, UAD 7/17/95; STEVEN J. ONDERWYZER LIVING TR, UAD 7/17/95; ONDERWYZER TRUST #1, UAD 7/14/89: ONDERWYZER TRUST #2, UAD 7/14/89, STEVEN ONDERWYZER Claimants, vs. MILLER & SCHROEDER FINANCIAL, INC., a Minnesota corporation; MARSHALL, MILLER & SCHROEDER, INC.; JAMES DLUGOSCH, JAMES IVERSON, JOHN CLAREY, ROGER WICKNER, NANCY MELDON, VICTOR DHOOGE, TIMOTHY JONES, M.M.& S. FINANCIAL, INC., JEROME A. TABOLICH, EDWARD J. HENTGES, KENNETH R. LARSEN, STEVEN W. ERICKSON, PAUL R. EKHOLM, KENNETH HALLORAN, KENNETH DAWKINS, TOM S. NELSON, MARY JO BRENDEN, DANIEL DILL, Respondents.	Case No. 01-05301 **SECOND AMENDED STATEMENT OF CLAIM**

NOTE: (not yet served)

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EXHIBIT S

I.

INTRODUCTION

1. Miller and Schroeder Financial, Inc., ("Miller") was bought out in late 1996/early 1997 by its now CEO, Mr. James Dlugosch. Specifically, Mr. Dlugosch bought out the two former owners of Miller, Mr. James Iverson and Mr. Roger Wickner for about $17 million. On information and belief, the buy-out was financed from Miller's underwriting of bond deals, including Heritage Healthcare Bonds issued and sold throughout the country. The essence of these deals was that each of the parties involved would collect substantial fees for their participation passing the cost to the investors. These fees included underwriting fees for Miller, management fees for Mr. Kasirer, and architectural fees for Mr. Bertolini.

2. Due to the fact that the substantial fees were lining the pockets of the participants, certain disclosures and duties were overlooked and/or purposely not made, and Miller and its executives failed to properly perform the underwriting duties and subsequent disclosures mandated therefrom. Further, in order to "push" these shady deals, Miller enlisted the help of its army of brokers and made it known that Miller must sell these issues to rid their inventory of them. Of these brokers, Mr. Timothy Jones was the broker of Mr. Onderwyzer and sold Mr. Onderwyzer these bonds under the representations that they were safe, income producing municipal bonds. Mr. Onderwyzer has been retired for 13 years and placed his trust and confidence in Mr. Jones who represented he was an expert in these investments, that they were safe, income producing investments, and there was no risk of loss to the principal.

3. Eventually all of these bond deals collapsed, but only after Mr. Iverson and Mr. Wickner were paid, Mr. Dlugosch retained control of Miller, and the other parties collected their fees. Mr. Onderwyzer, along with many other bondholders including the Heartland Funds, were left holding the bag. Mr. Onderwyzer lost approximately $1.5 million of his retirement money.

4. Several indications of Miller's credibility in the bond business have recently arisen. Notably, Miller, one of its executive vice-presidents, and Miller's bond lawyer John Larsen recently

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agreed to pay a total of $400,000 to settle allegations made by San Bernadino County, California, and several authorities, that they bribed county officials to obtain municipal bond business. In addition, there have been a litany of arbitration claims and civil actions filed (including a suit seeking class action status) against Miller making the same allegations as contained herein.

II.

PARTIES

5. Claimant, STEVEN J. ONDERWYZER, is and was during the relevant time period, the trustee of the CLAIRE ONDERWYZER TRUST (UAD 8/14/78), the CLAIRE ONDERWYZER LIVING TRUST (UAD 7/17/95), the STEVEN J. ONDERWYZER LIVING TRUST (UAD 7/17/95), the ONDERWYZER TRUST #1 (UAD 7/14/89), and the ONDERWYZER TRUST #2 (UAD 7/14/89)[collectively referred to herein as "the Trusts"]. Mr. Onderwyzer is a resident of California residing at 1 Jib St. Unit 301A, Marina Del Ray, California, 90292.

6. Respondent MILLER & SCHROEDER FINANCIAL, INC. (hereinafter "Miller") is Minnesota corporation with its principal place of business located at 150 South Fifth Street, Suite 3000, Minneapolis, Minnesota 55402. Miller is qualified to do business in California and is a licensed broker-dealer under the laws of California and the United States. Miller is a member of the National Association of Securities Dealers; Miller transacts business in the municipal securities market and is governed by the rules of the NASD, the Municipal Securities Rulemaking Board, the Securities and Exchange Commission, and federal and state securities laws. During the relevant time period, Miller maintained a branch office location in Solana Beach, California, from which it offered and sold securities (particularly, bond investments) to the public. The Solana Beach office has recently been closed due to Miller's exodus from the retail securities market.

7. Respondent MARSHALL, MILLER & SCHROEDER, INC. ("Marshall") is believed to have purchased Respondent MILLER & SCHROEDER FINANCIAL, INC. The

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Minneapolis Secretary of State records shows that Marshall was formed on April 5, 2001. Current NASD records do not show a change in licensing or business structure.

8. Respondent James F. Dlugosch is Miller's Chief Executive Officer and Chair of the Board of Directors. On information and belief, Mr. Dlugosch and Mssrs. Iverson and Wickner organized the buy-out, which was to be financed through underwriting fees received from the Heritage bonds and other speculative bonds.

9. Respondent James Iverson was a former Director, Vice President, and controlling shareholder of Miller and Schroeder Financial, Inc. and now is employed by Miller. On information and belief, Mr. Iverson received buy-out payments for his interests in Miller & Schroeder Financial, Inc. based on proceeds from underwriting of the Heritage bonds.

10. Respondent Roger James Wickner was a President, Director, of Miller & Schroeder Financial, Inc., and was the former part-owner of Miller & Schroeder Financial, Inc.. On information and belief, Mr. Wickner received buy-out payments for his interests in Miller & Schroeder Financial, Inc. based on proceeds from underwriting of the Heritage bonds.

11. Respondent Victor Dhooge was on information and belief the President (or held such title and responsibilities as would be commensurate with the title of President) of the Underwriting Department and organized, cooridinated, and performed or managed the performance of all Miller's due diligence responsibilities relating to Miller's underwriting of bonds, which are the subject of this complaint.

12. Respondent Nancy Meldon was on information and belief the Chief Compliance Officer at Miller. Ms. Meldon was responsible for review, inspection, and approval of certain aspects of Miller's due diligence responsibilities and supervisory responsibilities over customer accounts including the accounts at issue.

13. Respondent John Clarey was an Owner of Miller and also had responsibilities for customer service and complaints. Mr. Clarey was a member of Miller's Credit Committee, which had oversight and approval powers and duties over all of Miller's underwriting ventures including the ones which are the subject of this complaint.

14. Respondent Timothy Jones was a senior vice president and Mr. Onderwyzer's account executive at Miller's Solana Beach California office, which has since closed due to Miller's exodus from the retail securities market.

15. Respondent MM&S Financial. Inc. holds itself out to the public as a regulated entity composed of securities professionals specializing in municipal bonds. Beginning in 2000, Miller & Schroeder Financial, Inc. began divesting portions of its business and businesses to various individuals and entities, including respondent MM&S Financial, Inc. Respondent MM&S Financial, Inc. is conducting business from its Solana Beach, California location as the successor to Miller & Schroeder Financial, Inc.

16. Any and all references herein to Respondent MM&S Financial, Inc. shall be as successor to Miller & Schroeder Financial, Inc.

17. Any and all references herein to Miller & Schroeder Financial, Inc. shall be as predecessor to respondent MM&S Financial, Inc.

18. Claimants allege that Respondents, James E. Iverson, Jerome A Tabolich, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, James F. Dlugosch, Kenneth Halloran, Kenneth E. Dawkins, Tom S. Nelson, John M. Clarey ,Victor Dhoogie, Mary Jo Brenden, Daniel Dill are and were at all relevant times, officers, underwriters, directors, members of the credit committee, and supervisors at Miller & Schroeder Financial, Inc. Miller & Schroeder Financial, Inc. filed bankruptcy on or about January 21, 2002. Claimants believes that these named individuals are members of the NASD and/or the Municipal Bond Securities group giving the NASD jurisdiction in this case.

19. Respondent Iverson, Clarey, Tabolich, Hentges, Larsen, Erickson, Ekholm, Dlugosch, Halloran, Dawkins, Nelson, Dhoogie, Brenden, and Dill were at all relevant times herein key officers, underwriters, directors, members of the credit committee, and supervisors of Miller & Schroeder Financial, Inc. predecessor to Respondent herein, MM&S Financial, Inc.and its associated entities with responsibility for the due diligence for the Heritage Health Care Bonds and other investments

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including Boston Chicken, Jackson County Bonds, Service Merchandise Bonds, Globalstar Bonds, Beech Grove Bonds, Housing Authority of City of Tupelo Bonds, Dakota Colorado Bonds, Tillman Co. Bonds and others which were sold to the public including the claimants, causing the substantial losses to the claimants because of the action of the 'CONTROL PERSONS" and Miller & Schroeder Financial, Inc. predecessor to third party respondent herein, MM&S Financial, Inc. At all times during the actions alleged herein, control person respondents were agents and coconspirators of each other in the activities alleged.

ALTER EGO ALLEGATIONS

20. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between all respondents, and each of them, and all the other remaining respondents, and each; of them, such that any individuality and separateness between all respondents, and each of them and the respondent corporate entities, has ceased to exist, and all the respondents corporate entities are the alter egos of respondents, and each of them, in that claimants allege that each of the individual third respondents used the assets of the respondent corporate entities to cause the losses to claimants alleged herein.

21. Adherence to the fiction of the separate existence of any respondent corporate entity as an entity distinct from any of the other respondents, individual or corporate, would permit an abuse of the corporate privilege and would promote injustice in that such asserting respondents, and each of them, would be shielded from their proper and lawful obligations, and would allow the perpetration of acts of bad faith and malfeasance without financial liability.

III.

FACTUAL ALLEGATIONS

22. Miller held itself out as an experienced underwriter of fixed income securities.

23. Jones and Miller at all material times were governed by state and federal securities laws, the rules and regulations of the NASD, the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, and the California Department of Corporations.

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24. Mr. Onderwyzer has been retired for 13 years and pays for his family's living expenses exclusively from the interest income of their investments. At all relevant times, Mr. Jones was aware and knew that Mr. Onderwyzer depended on such income for his support and the support of his sister who is mentally ill with schizophrenia.

25. Sometime in 1997, Mr. Onderwyzer saw a television advertisement or an advertisement in the Los Angeles Times newspaper regarding municipal bonds and Miller & Schroeder. Interested in gaining access to safe municipal bond investments, Mr. Onderwyzer called Miller and was referred to Mr. Jones. After several discussions over the course of a few months, Jones gained Mr. Onderwyzer's trust and confidence. Mr. Onderwyzer expressed his goals of investing for safety of principal and income. Jones and Miller represented that they were very experienced in tax-free municipal bond offerings as well as other bond offerings and agreed they would recommend bond investments commensurate with Mr. Onderwyzer's expressed goals.

26. In stark disregard for Mr. Onderwyzer's requests for safe municipal bond investments, Miller and Jones recommended and sold to Mr. Onderwyzer many bonds outside of these stated objectives. Jones recommended several bonds underwritten by Miller and represented these bonds to be safe, income producing investments.

27. Over the course of their relationship, Jones persuaded Mr. Onderwyzer to invest in "Heritage"[1] industrial revenue bonds and several other bond offerings promoted by Miller. Eventually, most of these investments would either default, enter bankruptcy, or the underlying value become worthless. Mr. Onderwyzer's losses from the Heritage bond investments with Miller totaled $1.5 million.

28. At all relevant times surrounding Mr. Onderwyzer's bond purchases, Jones and Miller represented that the bonds were low-risk in character. On several occasions, Jones, in order to assure Mr. Onderwyzer of the Heritage bonds' risk level, represented the investments were safe. Jones further represented on many occasions before and after the sales of the bonds to Mr. Onderwyzer that he and other executives at Miller had personally inspected the facilities and that the Heritage entities

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[1] The Heritage bonds include all bonds offered through the various Heritage entities in various states.

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were completing their stated objectives according to plan and there were "no problems" with the projects. Moreover, Jones stated that the hospitals were 90% occupied (and/or there was a waiting list to get in) and all bonds had debt service ratios of at least 1.5 times that needed.

29. At all material times, Miller, First Wall Street, Pumar and Jones knew or should have known that the bonds were unrated, or of questionable viability, and that, if rated, such rating would have been such as to indicate that the ability of Heritage to meet their obligations in connection with the debentures was subject to substantial doubt in light of its financial condition at the time of the offering and their then recent financial history. Thereby meaning that the bonds were in fact not "safe" and were extremely risky.

30. Further, Miller and Jones knew or should have known, due to their underwriting research and position as financial advisor to Heritage, that the financial condition of Heritage was such that the projects were not feasible from inception due to several factors including but not limited to: 1) the "soft costs" (fees to consummate the deals) of the projects were too high on a percentage basis, 2) revenues to be derived from the facilities were unreasonably overstated, 3) the appraisal values of the land and facilities were overstated, and 4) the costs and expenses for operating long-term health care facilities were unreasonably underestimated.

31. In connection with the sales of the debentures and with the intent of inducing Mr. Onderwyzer to purchase the debentures, Miller and Jones failed to disclose material negative and adverse facts, which facts were known to Miller and Jones or would have been known to them in the exercise of reasonable care, including but not limited to the following:

a. The audited financial statements were outdated.

b. The issuers were highly leveraged.

c. The issuer's financial condition was such that it was unlikely to be able to service the debentures in accordance with the terms thereof.

d. From 1997 through the date of Claimant's purchases, the issuers earnings were either insufficient or barely sufficient to cover its then fixed charges.

e. The issuer's cash flows were negative or close thereto from their inception through the offering of the bonds.

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f. The issuers customarily borrowed additional amounts to pay existing obligations.

g. Miller was compensated a high percentage of the principle amount of the securities offered.

h. Total expenses of the offering were an excessive percentage of the principle amounts offered.

i. A substantial portion of the earnings from the Heritage bonds was required to be paid to certain entities in which Heritage or their insiders had partial interests.

j. Heritage was insolvent at all relevant times herein.

k. There was significant commingling of funds among the different Heritage projects such that the Heritage combined offerings violated the applicable Bond documents and thus was misrepresented in the various prospectuses provided to the bondholders

32. The misrepresentations and omissions of material facts related to the sales of the debentures by Miller and Jones violated state and federal laws regulating underwriters, the rules, regulations, standards of conduct imposed on licensed brokers and agents by the SEC, the California Department of Corporations, the Municipal Securities Rulemaking Board and the NASD.

33. Said misrepresentations and omissions of material facts were made negligently and/or purposefully and with intent in order to accomplish the sale of the debentures to Mr. Onderwyzer.

34. The purchases by Mr. Onderwyzer were made in reliance upon and/or assuming the absence of any material negative information about the issuer of the debentures. Mr. Onderwyzer's reliance on his broker was justified in that Mr. Onderwyzer is retired and relied on the statements of his broker due to the trust and confidence relinquished to Mr. Jones by way of his fiduciary relationship with Mr. Onderwyzer.

35. Not until after Mr. Onderwyzer's purchase of the debentures, which determination was based on the oral representations of Jones (no other information having been provided to Mr. Onderwyzer when the decision to purchase was made), which representations were misleading because they did not include any material adverse or negative information about the Heritage entities, did Miller furnish to Mr. Onderwyzer a prospectus that described such debentures.

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36. Even though a prospectus was eventually provided, the Appraisal reports purporting to provide the basis for land and facilities valuations were not included in any prospectus.

BACKGROUND INFORMATION ON MILLER & SCHROEDER, INC.

37. On information and belief, Mr. James Iverson and Mr. Roger Wickner were the owners of Miller until sometime in early 1997. Mr. James Dulugosh arranged to buy out Iverson and Wickner and finance the buy-out with income from the underwriting of speculative municipal bonds.

38. On information and belief, the buy-out contract's terms included payments over a three-year period totaling $17 million dollars. Concurrently, Miller began underwriting a large amount of speculative municipal bond deals. These deals were commonly negotiated bids, as opposed to competitively bid deals where other underwriters bid for the deal. On information and belief, these deals included the Heritage bonds and essentially allowed Miller to set its underwriting fee at a very large percentage—amounting to about 5% in underwriting fees as opposed to the industry standard of 1-2%.

39. In fact, Miller has underwritten over 80 municipal bond deals that have defaulted or gone into bankruptcy in the past several years. Miller has reaped untold millions of dollars in fees for organizing these deals all under the radar of the SEC and other regulatory agencies.

FIRST CLAIM

BREACH OF FIDUCIARY DUTY AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

40. Claimant repeats and incorporates all preceding relevant paragraphs.

41. At all times herein mentioned, there existed between Respondents and Claimant a fiduciary relationship which arose from the Respondents serving as the agent in executing transactions for Claimant. This fiduciary duty mandates honesty, fair dealing and a duty to inform clients of material information regarding their relationship and exercise reasonable care in handling Claimant's Account. Gaining the trust and confidence of Claimant, Respondents owed to Claimant the highest standard of care, loyalty and fiduciary duty.

42. Respondents breached their fiduciary duty to Claimant by:

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a. Failure to adequately disclose the true risks and facts associated with the various bond sales to Claimant;

b. Materially misrepresenting and/or omitting to disclose the true risks and facts associated with the various bond sales to Claimant;

c. Failing to implement a system of supervision and/or failing to supervise its employees and agents as set forth hereinafter;

d. Placing Respondents' own interests ahead of it customer's interests.

43. As a result of the aforementioned acts of Respondents, Claimant was actually and proximately harmed by the purchases of the various bonds sold and underwritten by Miller. Further, the aforementioned acts of Respondents were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

SECOND CLAIM

PROFESSIONAL NEGLIGENCE: VIOLATION OF NASD AND NYSE CONDUCT RULES

44. Claimant repeats and incorporates all previous relevant paragraphs.

NASD RULE 2110 – "STANDARDS OF CONDUCT"

45. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 2110 in that it had the responsibility to observe high standards of commercial honor and just and equitable principles of trade; and engaged in acts practices and course of business which operated as a breach of such responsibilities.

2210 – "COMMUNICATIONS WITH THE PUBLIC"

46. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 2210 in that it had the responsibility to insure that its advertisements and correspondence with the public and customers were based on principles of fair dealing and good faith and did not omit any

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material fact; and engaged in acts practices and courses of business which operated as a breach of such responsibilities.

3010 – "SUPERVISION"

47. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 3010 in that it had the responsibility to establish a system to supervise it agents and employees in each of its offices, departments and/or business activities, which was reasonably designed to achieve compliance with all applicable securities laws and regulations and with the rules of the NASD; and engaged in acts practices and courses of business which operated as a breach of such responsibilities.

IM – 2310 – 2 – "FAIR DEALING WITH CUSTOMERS"

48. The conduct of Miller constituted a willful and/or intentional violation of NASD Conduct Rule 2310 in that it had the responsibility to deal fairly in all interactions with customers; and engaged in acts practices and courses of business which operated as a breach of such responsibilities.

THIRD CLAIM

VIOLATION OF SECTIONS 10 (B) AND 20 OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 10B-5 OF THE SECURITIES EXCHANGED COMMISSION

49. Claimant repeats and incorporates all previous relevant paragraphs.

50. Respondents are liable as controlling persons for the damages herein alleged under Section 20 of the Securities Exchange Act of 1934 and under the doctrine of *respondent superior*.

FRAUD, DECEIT, AND OMISSION OF MATERIAL FACT

Respondents engaged in an unlawful course of conduct, pursuant to which they knowingly and/or recklessly made representations with no reasonable basis in fact and which acted as a fraud upon Claimant. Respondents made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, no misleading to Claimant.

MG014228

51. Respondents further engaged in an unlawful course of conduct specifically prohibited by the SEC as a violation of Rule 10b-5 in that they induced purchases of the various bonds without disclosure of all material adverse and negative facts which Respondent knew and was aware of and further misrepresented material facts concerning the various bond investments.

52. Claimant relied on Respondent's material misrepresentations and/or non-disclosure to his detriment. As a result of the aforementioned acts of Respondents, Claimant was actually and proximately harmed by the substantial decline of the value of his investments. Further, the aforementioned acts of Respondents were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

FOURTH CLAIM

CONSTRUCTIVE FRAUD

53. Claimant repeats and incorporates all previous relevant paragraphs.

54. As set forth above, a fiduciary relationship arose from the Respondents serving as advisors and brokers for Claimant and from the contracts executed by the parties. The fiduciary duty mandates honesty, fair dealing, a duty to exercise reasonable care in handling customer accounts, and the obligation to accurately disclose known material facts.

55. Respondents made material misrepresentations with regard to the nature and extent of the risks and material facts relevant to the various bond investments. Respondents had knowledge of the falsity and/or lacked reasonable grounds to believe in its truth and/or suppressed the truth which amounted to a breach of duty or intentional deception on behalf of the Respondents.

56. Respondents did these acts with the intent to induce reliance and trust by Claimant in Respondents and to placate Claimant. Claimant did in fact place his confidence in Respondents' false representations and material omissions.

57. As a result of the aforementioned acts of Respondents, Claimant was actually and proximately harmed by the substantial decline in the value of the various bond investments. Further,

MG014229

the aforementioned acts of Respondents were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

FIFTH CLAIM

NEGLIGENT MISREPRESENTATION

58. Claimant repeats and incorporates all previous relevant paragraphs.

59. Miller and Jones had and have a continuing duty to inform Claimant truthfully, accurately and fully about the characteristics and risks of the various bond investments.

60. Miller and Jones acted negligently and/or recklessly, in making various untrue statements of material fact and/or omitting to state material facts about the characteristics and risks of the various bond investments, as previously set forth herein, through oral and written communications, in order to induce Claimant to purchase said investments.

61. At the time these misrepresentations, misleading statements, and omissions were made, Claimant was ignorant of their falsity. Claimant justifiably relied, to his detriment, upon the superior knowledge and expertise of Miller and Jones, and on the misrepresentations, misleading statements, and omissions of Miller and Jones. Had Claimant been aware of the true facts, he would not have purchased said investments from Miller and Jones.

62. Further, Miller owed to Claimant a duty to disclose accurately, completely and fully all material facts that it knew or should have known and that were relevant to a decision to purchase the debentures.

63. Miller failed to exercise that degree of diligence and due care that Claimant was entitled to expect of Miller.

64. Miller owed to Claimant a duty of disclosure by virtue of its function as the underwriter of the debentures.

65. Miller failed to exercise due care and failed to satisfy its duty of disclosure in connection with the sales of the debentures to Claimant by misrepresenting and omitting material facts with

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respect to the debentures. Miller knew, or in the exercise of reasonable care would have known, of those material facts and misrepresentations.

66. In connection with his decision to purchase the debentures, Claimant reasonably and detrimentally, relied on Miller's failure to disclose material negative and adverse information about the issuer of said debentures.

67. In connection with his reliance on Miller's failure to disclose material negative and adverse information about the issuer of said debentures and the assumed absence of such information Claimant exercised due care.

68. As a result, and in proximate consequence, of Miller and Jones's negligent failure to disclose material negative and adverse information to Claimant at the time he decided to purchase the debentures, Claimant has been damaged and is entitled to recover damages from Miller in an amount to be proven at trial.

SIXTH CLAIM

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 et. seq., "UNFAIR TRADE PRACTICES ACT"

69. Claimant repeats and incorporates all previous relevant paragraphs.

70. The Unfair Trade Practices act defines unfair competition to include "any unfair, unlawful, or fraudulent" business act or practice. (Cal. Bus. & Prof. Code§17200) Unfair competition also includes "unfair, deceptive, untrue, or misleading advertising." The Act also provides for injunctive relief and restitution for violations.

71. Miller committed acts of unfair competition, as defined by Business & Professions Code Section 17200, by falsely and inaccurately making representations regarding the quality, risks, and economic viability of the various bond investments, when, in fact, Miller knew of material adverse and negative facts surrounding such bond investments. As a result, Claimant sustained substantial losses in his account.

MG014231

72. Miller's failure to inform Claimant of the true quality, risks, and economic viability of the various bond investments was contrary to the representations it made in its advertisements, communications, and correspondence with Claimant and therefore violated Business & Professions Code §17200.

73. Pursuant to Business & Professions Code §17200 *et. seq.*, Claimant is entitled to enjoin Miller's wrongful practices and to obtain compensation for the losses they incurred by reason of Miller's unlawful, unfair and/or deceptive practices. As a direct and proximate result of the acts and practices alleged above Claimant is entitled to monetary losses suffered as a result of Miller's actions and disgorgement of Miller's ill-gotten gains in order to accomplish complete justice between the parties.

SEVENTH CLAIM

VIOLATION OF CONSUMER LEGAL REMEDIES ACT
CALIFORNIA CIVIL CODE SECTION 1750 et. seq.
AND CIVIL CODE SECTIONS 1709, 1710 FALSE ADVERTISING/
NEGLIGENT OR INTENTIONAL MISREPRESENTATION OF FACT

74. Claimant repeats and incorporates all previous relevant paragraphs.

75. The conduct of Miller constituted a violations of Section 1770, 1709, 1710 of the California Civil code, which prohibit unlawful advertising practices by representing that its bond offerings had characteristics and/or benefits which it did not have, namely (without limitation) that they were low-risk municipal bonds, that the financial circumstances surrounding the bonds were accurately represented, and that the bonds were guaranteed by Medicare, amongst other misrepresentations included in the preceding paragraphs.

76. Miller knew, or by the exercise of reasonable care should have known the various representations were false and/or misleading and that the statements Miller and its salespeople made in order to sell the bonds were inaccurate.

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77. California Civil Code Section 1709 provides: "One who willfully deceives another with intent to induce him to alter his position to his injury or risk is liable for any damages which he thereby suffers."

78. California Civil Code Section 1710 provides: "A deceit, within the meaning of the last section, is either:

A. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

B. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

C. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or

D. A promise made without any intention of performing it."

79. As a result of Respondents actions, Claimant suffered damages in an amount according to proof at the arbitration of this matter.

EIGHTH CLAIM

VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTIONS 25401 et. seq. & 25501 et. seq.

80. Claimant repeats and incorporates all previous relevant paragraphs.

81. Respondents engaged in an unlawful course of conduct, pursuant to which they knowingly and/or recklessly made representations with no reasonable basis in fact and which acted as a fraud upon Claimant. Respondents made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Claimant.

MG014233

82. Claimant relied on Respondent's material misrepresentations and/or non-disclosures to their detriment. As a result of the aforementioned acts of Respondents, Claimant was actually and proximately harmed by substantial decline in the various bond investments offered by miller and Jones. Further, the aforementioned acts of Respondents were willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages in an amount to be proven at trial.

NINTH CLAIM

NEGLIGENCE

83. Claimant repeats and incorporates all previous relevant paragraphs.

84. By underwriting the debentures, Miller implicitly represented that it had determined that such debentures were meritorious investments and that it had conducted its due diligence in accordance with the standards of the industry. Miller was obliged to disclose all material facts that it knew and that were reasonably ascertainable.

85. Miller was obliged not to underwrite, and not to offer or recommend to investors such as Claimant, securities that it had not affirmatively determined to be meritorious investments.

86. Miller was obligated to investigate the merits of a security such as the debentures before underwriting them and offering them to investors such as Claimant to determine whether such security was a meritorious investment.

87. By underwriting the debentures, Miller owed to Claimant a duty of due care and due diligence to investigate the merits of the debenture offering and to determine that there was a substantial likelihood that the various bond investments would be able to meet their obligations in accordance with the terms of such debentures.

88. By carelessly and negligently failing to affirmatively determine that there was a substantial likelihood that the various bond investments would be able to meet their obligations under the debentures, Miller failed to exercise its duty of due care and due diligence in connection with its underwriting of the debentures.

MG014234

89. If Miller had properly carried out its due diligence responsibilities, it would be determined that the various bond investments were unlikely to be able to meet their obligations in accordance with the terms of such debentures.

90. In determining whether to purchase the debentures, Claimant was induced by, and reasonably relied upon Miller to properly perform its duties of due care and due diligence in underwriting said debentures.

91. But for Miller's negligence, Claimant would not have suffered substantial losses on his purchase of the debentures, and such losses were the proximate or foreseeable consequence of Miller's negligence.

92. In view of the absence of any material negative or adverse information about the issuer of the debentures at the time that the decision was made to purchase the debentures and in reliance on Miller's implicit representations, by underwriting the debentures, that such debentures were a meritorious investment, Claimant exercised due care.

93. As a result of Miller's careless and negligent underwriting of the debentures, Claimant has been damaged and is entitled to recover damages from Miller in an amount to be proven at trial.

TENTH CLAIM

VIOLATION OF §12 (2) OF THE SECURITIES ACT OF 1933

94. Claimant repeats and incorporates all previous relevant paragraphs.

95. Miller offered and sold a security, namely the debentures, by means of a prospectus and oral communications. This prospectus and oral communications contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements and omissions Respondents knew, or in the exercise of reasonable care Respondents would have known, were false or were material facts which were required to be disclosed to avoid the representations which were made from being misleading.

MG014235

96. Claimant did not know that the representations made to them by Miller regarding the matters described above were untrue and did not know the material facts that were not disclosed.

97. As a result of the matters set forth herein, pursuant to §12 (2) of the Securities Act, Claimant is entitled to rescind his purchases of the debentures and is entitled to interest on the amount paid for the debentures.

98. Miller is liable to Claimant pursuant to §12 (2) of the Securities Act.

99. Claimant did not know, and could not have known, of the facts upon which he has brought this claim sooner than one year before the date hereof. This claim is brought within three years from the date upon which the debentures were offered to the public.

ELEVENTH CLAIM

PROFESSIONAL NEGLIGENCE: VIOLATIONS OF MUNICIPAL SECURITIES RULEMAKING BOARD RULES

100. Claimant repeats and incorporates all previous relevant paragraphs.

101. Miller and Jones did not deal fairly with Mr. Onderwyzer who purchased the bonds.

102. For the reasons stated above, Respondents Miller and Jones, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, effected transactions in, or induced or attempted to induce the purchase or sale of municipal securities in contravention of Rule G-17 of the Municipal Securities Regulation Board.

103. By reasons of the foregoing transactions, acts, practices and courses of conduct, Respondents Miller and Jones violated Rule G-17 of the MSRB.

PRAYER

WHEREFORE, Claimant prays for damages in law and/or in equity and recovery against Respondents, and each of them, jointly and severally. The objective of this award is to make Claimant whole. That is, after attorneys' fees and costs are deducted from the award, Claimant should be left with 100% of his out-of-pocket losses. He is also entitled to receive imputed interest on his loss at the

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legal rate from the first date of his loss. The appropriate "make-whole" amount for the Claimant is as follows:

1. For the decline in the value of his investments and the opportunity cost associated with said investments in the approximate sum of $2,000,000.

2. Pre-award and post-award interest of Ten percent (10%) from the date of the original investment as allowed by law in an amount to be proven at trial;

3. For costs of arbitration and expenses including reasonable attorneys' fees and the cost of expert witnesses, and any other costs deemed reasonable and just, in an amount to be proven at trial;

4. Damages pursuant to California Civil Code Sections 3294 and 3333;

5. For such exemplary damages as to make an example of Respondents and to punish their conduct; and

6. For such further relief as the Court deems to be just and equitable.

RESPECTFULLY SUBMITTED:

October 1, 2001

MARRON & WILSON, LLP

Ronald A. Marron, Esq.
L. Michael Wilson, Esq.
Attorneys for Claimants

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IN ARBITRATION BEFORE THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS

JOSEPH FORMICA 2318 Stanford Dr. Wickliffe, OH 44092 and FRANCES FORMICA 2318 Stanford Dr. Wickliffe, OH 44092 Claimants, vs. MILLER & SCHROEDER FINANCIAL, INC. 220 South Sixth St., Suite 300 Minneapolis, MN 55402 and JEFFERY HILL c/o Miller & Schroeder Financial, Inc. 220 South Sixth St., Suite 300 Minneapolis, MN 55402 and JOHN M. CLAREY, JR. c/o Miller & Schroeder Financial, Inc. 220 South Sixth St., Suite 300 Minneapolis, MN 55402 and KENNETH R. LARSEN c/o Miller & Schroeder Financial, Inc. 220 South Sixth St., Suite 300 Minneapolis, MN 55402	ARBITRATION NO: 01-05467

and)
)
DAVID G. REINHART)
C/o Miller & Schroeder Financial, Inc.)
220 South Sixth St., Suite 300)
Minneapolis, MN 55402)
)
Respondents.)

Sent via U.S. Mail: December 12, 2001

BRIAN P. BIGGINS, ESQ.
DOUGLAS A. KUTSKO, ESQ.
Brian P. Biggins & Associates Co., L.P.A.
20545 Center Ridge Road, Ste. 120
Rocky River, OH 44116
(440) 333-9270

STATEMENT OF CLAIM

Now come Claimants, by and through undersigned counsel, and for their Statement of Claim against Respondents, state as follows:

Respondent, Miller & Schroeder Financial, Inc. (hereinafter "Respondent Firm"), at all times relevant to this action and, to the best of Claimants' knowledge, was a brokerage firm licensed to do business in the State of Ohio. Respondent Jeffery Hill (hereinafter "Respondent Hill"), during specified periods relevant to this action, while acting within the scope of his employment, performed in the capacity of Claimants' broker/investment adviser and as an agent of Respondent Firm. Respondents John M. Clarey, Jr., Kenneth R. Larsen and David G. Reinhart (hereinafter "Control Respondents"), during specified periods relevant to this action, while acting within the scope of their employment, performed in the capacity of Respondent Hill's supervisor/branch manager, agents for

Respondent Firm and as control persons for Respondent Firm during specified periods relevant to this action.

During the months of January and February of 1997, Claimants contacted Respondent Hill to inquire about bonds. In February of 1997, following Claimants' liquidation of several certificates of deposit, they turned their retirement funds over to Respondent Hill to invest appropriately according to Claimants' investor profiles. Claimants were retired with very low risk tolerance. Respondent Hill subsequently placed Claimants into high-risk, non-rated municipal bonds, underwritten by Respondent Firm. These bonds have little to no value and were sold to Claimants by Respondent Hill without an explanation as to the high degree of risk involved with such an investment or Respondent Firm's derived benefit. Claimants were very unsophisticated investors who relied on Respondent Hill for good advice and compliance with NYSE Rule 405 "Know Your Client Rule." Instead, Claimants were placed into investments that were highly unsuitable for their needs and objectives. As a result of Respondent's conduct, Claimants suffered substantial losses.

COUNT I
NEGLIGENCE

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

The conduct of all Respondents constituted negligence, in that they, in connection with the purchase and sale of investments, owed to Claimants a duty of due care; in connection therewith were required to execute for the Claimants their orders in a suitable manner, comporting with the instructions and investment needs and profile of said Claimants; and engaged in acts, practices and courses of business which operated as grossly negligent, careless and/or reckless disregard for such duties which directly and proximately resulted in substantial financial losses to the Claimants.

COUNT II
BREACH OF CONTRACT

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

The conduct of all Respondents constituted breach of contract, in that they, in connection with the purchase and sale of investments, agreed to execute for the Claimants purchases and sales which comported with the instructions and investment needs of said Claimants; and engaged in acts, practices and courses of business which operated as a breach of such agreement which directly and proximately resulted in substantial financial losses to the Claimants.

COUNT III
BREACH OF FIDUCIARY DUTY

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

The conduct of all Respondents constitute breach of fiduciary duty, in that they, in connection with the purchase and sale of investments, owed to the Claimants a fiduciary duty, loyalty and due care; in connection therewith were required to execute for the Claimants their orders in a way that comported with the instructions and investment needs of said Claimants; and engaged in acts, practices and courses of business which operated as a negligent, careless and/or reckless disregard for such duties which directly and proximately resulted in substantial financial losses to the Claimants.

COUNT IV
RESPONDEAT SUPERIOR

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

The conduct of the employees and/or agents (Respondent Hill and Control Respondents) of Respondent firm was performed within the scope and course of their employment in that they, individually and/or collectively, directly and/or indirectly, performed services on behalf of the Respondent Firm; Respondent Firm directly and/or indirectly induced the acts set forth above; all the services performed by said employees were performed in the scope and course of their employment with Respondent Firm; therefore, Respondent Firm is jointly and severally liable for, and to the same extent as its employees.

COUNT V
VIOLATION OF NASD CONDUCT RULE

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

RULE 2110

The conduct of the Respondents constituted a willful and/or wanton and/or intentional violation of Rule 2110 of the Conduct Rules of the NASD in that it had the responsibility to observe high standards of commercial honor and just and equitable principles of trade; and engaged in acts, practices and courses of business which operated as a breach of such responsibilities.

COUNT VI
FAILURE TO SUPERVISE

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

Respondent Firm and Control Respondents failed to properly supervise the professional activities of Respondent Hill and as a direct and proximate result of such failure the Claimants have suffered substantial financial losses.

COUNT VII
UNSUITABILITY

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

Respondents' act of placing Claimants' funds into a highly risky investment was highly unsuitable for Claimants' profile and objectives, directly and proximately resulting in substantial financial losses to the Claimants.

COUNT VIII
OMISSIONS/MISREPRESENTATION

The Claimants re-allege any and all of the allegations set forth above as if fully rewritten herein by reference.

Respondent Hill's intentional failure to disclose to the Claimants the risk of the investment and Respondent Firm's direct financial benefit derived from the sale of said investments describe actions of omission and misrepresentation constituting willful, wanton, intentional, outrageous and destructive behavior that was pervasive and a concerted effort with Respondent Firm's reckless disregard for the supervision of its broker directly and proximately resulting in substantial financial losses to the Claimants.

RELIEF REQUESTED

In view of the preceding and pursuant to Counts I through VII, Claimants request that the members of the Arbitration Panel, to be appointed herein, render an award of compensatory damages in their favor and against Respondents jointly and severally in the amount of one hundred sixty thousand dollars ($160,000.00). Pursuant to Count VIII, Claimants also pray for punitive damages in the amount of three hundred thirty thousand dollars ($330,000.00) plus attorney fees (ORC sec. 1343.03), costs, and any other remedy this Honorable Panel deems just and equitable. (See NASD

Rule 3110(f) of the Conduct Rules which states "No initial agreement [between a member and a customer] shall include any condition which ... limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrator to make any award.")

Respectfully submitted,

BRIAN P. BIGGINS, ESQ.
DOUGLAS A. KUTSKO, ESQ.
Brian P. Biggins & Associates Co., L.P.A.
20545 Center Ridge Road, Suite 120
Rocky River, Ohio 44116
(440) 333-9270

Attorneys for Claimant

CERTIFICATE OF SERVICE

A true and exact copy of Claimants' Amended Statement of Claim was sent via UPS Overnight requiring signature to the following on this 12TH day of December, 2001:

Jeffery Dean, Esq.
NASD Dispute Resolution, Inc.
10 S. LaSalle St., Suite 1110
Chicago, IL 60603-1002

and

Miller & Schroeder Financial, Inc.
220 South Sixth St., Suite 300
Minneapolis, MN 55402

Respondent,

and

Jeffery Hill
c/o Miller & Schroeder Financial, Inc.
220 South Sixth St., Suite 300
Minneapolis, MN 55402

Respondent,

and

John M. Clarey, Jr.
Kenneth R. Larsen
David G. Reinhart
c/o Miller & Schroeder Financial, Inc.
220 South Sixth St., Suite 300
Minneapolis, MN 55402

Respondents.

DOUGLAS A. KUTSKO, ESQ.
BRIAN P. BIGGINS, ESQ.

Attorney for Claimant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding Corp. f/k/a Miller & Schroeder, Inc. and its subsidiaries, Debtor.	)	Chapter 7 Case BKY Case No. 02-40284 to 02-40286 Jointly Administered
Brian F. Leonard, Trustee, Plaintiff, vs. Executive Risk Indemnity, Inc., Defendant.	)	ADV Case No. 03-4284 **NON-CORE PROCEEDING**
The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden, Intervenors.	)	

AFFIDAVIT OF KENNETH LARSEN IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Kenneth Larsen, being duly sworn, states as follows:

1. I make this affidavit on my personal knowledge.

2. I am the Chief Financial Officer of The Marshall Group, Inc. ("The Marshall Group"), where I became employed in approximately August 2001.

EXHIBIT U

3. Prior to my employment with The Marshall Group, I was employed by Miller & Schroeder, Inc. ("Miller & Schroeder"). From approximately February 1998 to March 31, 2001, I was the Controller for Miller & Schroeder. From April 1, 2001 until the end of my employment with Miller & Schroeder, I was the Chief Financial Officer.

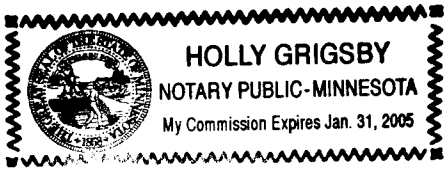
4. In my capacity as controller and Chief Financial Officer of Miller & Schroeder, I became personally familiar with certain claims filed against Miller & Schroeder and a number of its officers and directors arising out of what are commonly referred to as "the Heritage Bonds," eventually resulting in various litigation known as the "Heritage Bond Litigation."

5. In my capacity as a former officer of Miller & Schroeder, I have been named as a respondent or defendant in a number of statements of claim and complaints in the Heritage Bond Litigation. In addition, the following individuals named as respondents or defendants in the Heritage Bond Litigation were officers and/or directors of Miller & Schroeder during the time that I was employed by Miller & Schroeder: Jerome A. Tabolich; James E. Iverson; Edward J. Hentges; Steven W. Erickson; Paul R. Ekholm; and Mary Jo Brenden. Each of these individuals, in addition to myself, became employed by The Marshall Group after it purchased in 2001 certain of the assets of Miller & Schroeder. Except for Messrs. Tabolich and Iverson, these individuals remain employed by The Marshall Group.

6. The Marshall Group has made certain payments on behalf of myself and the individuals identified in the preceding paragraph arising out of the Heritage Bond Litigation. These payments have been made because of the refusal of the insurer for Miller & Schroeder and its former officers and directors to defend and indemnify the officers and directors in the Heritage Bond Litigation. The Marshall Group has received written assignments of right from each of these individuals, to the extent of payments made by The Marshall Group on their behalf.

In addition, each of these individuals and myself have incurred expenses, including attorneys' fees and costs for payment of settlements, that have not been reimbursed by The Marshall Group or paid by the insurer that issued a directors' and officers liability policy to Miller & Schroeder.

FURTHER YOUR AFFIANT SAYETH NOT.



Kenneth Larsen

Subscribed and sworn to before me
this 29th day of October, 2004.

Notary Public

#360771 v1

Executive Risk Indemnity Inc.
Home Office
32 Loockerman Square, Suite L100
Dover, Delaware 19901

Administrative Offices/Mailing Address:
82 Hopmeadow Street
Simsbury, Connecticut 06070-7683

DECLARATIONS

THE POWER SM

POLICY NUMBER
8166-6027

DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY INCLUDING EMPLOYMENT PRACTICES LIABILITY COVERAGE

NOTICE: THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING T "POLICY PERIOD", OR, IF PURCHASED, THE DISCOVERY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO P DAMAGES OR SETTLEMENTS WILL BE REDUCED BY THE PAYMENT OF "DEFENSE EXPENSES", AND "DEFEN EXPENSES" WILL BE APPLIED AGAINST THE RETENTION. THE COVERAGE AFFORDED UNDER THIS POLI DIFFERS IN SOME RESPECTS FROM THAT AFFORDED UNDER OTHER POLICIES. PLEASE READ THE ENTI POLICY CAREFULLY.

OPTIONAL COVERAGE UNDER INSURING AGREEMENT (B)(2) IS X IS NOT _ AVAILABLE UNDER THIS POLICY.

ITEM 1. PARENT CORPORATION –NAME AND PRINCIPAL ADDRESS:
Miller and Schroeder, Inc.
PO Box 789
Minneapolis, MN 55440-0789

ITEM 2. POLICY PERIOD:
(a) Inception Date: July 31, 2000
(b) Expiration Date: July 31, 2003
at 12:01 a.m. both dates at the Principal Address in ITEM 1.

ITEM 3. LIMIT OF LIABILITY (inclusive of Defense Expenses):
$5,000,000.00 maximum aggregate limit of liability for all Claims.

ITEM 4. PREMIUM:
$82,500.00 total prepaid premium.

ITEM 5. RETENTIONS:
(a) $0.00 each Insured Person each Claim, but only for Loss as to which indemnification by the Company is not legally permissible or is not made solely by reason of the Company's financial insolvency.
(b) $50,000.00 each Claim, for Loss as to which indemnification by the Company is legally permissible.
(c) $100,000.00 each Claim under Insuring Agreement (B)(2), if applicable.

ITEM 6. LENGTH OF DISCOVERY PERIOD:
one year

ITEM 7. ADDITIONAL PREMIUM FOR DISCOVERY PERIOD:
$61,875.00

ITEM 8. NOTICE UNDER CONDITIONS (G)(1) AND (G)(2) MUST BE ADDRESSED TO:
Vice President of Claims
Executive Risk Management Associates
P. O. Box 2002
Simsbury, CT 06070-7683

ITEM 9. ENDORSEMENTS ATTACHED AT ISSUANCE:

C23115	D23091
C30302	D23299
D22309	D25090
D22529	
D22560	
23005	

These Declarations, the signed and completed Application and the Policy, with endorsements, will constitute the entire agreement between the Underwriter, the Company and the Insured Persons.

EXECUTIVE RISK INDEMNITY INC. by (Attorney-in-Fact):
9/14/00

Form C22164 (306ed.)

EXHIBIT V

*The Power*SM

Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage

Executive Risk Indemnity Inc.
Home Office:
32 Loockerman Square, Suite L100
Dover, Delaware 19901

Administrative Offices/Mailing Address:
82 Hopmeadow Street
Simsbury, Connecticut 06070-7683
860.408.2000

THIS IS A CLAIMS MADE POLICY WITH
DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.

EXECUTIVE RISK INDEMNITY INC.

THE POWER[SM]

DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY INCLUDING EMPLOYMENT PRACTICES LIABILITY COVERAGE

Executive Risk Indemnity Inc. (the "Underwriter"), the Insured Persons and the Company, subject to all of the terms, conditions and limitations of and any endorsements to this Policy, agree as follows:

I. INSURING AGREEMENTS

(A) The Underwriter will pay on behalf of the **Insured Persons** **Loss** from **Claims** first made against them during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, unless the **Company** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification.

(B) The Underwriter will pay on behalf of the **Company**:

(1) **Loss** from **Claims** first made against the **Insured Persons** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, if the **Company** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification; and

(2) (OPTIONAL COVERAGE) if it is stated in the Declarations that coverage has been made available under this INSURING AGREEMENT (B)(2), **Loss** from **Claims** first made against the **Company** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**.

(C) As part of and subject to the limit of liability stated in ITEM 3 of the Declarations, the Underwriter will have the right and duty to defend any **Claim** as described in INSURING AGREEMENTS (A) and (B)(1) (and, if it is stated in the Declarations that coverage has been made available thereunder, INSURING AGREEMENT (B)(2)), even if such **Claim** is groundless, false or fraudulent.

II. DEFINITIONS

(A) **"Application"** means the application attached to and forming part of this Policy, including any materials submitted in connection therewith, all of which are on file with the Underwriter and are a part of the Policy, as if physically attached.

(B) **"Claim"** means written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**. A **Claim** will be deemed to have been made when such written notice is first received by any **Insured**.

(C) **"Company"** means the **Parent Corporation** and any **Subsidiary** created or acquired on or before the Inception Date in ITEM 2(a) of the Declarations or, subject to CONDITION (H), during the **Policy Period**.

(D) **"Defense Expenses"** means reasonable legal fees and expenses incurred by or on behalf of the **Insured Persons** (or, if coverage has been made available under INSURING AGREEMENT (B)(2), the **Company**) in the defense or appeal of a **Claim**, subject to the Underwriter's right and duty to defend as set forth in INSURING AGREEMENT (C); provided, that **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees.

(E) **"Employment Practices Wrongful Act"** means any actual or alleged:

(1) wrongful termination of the employment of, or demotion of or failure or refusal to hire or promote, any person;

(2) discrimination or sexual harassment adversely affecting any employee of, or applicant for employment with, the **Company**; or

(3) retaliatory treatment against an employee of the **Company** on account of such employee's exercise or attempted exercise of his or her rights under law.

(F) **"Insured"** means the **Company** and any **Insured Person**.

(G) **"Insured Person"** means:

(1) any past, present or future director or officer of the **Company**; and

(2) any past, present or future employee of the **Company**; provided, that employees, unlike directors and officers, will be **Insured Persons** only if and to the extent that **Claims** are made against them for **Employment Practices Wrongful Acts**. In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

(H) **"Loss"** means **Defense Expenses** and damages, judgments, settlements or other amounts that an **Insured Person** (or, if coverage has been made available under INSURING AGREEMENT (B)(2), the **Company**) is obligated to pay as a result of a **Claim**.

(I) **"Parent Corporation"** means the entity named in ITEM 1 of the Declarations.

(J) **"Policy Period"** means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations or to any earlier cancelation date.

(K) **"Related Claims"** means all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

(L) **"Subsidiary"** means any entity during any time in which the **Parent Corporation** owns or controls, directly or through one or more **Subsidiaries**, the right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees.

(M) **"Wrongful Act"** means:

(1) any **Employment Practices Wrongful Act** by an **Insured Person** in his or her capacity as a director, officer or employee of the **Company**;

(2) any other actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as a director or officer of the **Company**;

(3) any matter asserted against an **Insured Person** solely by reason of his or her status as a director or officer of the **Company**; and

(4) any **Employment Practices Wrongful Act** by the **Company** or any other actual or alleged error, omission, misstatement, misleading statement or breach of duty by the **Company**; provided, that this DEFINITION [illegible] will only apply if it is stated in the Declarations that coverage has made available under INSURING AGREEMENT (B)(2).

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III. EXCLUSIONS

This Policy does not apply to:

(A) **Loss**, other than **Defense Expenses**, which an **Insured** is obligated to pay:

(1) as a result of a **Claim** brought about or contributed to in fact by any dishonest or fraudulent act or omission or any willful violation of any statute, rule or law by any **Insured**, or by the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled; provided, that for the purposes of determining the applicability of this EXCLUSION (A)(1), no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**; and further, provided, that each **Insured** agrees that, if it is finally established that the Underwriter has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION (A)(1), such **Insured** will repay the Underwriter upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**;

(2) as a result of any portion of a **Claim** for an **Employment Practices Wrongful Act** seeking relief or redress in any form other than money damages; or

(3) by operation of the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing;

(B) any salary, wages or other employment-related benefits which the **Company** is obligated to pay to any employee under a written contract either to commence or continue employment or to make any payment in the event of a termination of employment;

(C) fines, taxes or penalties, punitive or exemplary damages, the multiplied portion of any multiplied damage award, or matters which are uninsurable under the law pursuant to which this Policy will be construed; provided, that if applicable law so permits, this EXCLUSION (C) will not apply to punitive or exemplary damages or to the multiplied portion of a multiple damage award in any amount not exceeding $25,000 in connection with any **Claim**, such amount to be part of, and not in addition to, the limit of liability set forth in ITEM 3 of the Declarations;

(D) any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, damage to or destruction of any tangible property including loss of use thereof, libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium; provided, that this EXCLUSION (D)(1) will not apply to allegations of mental anguish, emotional distress or libel, slander or oral or written publication of defamatory or disparaging material if and only to the extent that such allegations are made as part of a **Claim** for an **Employment Practices Wrongful Act**;

(2) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request, including but not limited to any such **Claim** alleging damage to the **Company** or to its shareholders;

(3) any fact, circumstance, situation, transaction, event or **Wrongful Act**:

(a) underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received written notice before the Inception Date in ITEM 2(a) of the Declarations; or

(b) which, before the Inception Date in ITEM 2(a) of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance; or

(4) the service by any **Insured Person** as a director, officer or employee of any entity other than the **Company**, even if directed or requested by the **Company** to serve as a director, officer or employee of such other entity;

(E) any **Claim** by or on behalf of, or in the name or right of, the **Company** or any **Insured Person**, except that this EXCLUSION (E) will not apply to:

(1) any derivative action by a security holder of the **Company** on behalf of, or in the name or right of, the **Company**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, the **Company** or any **Insured Person**;

(2) any **Claim** in the form of a crossclaim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or

(3) any **Claim** for an **Employment Practices Wrongful Act**;

(F) any **Claim** for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder, or of any similar provisions of federal, state or local law or regulation;

(G) any **Claim** against any **Subsidiary** or other entity acquired by the **Company**, whether by merger, consolidation or otherwise, or against any **Insured Person** of such **Subsidiary** or other entity in his or her capacity as such for any **Wrongful Act**, including any **Employment Practices Wrongful Act**, committed during any time in which such entity is not a **Subsidiary** or at any time before the **Company's** acquisition of such entity; or

(H) any **Claim** arising out of any actual or alleged liability of the **Company** under any express contract or agreement. For the purposes of this EXCLUSION (H), an "express contract or agreement" is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making. This EXCLUSION (H) will apply only to the coverage available to the **Company** under INSURING AGREEMENT (B)(2) if it is stated in the Declarations that coverage has been made available thereunder, and this EXCLUSION (H) will not apply to **Claims** for liability resulting from **Employment Practices Wrongful Acts** if such liability would have attached to the **Company** in the absence of the express contract or agreement in question.

IV. CONDITIONS

(A) **Limit of Liability:**

(1) The amount stated in ITEM 3 of the Declarations will be the maximum aggregate limit of liability of the Underwriter under this Policy for all **Loss**, including **Defense Expenses**, from all **Claims** for which this Policy provides coverage, regardless of the time of payment by the Underwriter, and regardless of whether such **Claims** are made during the **Policy Period** or during the Discovery Period.

(2) **Defense Expenses** are part of and not in addition to the Underwriter's limit of liability, and payment of **Defense Expenses** by the Underwriter will reduce its limit of liability.

(B) **Application of Retention; Presumption of Indemnification:**

(1) The obligation of the Underwriter to pay **Loss**, including **Defense Expenses**, will only be in excess of the applicable retention. The Underwriter will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the Underwriter will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the Underwriter any amounts so paid.

(2) The certificate of incorporation or articles of association, bylaws and resolutions of the **Parent Corporation** and each **Subsidiary** will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

(3) The retention set forth in ITEM 5(b) of the Declarations will apply to any **Loss** incurred by or on behalf of the **Insured Persons** as to which indemnification by the **Company** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the **Company** solely by reason of its financial insolvency.

(4) If different retentions are applicable to different parts of any **Claim**, the applicable retentions will be applied separately to each part of such **Claim**, but the sum of such retentions will not exceed the largest applicable retention as set forth in ITEM 5 of the Declarations.

(C) Defense and Settlement of Claims:

(1) No **Insured** may incur any **Defense Expenses** or admit liability for or settle any **Claim** without the Underwriter's written consent. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, to enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation:

(a) the **Insureds** will thereafter be responsible for negotiating and defending such **Claim** at their own expense independently of the Underwriter; and

(b) subject to the Underwriter's maximum aggregate limit of liability as set forth in ITEM 3 of the Declarations, the Underwriter's liability in respect of any such **Claim** will not exceed the amount for which such **Claim** could have been settled by the Underwriter plus **Defense Expenses** up to the date the **Insureds** refused to settle such **Claim**.

(2) The Underwriter will have no obligation to pay **Loss** or **Defense Expenses** or to defend or continue to defend any **Claim** after the Underwriter's maximum aggregate limit of liability, as set forth in ITEM 3 of the Declarations, has been exhausted by the payment of **Loss** or **Defense Expenses**, or both. If the Underwriter's limit of liability is exhausted by the payment of **Loss**, including **Defense Expenses**, the premium will be fully earned.

(D) Other Insurance; Other Indemnification:

All **Loss** payable under this Policy will be specifically excess of and will not contribute with (1) other existing insurance, including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically in excess of this Policy, and (2) indemnification to which an **Insured** is entitled from any entity other than the **Company**. This Policy will not be subject to the terms of any other insurance.

(E) **Cooperation; Subrogation:**

In the event of a **Claim**, the **Insureds** will provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests, and will do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. At the Underwriter's request, the **Insureds** will assist in the conduct of actions, suits or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the Underwriter will be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit in their name. The obligations of the **Insureds** under this CONDITION (E) will survive the Policy.

(F) **Discovery Period:**

If either the Underwriter or the **Parent Corporation** refuses or declines to renew this Policy for any reason and, within thirty (30) days of the end of the **Policy Period**, the **Parent Corporation** elects to purchase the Discovery Period set forth in ITEM 6 of the Declarations by paying the additional premium set forth in ITEM 7 of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made during the Discovery Period, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION (I), whichever is earlier.

(G) **Notice; Timing and Interrelationship of Claims:**

(1) As a condition precedent to any right to payment in respect of any **Claim**, including any **Claim** for a **Wrongful Act** of which notice was previously given under CONDITION (G)(2), the **Insureds** must give the Underwriter written notice of such **Claim**, with full details, as soon as practicable after it is first made.

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(2) If, during the **Policy Period**, the **Insureds** first become aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancelation of the Policy:

(a) give the Underwriter written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insureds** first became aware of such **Wrongful Act**, and

(b) request coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then the Underwriter will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.

(3) All notices under CONDITIONS (G)(1) and (2) must be sent by certified mail to the address set forth in ITEM 8 of the Declarations.

(4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION (G)(2), whichever is earlier.

(H) **Adjustments:**

If, during the **Policy Period**, any of the following events occurs:

(1) the **Company** acquires any assets, acquires a **Subsidiary** or acquires any entity by merger and, at the time of such transaction, the assets so acquired or the assets of the entity so acquired exceed twenty-five percent (25%) of the total assets of the **Company** as reflected in the **Company's** most recent audited consolidated financial statements; or

(2) the **Company** assumes any liabilities and, at the time of such assumption, the liabilities so assumed exceed twenty-five percent (25%) of the total liabilities of the **Company** as reflected in the **Company's** most recent audited consolidated financial statements;

there will be no coverage under this Policy for any **Claim** for **Wrongful Acts** arising out of or in any way relating to the entity, assets or liabilities acquired, assumed or merged with, unless the Underwriter receives from the **Company** full details of such transaction or event and the Underwriter, at its sole discretion,

agrees by written endorsement to provide such coverage upon such terms, conditions and limitations as it may require.

(I) **Conversion of Coverage Under Certain Circumstances:**

If, during the **Policy Period**, any of the following events occurs:

(1) the acquisition of the **Parent Corporation**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Parent Corporation** into or with another entity such that the **Parent Corporation** is not the surviving entity;

(2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Parent Corporation**; or

(3) the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Parent Corporation**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, the Policy may not be canceled, regardless of CONDITION (J)(2), and the entire premium for the Policy will be deemed fully earned.

(J) **Cancelation; No Obligation to Renew:**

(1) The Underwriter may not cancel this Policy except for failure to pay a premium when due, in which case fifteen (15) days' written notice will be given.

(2) The **Parent Corporation** may cancel this Policy by mailing to the Underwriter written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancelation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancelation by the **Parent Corporation** is effective or as soon as practicable thereafter, but payment or tender by the Underwriter of unearned premium is not a condition of cancelation by the **Parent Corporation.**

(3) The Underwriter will not be required to renew this Policy upon its expiration. If the Underwriter elects not to renew this Policy, the Underwriter will deliver or mail to the **Parent Corporation** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.

(K) Representations; Severability:

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the **Application**. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy will be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

(L) No Action Against the Underwriter:

(1) No action may be taken against the Underwriter unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the Underwriter.

(2) No person or entity will have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor may the Underwriter be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**. The Underwriter will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

(M) Authorization and Notices:

The **Insureds** agree that the **Parent Corporation** will act on their behalf with respect to receiving any notices and return premiums from the Underwriter.

(N) Changes:

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Underwriter will not effect a waiver or change in any part of this Policy or estop the Underwriter from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

(O) **Assignment:**

No assignment of interest under this Policy will bind the Underwriter without its consent.

(P) **Entire Agreement:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

(Q) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof the Underwriter has caused this Policy to be executed on the Declarations Page.

Secretary

Executive Vice President

*The Power*SM

Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage

Executive Risk Indemnity Inc.
Home Office:
32 Loockerman Square, Suite L100
Dover, Delaware 19901

Administrative Offices/Mailing Address:
82 Hopmeadow Street
Simsbury, Connecticut 06070-7683
860.408.2000

THIS IS A CLAIMS MADE POLICY WITH
DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.

EXECUTIVE RISK INDEMNITY INC.

THE POWER[SM]

DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY INCLUDING EMPLOYMENT PRACTICES LIABILITY COVERAGE

Executive Risk Indemnity Inc. (the "Underwriter"), the Insured Persons and the Company, subject to all of the terms, conditions and limitations of and any endorsements to this Policy, agree as follows:

I. INSURING AGREEMENTS

(A) The Underwriter will pay on behalf of the **Insured Persons Loss** from **Claims** first made against them during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, unless the **Company** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification.

(B) The Underwriter will pay on behalf of the **Company**:

(1) **Loss** from **Claims** first made against the **Insured Persons** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, if the **Company** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification; and

(2) (OPTIONAL COVERAGE) if it is stated in the Declarations that coverage has been made available under this INSURING AGREEMENT (B)(2), **Loss** from **Claims** first made against the **Company** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**.

(C) As part of and subject to the limit of liability stated in ITEM 3 of the Declarations, the Underwriter will have the right and duty to defend any **Claim** as described in INSURING AGREEMENTS (A) and (B)(1) (and, if it is stated in the Declarations that coverage has been made available thereunder, INSURING AGREEMENT (B)(2)), even if such **Claim** is groundless, false or fraudulent.

II. DEFINITIONS

(A) "**Application**" means the application attached to and forming part of this Policy, including any materials submitted in connection therewith, all of which are on file with the Underwriter and are a part of the Policy, as if physically attached.

(B) "**Claim**" means written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**. A **Claim** will be deemed to have been made when such written notice is first received by any **Insured**.

(C) "**Company**" means the **Parent Corporation** and any **Subsidiary** created or acquired on or before the Inception Date in ITEM 2(a) of the Declarations or, subject to CONDITION (H), during the **Policy Period**.

(D) "**Defense Expenses**" means reasonable legal fees and expenses incurred by or on behalf of the **Insured Persons** (or, if coverage has been made available under INSURING AGREEMENT (B)(2), the **Company**) in the defense or appeal of a **Claim**, subject to the Underwriter's right and duty to defend as set forth in INSURING AGREEMENT (C); provided, that **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees.

(E) "**Employment Practices Wrongful Act**" means any actual or alleged:

(1) wrongful termination of the employment of, or demotion of or failure or refusal to hire or promote, any person;

(2) discrimination or sexual harassment adversely affecting any employee of, or applicant for employment with, the **Company**; or

(3) retaliatory treatment against an employee of the **Company** on account of such employee's exercise or attempted exercise of his or her rights under law.

(F) "**Insured**" means the **Company** and any **Insured Person**.

(G) "**Insured Person**" means:

(1) any past, present or future director or officer of the **Company**; and

(2) any past, present or future employee of the **Company**; provided, that employees, unlike directors and officers, will be **Insured Persons** only if and to the extent that **Claims** are made against them for **Employment Practices Wrongful Acts**. In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

(H) **"Loss"** means **Defense Expenses** and damages, judgments, settlements or other amounts that an **Insured Person** (or, if coverage has been made available under INSURING AGREEMENT (B)(2), the **Company**) is obligated to pay as a result of a **Claim**.

(I) **"Parent Corporation"** means the entity named in ITEM 1 of the Declarations.

(J) **"Policy Period"** means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations or to any earlier cancelation date.

(K) **"Related Claims"** means all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

(L) **"Subsidiary"** means any entity during any time in which the **Parent Corporation** owns or controls, directly or through one or more **Subsidiaries**, the right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees.

(M) **"Wrongful Act"** means:

(1) any **Employment Practices Wrongful Act** by an **Insured Person** in his or her capacity as a director, officer or employee of the **Company**;

(2) any other actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as a director or officer of the **Company**;

(3) any matter asserted against an **Insured Person** solely by reason of his or her status as a director or officer of the **Company**; and

(4) any **Employment Practices Wrongful Act** by the **Company** or any other actual or alleged error, omission, misstatement, misleading statement or breach of duty by the **Company**; provided, that this DEFINITION (M)(4) will only apply if it is stated in the Declarations that coverage has been made available under INSURING AGREEMENT (B)(2).

III. EXCLUSIONS

This Policy does not apply to:

(A) **Loss**, other than **Defense Expenses**, which an **Insured** is obligated to pay:

(1) as a result of a **Claim** brought about or contributed to in fact by any dishonest or fraudulent act or omission or any willful violation of any statute, rule or law by any **Insured**, or by the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled; provided, that for the purposes of determining the applicability of this EXCLUSION (A)(1), no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**; and further, provided, that each **Insured** agrees that, if it is finally established that the Underwriter has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION (A)(1), such **Insured** will repay the Underwriter upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**;

(2) as a result of any portion of a **Claim** for an **Employment Practices Wrongful Act** seeking relief or redress in any form other than money damages; or

(3) by operation of the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing;

(B) any salary, wages or other employment-related benefits which the **Company** is obligated to pay to any employee under a written contract either to commence or continue employment or to make any payment in the event of a termination of employment;

(C) fines, taxes or penalties, punitive or exemplary damages, the multiplied portion of any multiplied damage award, or matters which are uninsurable under the law pursuant to which this Policy will be construed; provided, that if applicable law so permits, this EXCLUSION (C) will not apply to punitive or exemplary damages or to the multiplied portion of a multiple damage award in any amount not exceeding $25,000 in connection with any **Claim**, such amount to be part of, and not in addition to, the limit of liability set forth in ITEM 3 of the Declarations;

(D) any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, damage to or destruction of any tangible property including loss of use thereof, libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium; provided, that this EXCLUSION (D)(1) will not apply to allegations of mental anguish, emotional distress or libel, slander or oral or written publication of defamatory or disparaging material if and only to the extent that such allegations are made as part of a **Claim** for an **Employment Practices Wrongful Act**;

(2) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request, including but not limited to any such **Claim** alleging damage to the **Company** or to its shareholders;

(3) any fact, circumstance, situation, transaction, event or **Wrongful Act**:

(a) underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received written notice before the Inception Date in ITEM 2(a) of the Declarations; or

(b) which, before the Inception Date in ITEM 2(a) of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance; or

(4) the service by any **Insured Person** as a director, officer or employee of any entity other than the **Company**, even if directed or requested by the **Company** to serve as a director, officer or employee of such other entity;

(E) any **Claim** by or on behalf of, or in the name or right of, the **Company** or any **Insured Person**, except that this EXCLUSION (E) will not apply to:

(1) any derivative action by a security holder of the **Company** on behalf of, or in the name or right of, the **Company**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, the **Company** or any **Insured Person**;

(2) any **Claim** in the form of a crossclaim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or

(3) any **Claim** for an **Employment Practices Wrongful Act**;

(F) any **Claim** for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder, or of any similar provisions of federal, state or local law or regulation;

(G) any **Claim** against any **Subsidiary** or other entity acquired by the **Company**, whether by merger, consolidation or otherwise, or against any **Insured Person** of such **Subsidiary** or other entity in his or her capacity as such for any **Wrongful Act**, including any **Employment Practices Wrongful Act**, committed during any time in which such entity is not a **Subsidiary** or at any time before the **Company's** acquisition of such entity; or

(H) any **Claim** arising out of any actual or alleged liability of the **Company** under any express contract or agreement. For the purposes of this EXCLUSION (H), an "express contract or agreement" is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making. This EXCLUSION (H) will apply only to the coverage available to the **Company** under INSURING AGREEMENT (B)(2) if it is stated in the Declarations that coverage has been made available thereunder, and this EXCLUSION (H) will not apply to **Claims** for liability resulting from **Employment Practices Wrongful Acts** if such liability would have attached to the **Company** in the absence of the express contract or agreement in question.

IV. CONDITIONS

(A) **Limit of Liability:**

(1) The amount stated in ITEM 3 of the Declarations will be the maximum aggregate limit of liability of the Underwriter under this Policy for all **Loss**, including **Defense Expenses**, from all **Claims** for which this Policy provides coverage, regardless of the time of payment by the Underwriter, and regardless of whether such **Claims** are made during the **Policy Period** or during the Discovery Period.

(2) **Defense Expenses** are part of and not in addition to the Underwriter's limit of liability, and payment of **Defense Expenses** by the Underwriter will reduce its limit of liability.

(B) **Application of Retention; Presumption of Indemnification:**

(1) The obligation of the Underwriter to pay **Loss**, including **Defense Expenses**, will only be in excess of the applicable retention. The Underwriter will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the Underwriter will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the Underwriter any amounts so paid.

(2) The certificate of incorporation or articles of association, bylaws and resolutions of the **Parent Corporation** and each **Subsidiary** will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

(3) The retention set forth in ITEM 5(b) of the Declarations will apply to any **Loss** incurred by or on behalf of the **Insured Persons** as to which indemnification by the **Company** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the **Company** solely by reason of its financial insolvency.

(4) If different retentions are applicable to different parts of any **Claim**, the applicable retentions will be applied separately to each part of such **Claim**, but the sum of such retentions will not exceed the largest applicable retention as set forth in ITEM 5 of the Declarations.

(C) **Defense and Settlement of Claims:**

(1) No **Insured** may incur any **Defense Expenses** or admit liability for or settle any **Claim** without the Underwriter's written consent. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, to enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation:

(a) the **Insureds** will thereafter be responsible for negotiating and defending such **Claim** at their own expense independently of the Underwriter; and

(b) subject to the Underwriter's maximum aggregate limit of liability as set forth in ITEM 3 of the Declarations, the Underwriter's liability in respect of any such **Claim** will not exceed the amount for which such **Claim** could have been settled by the Underwriter plus **Defense Expenses** up to the date the **Insureds** refused to settle such **Claim**.

(2) The Underwriter will have no obligation to pay **Loss** or **Defense Expenses** or to defend or continue to defend any **Claim** after the Underwriter's maximum aggregate limit of liability, as set forth in ITEM 3 of the Declarations, has been exhausted by the payment of **Loss** or **Defense Expenses**, or both. If the Underwriter's limit of liability is exhausted by the payment of **Loss**, including **Defense Expenses**, the premium will be fully earned.

(D) **Other Insurance; Other Indemnification:**

All **Loss** payable under this Policy will be specifically excess of and will not contribute with (1) other existing insurance, including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically in excess of this Policy, and (2) indemnification to which an **Insured** is entitled from any entity other than the **Company**. This Policy will not be subject to the terms of any other insurance.

(E) **Cooperation; Subrogation:**

In the event of a **Claim**, the **Insureds** will provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests, and will do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. At the Underwriter's request, the **Insureds** will assist in the conduct of actions, suits or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the Underwriter will be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit in their name. The obligations of the **Insureds** under this CONDITION (E) will survive the Policy.

(F) **Discovery Period:**

If either the Underwriter or the **Parent Corporation** refuses or declines to renew this Policy for any reason and, within thirty (30) days of the end of the **Policy Period**, the **Parent Corporation** elects to purchase the Discovery Period set forth in ITEM 6 of the Declarations by paying the additional premium set forth in ITEM 7 of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made during the Discovery Period, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION (I), whichever is earlier.

(G) **Notice; Timing and Interrelationship of Claims:**

(1) As a condition precedent to any right to payment in respect of any **Claim**, including any **Claim** for a **Wrongful Act** of which notice was previously given under CONDITION (G)(2), the **Insureds** must give the Underwriter written notice of such **Claim**, with full details, as soon as practicable after it is first made.

(2) If, during the **Policy Period**, the **Insureds** first become aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancelation of the Policy:

(a) give the Underwriter written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insureds** first became aware of such **Wrongful Act**, and

(b) request coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then the Underwriter will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.

(3) All notices under CONDITIONS (G)(1) and (2) must be sent by certified mail to the address set forth in ITEM 8 of the Declarations.

(4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION (G)(2), whichever is earlier.

(H) **Adjustments**:

If, during the **Policy Period**, any of the following events occurs:

(1) the **Company** acquires any assets, acquires a **Subsidiary** or acquires any entity by merger and, at the time of such transaction, the assets so acquired or the assets of the entity so acquired exceed twenty-five percent (25%) of the total assets of the **Company** as reflected in the **Company's** most recent audited consolidated financial statements; or

(2) the **Company** assumes any liabilities and, at the time of such assumption, the liabilities so assumed exceed twenty-five percent (25%) of the total liabilities of the **Company** as reflected in the **Company's** most recent audited consolidated financial statements;

there will be no coverage under this Policy for any **Claim** for **Wrongful Acts** arising out of or in any way relating to the entity, assets or liabilities acquired, assumed or merged with, unless the Underwriter receives from the **Company** full details of such transaction or event and the Underwriter, at its sole discretion,

agrees by written endorsement to provide such coverage upon such terms, conditions and limitations as it may require.

(I) **Conversion of Coverage Under Certain Circumstances:**

If, during the **Policy Period**, any of the following events occurs:

(1) the acquisition of the **Parent Corporation**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Parent Corporation** into or with another entity such that the **Parent Corporation** is not the surviving entity;

(2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Parent Corporation**; or

(3) the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Parent Corporation**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, the Policy may not be canceled, regardless of CONDITION (J)(2), and the entire premium for the Policy will be deemed fully earned.

(J) **Cancelation; No Obligation to Renew:**

(1) The Underwriter may not cancel this Policy except for failure to pay a premium when due, in which case fifteen (15) days' written notice will be given.

(2) The **Parent Corporation** may cancel this Policy by mailing to the Underwriter written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancelation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancelation by the **Parent Corporation** is effective or as soon as practicable thereafter, but payment or tender by the Underwriter of unearned premium is not a condition of cancelation by the **Parent Corporation.**

(3) The Underwriter will not be required to renew this Policy upon its expiration. If the Underwriter elects not to renew this Policy, the Underwriter will deliver or mail to the **Parent Corporation** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.

(K) Representations; Severability:

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the **Application**. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy will be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

(L) **No Action Against the Underwriter:**

(1) No action may be taken against the Underwriter unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the Underwriter.

(2) No person or entity will have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor may the Underwriter be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**. The Underwriter will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

(M) **Authorization and Notices:**

The **Insureds** agree that the **Parent Corporation** will act on their behalf with respect to receiving any notices and return premiums from the Underwriter.

(N) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Underwriter will not effect a waiver or change in any part of this Policy or estop the Underwriter from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

(O) Assignment:

No assignment of interest under this Policy will bind the Underwriter without its consent.

(P) **Entire Agreement:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

(Q) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof the Underwriter has caused this Policy to be executed on the Declarations Page.

Secretary

Executive Vice President

ENDORSEMENT NO. 1
MINNESOTA AMENDATORY ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged:

1. THIS POLICY PROVIDES COVERAGE ON A CLAIMS-MADE BASIS.

   This means that only Claims actually made during the Policy Period are covered unless coverage for a Discovery Period is purchased. If a Discovery Period is not made available to the Insureds, the Insureds risk having gaps in coverage when switching from one insurer to another. Moreover, even if such a Discovery Period is made available to the Insureds, the Insureds may still be personally liable for claims reported after the Discovery Period expires.

   Claims-made policies do not provide coverage for Wrongful Acts committed before a fixed retroactive date.

   Rates for claims-made policies are discounted in the early years of a policy, but increase steadily over time.

2. Section IV. CONDITIONS (A) Limit of Liability is amended by adding the following thereto:

   "(3) If a judgment is entered against the Insured Persons the principal amount of which is within the applicable policy limits, the Underwriter will be responsible for the Insured Person's share of the costs, disbursements, and prejudgment interest, as determined under Section 549.09 of Minnesota's insurance law, included in such judgment, even if the total amount exceeds the applicable policy limits."

3. Section III. Exclusions (C) is deleted in its entirety and replaced with the following:

   "(C) fines, taxes or penalties, punitive or exemplary damages, the multiplied portion of any multiplied damage award, or matters which are uninsurable under the law pursuant to which this Policy will be construed."

4. The COOPERATION, SUBROGATION section of Section IV. CONDITIONS of this Policy will be deemed to have been amended to provide that:

   (a) The Underwriter and its reinsurers may not proceed against the Insured Persons in a subrogation action if the Loss that could give rise to such action was caused by the nonintentional acts of the Insured Persons, and

   (b) The Underwriter and its reinsurers may not subrogate themselves to the rights of the Insured Persons to proceed against another person if that other person is also insured by the Underwriter for the same Loss, except that this subparagraph (b) will apply only if the Loss was caused by the nonintentional acts of the person against whom subrogation is sought.

5. The DISCOVERY PERIOD section of Section IV. CONDITIONS of this Policy is amended to allow the Parent Corporation to purchase the Discovery Period in accordance with the provisions of such section if the Parent Corporation cancels the Policy.

6. Paragraph (1) of the CANCELLATION section of Section IV. CONDITIONS of this Policy is deleted in its entirety and replaced by the following:

   "(1) The Underwriter may cancel this Policy only for failure to pay a premium when due, and only by delivering or mailing by first class mail to the entity named in ITEM 1 of the Declarations at its last known address, not less than ten (10) days before the effective date of cancellation, written notice stating the amount of premium due, the date on which such premium is due and the effect of non-payment by the due date; provided, that no cancellation for non-payment of premium of the amount due will be effective if payment is made before the effective date of cancellation set forth in the notice."

7. Paragraph (3) of Section IV. CONDITIONS (J) CANCELLATION; NO OBLIGATION TO RENEW is deleted in its entirety and replaced by the following:

   "(3) The Underwriter will not be required to renew this Policy upon its expiration. The Underwriter may non-renew this Policy only by delivering or mailing by first class mail to the entity named in ITEM 1 of the Declarations at its last known address, not less than sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations, written notice of its intention to non-renew. If the Underwriter does not mail or deliver such notice at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations, the coverage afforded under this Policy shall continue in force with no change in its terms, conditions and limitations for sixty (60) days after the entity named in ITEM 1 of the Declarations receives such notice. The foregoing will not apply, however, if the entity named in ITEM 1 of the Declarations has insured elsewhere, has accepted replacement coverage, or has requested or agreed to non-renewal."

8. The last sentence of Section IV. CONDITIONS (K) REPRESENTATIONS; SEVERABILITY is deleted in its entirety.

9. The Policy will be deemed to have been amended as necessary to effect the purposes of this endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

ENDORSEMENT NO. 2
Notice of Loss Control Services

RE: Directors and Officers Liability

As a valued policyholder, we want to let you know that we have loss prevention information available to you.

Available to you are copies of a Directors and Officers Liability Loss Prevention booklet written by Dan A. Bailey, a partner in the law firm of Arter & Hadden as well as Employment Practices Liability Loss Prevention booklet. These booklets discuss general principles governing D&O and EPL liability and the potential exposures insureds face in these areas in performing their everyday business activities. It also contains information that may be helpful to you in your loss prevention efforts. You may obtain copies by contacting your agent or your local Chubb Executive Risk underwriter.

As the booklets note, it is important that you consult competent counsel to design and implement your loss control programs.

If you have any questions, please call 800-432-8168 and press 3 to reach our Marketing Department to obtain additional materials.

ENDORSEMENT NO. 3
SECURITIES EXCLUSION

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged, this Policy does not apply to any Claim based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of:

(1) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any other federal law, rule or regulation with respect to the regulation of securities, any rules or regulations of the United States Securities and Exchange Commission, or any amendment of such laws, rules or regulations; or

(2) any state securities or "Blue Sky" laws or rules or regulations or any amendment of such laws, rules or regulations; or

(3) any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

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ENDORSEMENT NO. 4
PRODUCT EXCLUSION

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged, this Policy does not apply to any Claim against the Company based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency or inadequacy in the design or manufacture of such product. This exclusion applies only to the coverage available to the Company under Insuring Agreement B(2).

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

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ENDORSEMENT NO. 5
INTELLECTUAL PROPERTY EXCLUSION

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged, this Policy does not apply to any Claim against the Company based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged infringement of any patent, copyright, trademark or service mark, including any actual or alleged violation of any law or statute, or rule or regulation promulgated thereunder or of any provision of the common law imposing liability in connection therewith. This exclusion applies only to the coverage available to the Company under Insuring Agreement B(2).

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

ENDORSEMENT NO. 6
LIMITED SECURITIES COVERAGE ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged, Endorsement No. 3 will not apply to any Claim made against an Insured Person arising out of the offering, sale or purchase of Common Stock as described more fully in the Private Placement dated as of May 20, 1997.

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

ENDORSEMENT NO. 7
AMEND EXCLUSION (A)(2)

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged, Section III Exclusions (A)(2) is amended to read in its entirety as follows:

"(2) as a result of any portion of a Claim seeking relief or redress in any form other than money damages; or"

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

ENDORSEMENT NO. 8
OUTSIDE DIRECTORSHIP LIABILITY ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No. 8166-6027
Issued to Miller and Schroeder, Inc.
Issued by Executive Risk Indemnity Inc.

In consideration of the premium charged:

(1) The term "Wrongful Act" will also mean any Employment Practices Wrongful Act or other actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an Insured Person in his or her capacity as a director, officer, trustee, regent or governor of a not-for-profit organization or corporation, and DEFINITION (M) is amended accordingly.

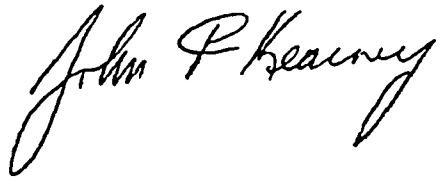
(2) EXCLUSION (D)(4) will not apply to Claims against Insured Persons for Wrongful Acts in their capacities as directors, officers, trustees, regents or governors of not-for-profit organizations or corporations when their service as such is with the consent the Company.

(3) All Loss payable under this Policy in respect of Claims against the Insured Persons for Wrongful Acts in their capacities as directors, officers, trustees, regents or governors of not-for-profit organizations or corporations will be specifically excess of and will not contribute with:

(a) any indemnification from any such not-for-profit organization or corporation available to an Insured Person by reason of his or her service as a director, officer, trustee, regent or governor thereof; and

(b) any insurance of any such not-for-profit organization or corporation available to an Insured Person by reason of his or her service as a director, officer, trustee, regent or governor thereof, except that if the Underwriter shall have issued any such policy or policies of insurance to the not-for-profit corporation and a Claim gives rise to coverage both under this Policy by reason of this endorsement and under such other policy or policies, then the Underwriter's maximum aggregate limit of liability under all such policies, including this Policy, for all Loss, including Defense Expenses, in respect of such Claim will not exceed the largest single available limit of liability under any of such policies. Nothing in this subparagraph (4)(b) is intended, nor shall it be construed, to obligate or require the Underwriter to pay any Loss, including Defense Expenses, under this Policy in respect of any such Claim in any amount exceeding the available Limit of Liability as set forth in ITEM 3 of the Declarations.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT NO. 9
GENERAL E & O EXCLUSION (WITH MANAGEMENT CARVEBACK)

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged:

(1) No coverage will be available under the Policy for Loss including Defense Expenses for any Claim made against any Insured based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an Insured's actual or alleged rendering or failure to render the following services:

Investment Banking Services
Security Broker/Dealer Services
Securities Underwriting

(2) Paragraph (1) above is not intended, however, nor shall it be construed, to apply to Loss, including Defense Expenses, in connection with any Claim against an Insured to the extent that such Claim is for a Wrongful Act by Insured Person in connection with the management or supervision of any division, Subsidiary or group of the Parent Corporation offering any of the aforementioned services.

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

D25090 (9/97)

40

ENDORSEMENT NO. 10
AMEND ITEM 7 OF DECLARATIONS

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged, Item 7 of the Declarations is amended to read in its entirety as follows:

"ITEM 7 ADDITIONAL PREMIUM FOR DISCOVERY PERIOD:

75% of Annual Premium

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

ENDORSEMENT NO. 11
OPTION TO PURCHASE REINSTATEMENT OF THE LIMIT OF LIABILITY

This Endorsement, effective at 12:01 a.m. on July 31, 2000, forms part of

Policy No.	8166-6027
Issued to	Miller and Schroeder, Inc.
Issued by	Executive Risk Indemnity Inc.

In consideration of the premium charged:

(1) Subject to the terms and conditions hereinafter set forth, the Insured shall have the right to purchase a reinstatement of the Limit of Liability set forth in Item 3 of the Declarations (the "Reinstated Limit").

(2) The Reinstated Limit shall be expressly conditioned on the following:

(a) This Policy shall be in full force and effect on the date of purchase;

(b) During the Policy Period (or any Discovery Period, if purchased) a claim shall have been made against the Insureds which, in the sole discretion of a third party mutually agreeable to the Underwriter and the Insureds (and whose costs shall be paid by the Underwriter), has the potential to give rise to Loss, including Defense Expenses, in excess of $5,000,000.00 (a "Reinstatement Activation Claim");

(c) The Insureds shall notify the Underwriter, in writing, of the determination of such third party (the "Determination Notice");

(d) The Insureds shall have 45 days following delivery of the Determination Notice to notify the Underwriter, in writing, of its intention to purchase the Reinstated Limit (a "Reinstatement Notice"). If purchased by the Insureds, the Reinstated Limit shall be effective on the date designated by the Insureds in such notice (the "Reinstated Limit Activation Date"); provided that in no event shall such date be prior to the later of (i) the first anniversary of the Inception Date set forth in Item 2 of the Declarations, or (ii) the date of the Reinstatement Notice.

(e) The Insureds shall pay an additional premium of (i) 150% of the annual premium if the Reinstated Limit Activation Date occurs after the first anniversary of the Inception Date set forth in Item 2 of the Declarations, but before the second anniversary of such inception Date, or (ii) 150% of the annual premium if the Reinstated Limit Activation Date occurs after the second anniversary of such Inception Date, but before the Expiration Date set forth in Item 2 of the Declarations. Such additional premium shall be paid by the Insureds at the same time as, or within 45 days following, delivery of the Reinstatement Notice. Such additional premium shall be deemed to be fully earned on and as of the Reinstated Limit Activation Date.

(3) The Reinstated Limit shall apply only to Loss, including Defense Expenses, from Claims first made against the Insureds during the Policy Period and on or after the Reinstated Limit Activation Date.

(4) The Underwriter shall not pay all or any portion of the Reinstated Limit for Loss, including Defense Expenses, in connection with any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance or situation which, before the Reinstated Limit Activation Date was the subject of any notice given under any directors and officers liability insurance policy.

(5) The Reinstated Limit shall be excess of any other excess insurance which was in force prior to the Reinstated Limit Activation Date, and all such excess insurance must be completely exhausted by payment of Loss, including Defense Expenses, thereunder before the Underwriter shall have any obligation to make any payment on account of the Reinstated Limit.

(6) Unless and until the Insureds elects to purchase the Reinstated Limit, the Underwriter's maximum aggregate limit of liability for all Claims during the Policy Period (and any Discovery Period, if purchased) shall be the amount set forth in Item 3 of the Declarations. If the Insureds elect to purchase the Reinstated Limit, the Underwriter's maximum aggregate limit of liability for all Claims during the Policy Period shall be increased, effective on the Reinstated Limit Activation Date, by the amount of the Reinstated Limit; provided that in no event will the Underwriter's maximum aggregate limit of liability for all Claims during the Policy Period exceed $5,000,000.00. In all events, the Underwriter's maximum aggregate limit of liability for any one Claim made against the Insureds during the Policy Period (or any Discovery Period, if purchased) shall be $5,000,000.00.

All other terms, conditions and limitations of this Policy shall remain unchanged.

John P Kearney

Authorized Representative

CHUBB

Chubb Group of Insurance Companies
82 Hopmeadow Street
P.O. Box 2002
Simsbury, CT 06070-7683
Phone: 860.408.2000 • Fax: 860.408.2002
www.chubb.com

August 22, 2003

Direct Dial: (860) 408-2574
Fax: (860) 408-2464
E-mail: smckelvey@chubb.com

James F. Dlugosch
2010 Ridge Drive
Apt. 14
Minneapolis, MN 55416-1490

Steven W. Erickson
9 Copeland Road
Maple Plain, MN 55359-9537

Jerome Tabolich
150 South Fifth Street
Suite 3000
Minneapolis, MN 55402

Edward J. Hentges
3399 Kings Point Road
Excelsior, MN 55331

Kenneth R. Larsen
539 Linden Lane
Lino Lakes, MN 55014

Paul R. Eckholm
2602 West LaFayette Road
Orono, MN 55331

EXHIBIT W

Roger J. Wickner
150 S. Fifth Street
Suite 3000
Minneapolis, MN 55402

Victor P. Dhooge
611 Jan Julio Road
Solano Beach, CA 92075

Kenneth E. Dawkins
768 Goodrich Avenue
St. Paul, MN 55105

Tom S. Nelson
D.A. Davidson & Co.
8 Third Street North
Great Falls, MT 59401

John M. Clarey
14720 15th Street
Afton, MN 55001

Kenneth Halloran
RBC Dain Raucher
60 South 6th Street
Minneapolis, MN 55402

Daniel Dill
Groyer Bain & Co.
777 108th Avenue NE
Bellevue, WA 98004

Nancy Meldon
150 S. Fifth Street
Suite 3000
Minneapolis, MN 55402

RE:	INSURED:	Miller and Schroeder, Inc.
	POLICY NO:	81666027
	CLAIM NO:	59159
	SUBJECT:	Bankruptcy Claim

Dear Madam and Sirs:

We are in receipt of the letter sent to you, as former directors and/or officers of Miller & Schroeder entities, by the Chapter 7 Bankruptcy Trustee in the SRC Holdings matter ("Trustee") informing you of claims being made against you resulting from the Heritage Bond issues. Chubb & Son, a division of Federal Insurance Company, is the claims manager for Executive Risk Indemnity Inc. ("ERII") in connection with this matter. This letter does not modify the terms and conditions of the Policy. Please note that the words that are in bold print are defined in the Policy.

According to the letter sent to you by Attorney Thomas Atmore, the Trustee has claims against you for negligence, breach of duty, and mismanagement as a result of your actions and inaction involving the Heritage Bond issue. Specifically, "[t]he Trustee's investigation has revealed that you, as a officer or director of Miller & Schroeder and/or Miller & Schroeder Financial, were negligent and breached your fiduciary duty and duty of loyalty in failing to properly supervise and manage the Solano Beach offices' sales of Heritage Bonds." Further, according to Attorney Atmore, the Trustee intends to initiate suit in the United States Bankruptcy Court for the District of Minnesota to recover all damages, including the total value of the Heritage Bond issue, wherein investors purchased $144 million worth of Heritage Bonds.

ERII issued The Power Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage, Policy No. 8166-6027 (the "Policy"), to Miller & Schroeder, Inc. ("M&S" or the "Company") effective from July 31, 2000 to July 31, 2003. The Policy has a $5 million maximum aggregate limit of liability, inclusive of **Defense Expenses**, and a $50,000 per-claim retention for Insured Persons as to which indemnification by M&S is legally permissible and $100,000 per claim retention for the Company. There is no retention for **Claims** against **Insured Persons** where **Loss** is not indemnified by reason of the Company's financial insolvency.

Subject to all Policy terms and conditions, the Policy provides coverage for **Loss** from **Claims** first made against an **Insured Person** during the **Policy Period** for **Wrongful Acts**. Under Section II(G) of the Policy, an **Insured Person** includes any past, present or future director or officer of the Company. It is our understanding that you were a director or officer of M&S, and, therefore, are an **Insured Person**.

Section II(B) defines a **Claim** as *"written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**. A **Claim** will be deemed to have been made when such written notice is first received by any **Insured**."* Section II(M) defines **Wrongful Act**, in pertinent part, as

(2) *any . . . actual or alleged act, error, omission, misstatement misleading statement, breach of duty by an **Insured Person** in his or her capacity as director or officer of the Company; [and]*

(3) *any matter asserted against an **Insured Person** solely by reason of his or her status as a director or officer of the Company . . ..*

This matter appears to constitute a **Claim** as it is written notice that the Trustee intends to hold an **Insured Person** responsible for breaches of duty allegedly committed in his capacity as an **Insured Person**. However, although this matter constitutes a **Claim**, it is excluded from coverage pursuant to the following policy provisions.

Endorsement No. 3 of the Policy provides that *"this Policy does not apply to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of:*

(1) *the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any other federal law, rule or regulation with respect to the regulation of securities, any rules or regulations of the United States Securities and Exchange Commission, or any amendment of such laws, rules or regulations; or*

(2) *any state securities or "Blue Sky" laws or rules or regulations or any amendment of such laws, rules or regulations; or*

(3) *any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.*

We have received a variety of material regarding the Heritage Bond issue, and have determined that it is an allegedly improper securities transaction. The Trustee in this matter, through his attorney, has stated that the claims he is asserting against you specifically relates to the "Solano Beach offices' sales of Heritage Bonds." Therefore, because the assertion against you is based on, arises out of or results from the offer, sale or purchase of securities, Endorsement No. 3 precludes coverage for this matter.

Although ERII believes that this matter is excluded from coverage in its entirety by Endorsement No. 3, this matter also would be excluded pursuant to the General E&O Exclusion found in Endorsement No. 9 of the Policy, which provides that

(1) *No coverage will be available under the Policy for **Loss** including **Defense Expenses** for any **Claim** made against any **Insured** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured's** actual or alleged rendering or failure to render the following services:*

Investment Banking Services

Security Broker/Dealer Services
Securities Underwriting

(2) *Paragraph (1) above is not intended, however, nor shall it be construed, to apply to* ***Loss****, including* ***Defense Expenses****, in connection with any* ***Claim*** *against an* ***Insured*** *to the extent that such* ***Claim*** *is for a* ***Wrongful Act*** *by* ***Insured Person*** *in connection with the management or supervision of any division,* ***Subsidiary*** *or group of the* ***Parent Corporation*** *offering any of the aforementioned services.*

The allegations in the Trustee's letter are based on and involve the sale of Heritage Bonds, which constitutes the rendering or failure to render Investment Banking Services, Security Broker/Dealer Services and/or Securities Underwriting. Thus Endorsement No. 9 applies to preclude coverage for the entire matter as well. The carve back in Endorsement No. 9(2) would not apply to this matter as the **Claim** alleges **Wrongful Acts** by **Insured Persons** in connection with specific securities transactions involving the Heritage bond offerings, not breaches of duty as managers or supervisors of any division, Subsidiary or group of M&S.

As ERII is denying coverage for this matter for the foregoing reasons, we will not be addressing all of the Policy provisions that may apply to limit or preclude coverage. However, ERII expressly reserves its right under all Policy terms and conditions as well as any applicable law including Sections III(A)(1) fraud and dishonesty exclusion, III(C) punitive damages exclusion, III(D)(3) prior and pending litigation exclusion, and III(H) Company contract liability exclusion. Please refer to the Policy form for the complete terms of these provisions.

In the event you believe our declination is improper, you may have this matter reviewed by the California Department of Insurance at the following address:

California Department of Insurance
Consumer Services Division
Claims Service Bureau
300 Spring Street
Los Angeles, CA 90013
800-927-4357 (in-state) or 213-897-8921

Please do not hesitate to contact me if you have any questions or any additional information of which we should be aware.

Sincerely,

Sherri McKelvey
Claims Examiner

CHUBB

Chubb Group of Insurance Companies
82 Hopmeadow Street
P.O. Box 2002
Simsbury, CT 06070-7683
Phone: 860.408.2000 • Fax: 860.408.2002
www.chubb.com

October 2, 2003

Direct Dial: (860) 408-2574
Fax: (860) 408-2464
E-mail: smckelvey@chubb.com

Mary Jo Brenden
150 S. Fifth Street
Suite 3000
Minneapolis, MN 55402

RE:	INSURED:	Miller and Schroeder, Inc.
	POLICY NO:	8166-6027
	CLAIM NO:	59159
	SUBJECT:	Miller & Schroeder Financial, Inc.

Dear Ms. Brenden:

We are in receipt of your September 22, 2003 letter informing us that you were a Vice President of Miller & Schroeder Financial, Inc. ("M&S"), and will now address coverage of the claim asserted against you by the Chapter 7 Bankruptcy Trustee in the SRC Holdings matter ("Trustee"). Chubb & Son, a division of Federal Insurance Company, is the claims manager for Executive Risk Indemnity Inc. ("ERII") in connection with this matter. This letter does not modify the terms and conditions of the Policy. Please note that the words in bold print are defined in the Policy.

According to the letter sent to you by Attorney Thomas Atmore, the Trustee has claims against you for negligence, breach of duty, and mismanagement as a result of your actions and inaction involving the Heritage Bond issue. Specifically, "[t]he Trustee's investigation has revealed that you, as a officer or director of Miller & Schroeder and/or Miller & Schroeder Financial, were negligent and breached your fiduciary duty and duty of loyalty in failing to properly supervise and manage the Solano Beach offices' sales of Heritage Bonds." Further, according to Attorney Atmore, the Trustee intends to initiate suit in the United States Bankruptcy Court for the

EXHIBIT X

District of Minnesota to recover all damages, including the total value of the Heritage Bond issue, wherein investors purchased $144 million worth of Heritage Bonds.

ERII issued The Power Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage, Policy No. 8166-6027 (the "Policy"), to Miller & Schroeder, Inc. ("M&S" or the "Company") effective from July 31, 2000 to July 31, 2003. The Policy has a $5 million maximum aggregate limit of liability, inclusive of **Defense Expenses**, and a $50,000 per-claim retention for Insured Persons as to which indemnification by M&S is legally permissible and $100,000 per claim retention for the Company. There is no retention for **Claims** against **Insured Persons** where **Loss** is not indemnified by reason of the Company's financial insolvency.

Subject to all Policy terms and conditions, the Policy provides coverage for **Loss** from **Claims** first made against an **Insured Person** during the **Policy Period** for **Wrongful Acts**. Under Section II(G) of the Policy, an **Insured Person** includes any past, present or future director or officer of the Company. As a former Vice President of M&S you are an **Insured Person**.

Section II(B) defines a **Claim** as *"written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**. A **Claim** will be deemed to have been made when such written notice is first received by any **Insured**."* Section II(M) defines **Wrongful Act**, in pertinent part, as

> *(2) any . . . actual or alleged act, error, omission, misstatement misleading statement, breach of duty by an **Insured Person** in his or her capacity as director or officer of the Company; [and]*
>
> *(3) any matter asserted against an **Insured Person** solely by reason of his or her status as a director or officer of the Company . . ..*

This matter appears to constitute a **Claim** as it is written notice that the Trustee intends to hold an **Insured Person** responsible for breaches of duty allegedly committed in his capacity as an **Insured Person**. However, although this matter constitutes a **Claim**, it is excluded from coverage pursuant to the following policy provisions.

Endorsement No. 3 of the Policy provides that *"this Policy does not apply to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of:*

(1) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any other federal law, rule or regulation with respect to the regulation of securities, any rules or regulations of the United States Securities and Exchange Commission, or any amendment of such laws, rules or regulations; or

(2) *any state securities or "Blue Sky" laws or rules or regulations or any amendment of such laws, rules or regulations; or*

(3) *any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.*

We have received a variety of materials regarding the Heritage Bond issue, and have determined that it is an allegedly improper securities transaction. The Trustee in this matter, through his attorney, has stated that the claims he is asserting against you specifically relates to the "Solano Beach offices' sales of Heritage Bonds." Therefore, because the assertion against you is based on, arises out of or results from the offer, sale or purchase of securities, Endorsement No. 3 precludes coverage for this matter.

Although ERII believes that this matter is excluded from coverage in its entirety by Endorsement No. 3, this matter also would be excluded pursuant to the General E&O Exclusion found in Endorsement No. 9 of the Policy, which provides that

(1) *No coverage will be available under the Policy for Loss including **Defense Expenses** for any **Claim** made against any **Insured** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured's** actual or alleged rendering or failure to render the following services:*

Investment Banking Services
Security Broker/Dealer Services
Securities Underwriting

(2) *Paragraph (1) above is not intended, however, nor shall it be construed, to apply to **Loss**, including **Defense Expenses**, in connection with any **Claim** against an **Insured** to the extent that such **Claim** is for a **Wrongful Act** by **Insured Person** in connection with the management or supervision of any division, **Subsidiary** or group of the **Parent Corporation** offering any of the aforementioned services.*

The allegations in the Trustee's letter are based on and involve the sale of Heritage Bonds, which constitutes the rendering or failure to render Investment Banking Services, Security Broker/Dealer Services and/or Securities Underwriting. Thus Endorsement No. 9 applies to preclude coverage for the entire matter as well. The carve back in Endorsement No. 9(2) would not apply to this matter as the **Claim** alleges **Wrongful Acts** by **Insured Persons** in connection with specific securities transactions involving the Heritage bond offerings, not breaches of duty as managers or supervisors of any division, Subsidiary or group of M&S.

As ERII is denying coverage for this matter for the foregoing reasons, we will not be addressing all of the Policy provisions that may apply to limit or preclude coverage. However, ERII expressly reserves its right under all Policy terms and conditions as well as any applicable law

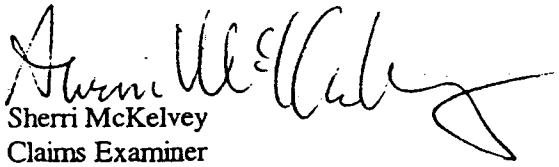
including Sections III(A)(1) fraud and dishonesty exclusion, III(C) punitive damages exclusion, III(D)(3) prior and pending litigation exclusion, and III(H) Company contract liability exclusion. Please refer to the Policy form for the complete terms of these provisions.

Although it is unclear whether California law would apply, in the event you believe our declination is improper, you may seek to have this matter reviewed by the California Department of Insurance at the following address:

California Department of Insurance
Consumer Services Division
Claims Service Bureau
300 Spring Street
Los Angeles, CA 90013
800-927-4357 (in-state) or 213-897-8921

Please do not hesitate to contact me if you have any questions or any additional information of which we should be aware.

Sincerely,



Sherri McKelvey
Claims Examiner

800-328-6122

www.marshallgroupinc.com

THE MARSHALL GROUP, INC.

150 South Fifth Street • Suite 3000 • Minneapolis, MN 55402

RECEIVED
SEP 2 6 2003
CLAIMS DEPT.

September 22, 2003

Sherri McKelvey
Claims Examiner
Chubb Group of Insurance Companies
82 Hopmeadow Street
P.O. Box 2002
Simsbury, CT. 06070-7683

RE: INSURED: Miller & Schroeder, Inc.
POLICY NO: 81666027
CLAIM NO: 59159
SUBJECT: Bankruptcy Claim

Dear Ms. McKelvey:

In response to your letter dated August 22, 2003, please be advised that I was a Vice President of Miller & Schroeder Financial, Inc.

Sincerely,

Mary Jo Brenden

Mary Jo Brenden

cc: Ken Larsen

LEONARD, O'BRIEN
WILFORD, SPENCER & GALE

FILE COPY

Thomas W. Newcome**
Brian F. Leonard+
Eldon J. Spencer, Jr. +
Michael R. O'Brien‡
Lawrence A. Wilford*
Edward W. Gale
Grover C. Sayre, III+◊
Thomas W. Newcome III*
James A. Geske
Michelle McQuarrie Colton
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Fax (612) 332-2740

Internet: www.lowsg.com

Reply to: *St. Paul*

Peter J. Sajevico
Justin P. Weinberg
Kerry A. Evans
Anna M. Burgett

Of Counsel
George B. Ingebrand, Jr.

+ Also admitted in Wisconsin
• Also admitted in Arizona
◊ Also admitted in Iowa
‡ Qualified Neutral (Rule 114)
* Certified Real Property Law Specialist
(Minnesota State Bar Association)
**Retired Status

July 18, 2003

Mary Jo Brenden
150 South Fifth Street, Suite 3000
Minneapolis, MN 55402

RE: SRC Holdings Corporation, f/k/a Miller & Schroeder, Inc. and its subsidiaries, Debtor
BKY Case Nos. 02-40284 to 02-40286

Dear Ms. Brenden:

The undersigned represents the Chapter 7 Bankruptcy Trustee in the SRC Holdings, et al. jointly administered bankruptcy. As you know, the Miller & Schroeder entities' troubles arose largely from the failure of the Heritage Bond issues.

The Trustee's investigation has revealed that you, as an officer or director of Miller & Schroeder and/or Miller & Schroeder Financial, were negligent and breached your fiduciary duty and duty of loyalty in failing to properly supervise and manage the Solano Beach offices' sales of Heritage Bonds. Investors purchased $144,000,000 worth of Heritage Bonds. Miller & Schroeder spent several million dollars defending various actions brought by investors and many of those actions resulted in judgments against Miller & Schroeder. The investors have renewed their claims in the bankruptcy court and are seeking damages against the bankruptcy estates of the successor entities.

The Trustee has claims against you for negligence and breach of duty and mismanagement and intends to initiate suit in the United States Bankruptcy Court for the District of Minnesota to recover all damages suffered as a result of your actions and inaction. The damages sought will include the total value of the Heritage Bond issue, the amount incurred by Miller & Schroeder to defend the many claims made by investors, and/or amounts awarded to the investors.

Miller & Schroeder and Miller & Schroeder Financial officers and directors were insured under an Officers and Directors' policy issued by Executive Risk Indemnity, Inc., c/o Chubb Insurance Group,

82 Hopmeadow Street, Simsbury, Connecticut 06070-7683, policy number 8166-6027. You should send this letter and tender the Trustee's claim to the insurer, with a request that the assigned representative contact me.

Very truly yours,

LEONARD, O'BRIEN
WILFORD, SPENCER & GALE, LTD.

By

Thomas C. Atmore
E-Mail: tatmore@lowsg.com

@PFDesktop\::ODMA/GRPWISE/GWDSTP.GWPOSTP.STPLIB1:136200.1

These letters go with the file that I previously forwarded on the Marshall Group. TXS! -Brownyn

Hays

's Companies
Center, Suite 700
South 8th Street
neapolis, MN 55402

.333.3323 phone
.373.7270 fax
w.hayscompanies.com

August 18, 2003

Brownyn DeWitt, Esq., MBA
Chubb and Son
233 South Wacker Drive
Suite #4700
Chicago, IL 60606

RE: Miller & Schroeder and [illegible]
SRC Holdings vs. Directors and Officers of Miller and Schroeder Financial

Dear Ms. DeWitt:

Enclosed are letters from plaintiff counsel to the various Directors and/or Officers against whom the subject claim is being pursued.

Regards,

Kevin Eukel
Assistant Vice President
Direct: 612.373.7292
Fax: 612.313.1692
Cell: 612.850.5075
keukel@hayscompanies.com

SPECIALTY CLAIMS - CIN
AUG 21 2003
CHUBB & SON, INC.

CHUBB

Chubb Group of Insurance Companies
82 Hopmeadow Street
P.O. Box 2002
Simsbury, CT 06070-7683
Phone: 860.408.2000 • Fax: 860.408.2002
www.chubb.com

October 6, 2003

Direct Dial: (860)408-2574
Fax: (860)408-2464
E-mail: smckelvey@chubb.com

Kevin Eukel
Hays Companies
IDS Center, Suite 700
80 South 8th Street
Minneapolis, MN 55402

RE:		
	INSURED:	Miller and Schroeder, Inc.
	POLICY NO:	8166-6027
	CLAIM NO:	59159
	SUBJECT:	Miller & Schroeder Financial, Inc.

Dear Mr. Eukel:

On behalf of Executive Risk Indemnity Inc. ("ERII"), we are writing in follow up to your recent submissions for coverage under Miller & Schroeder, Inc.'s ("M&S") Directors and Officer's Liability Insurance Policy referenced above. Chubb & Son, a division of Federal Insurance is the claims manager for ERII in connection with this matter. We regret to inform you that none of the above-referenced matter is covered under this Policy.

We are in receipt of your letter of July 31, 2003 wherein you submitted the following matters for coverage under the above-referenced policy:

1. Ralph Allman et al. v. O.V. Bertolini et al., Case No. 02-6484, USDC, Central District of California;
2. Gilbert Kivenson et al. v. U.S. trust Company of Texas, NA, et al., Case No CV 01-5752 DT (RCx), USDC, Central District of California;
3. Dr. Kenneth J. Fleshman, The Fleshman Family Trust v. Miller & Schroeder Financial, Inc. et al., NASD-DR Case No. 01-01444;

EXHIBIT Y

4. Chloe Kerns Edge TRS/Chloe Kerns Edge TR v. Scott Penwarden and Miller & Schroeder Financial, Inc., NASD-DR Case NO. 01-03099;
5. Eugene Eldridge, Trustee Eldridge Family Trust, et al. v. Bruce Richard Talley, et al., NASD-DR Case No. 02-05426;
6. Grace E. English et al. v. Miller & Schroeder Financial, Inc. et al., NASD-DR Case NO. 01-01056;
7. George McCauley IRA et al. v. MM&S Financial, Inc. et al., NASD-DR Case No. 01-01348.

As an initial matter, we note that you do not identify the person or entity on whose behalf these matters are submitted. As per my voicemail message to you on September 30, 2003, we will treat these matters as being submitted on behalf of all possible **Insureds** under the Policy.

Also, as I stated in my voicemail message to you, there was no enclosure for the Allman suit. Please forward a copy of the Allman complaint at your earliest convenience so that we can assess coverage for that matter under the Policy.

We previously have received and issued coverage positions on Kivenson, Fleshman, Eldridge, English, and McCauley. We denied coverage for each of these matters, and out coverage position for these matter remains unchanged. We hereby incorporate those letters, in their entirety, herein. If you would like us to send you copies of these letters, please advise.

Chole Kerns Edge TRS/Chloe Kerns Edge TR v. Scott Penwarden and M&S

We have reviewed a copy of the Statement of Claim in the NASD action brought by Chole Kerns Edge TRS/Chloe Kerns Edge TR against Scott Penwarden and M&S. In her statement, claimant alleges that she was an unsophisticated investor and that she wanted a safe investment vehicle for her funds. She claims that she relied upon Mr. Penwarden's advice in the purchase of non-rated tax-free municipal bonds for her account. Claimant's account declined precipitously, and claimant contends that the bonds were unsuitable investments as to her express needs and objectives. Claimant asserts various causes of action, including Common Law Fraud/Misrepresentation, Fraud/Breach of Fiduciary Duty, Negligence, Unsuitability per MSRB G-17, M&S Failure to Supervise/Breach of Fiduciary Duty, M&S Respondeat Superior and Agency Law, and Exemplary and Punitive Damages. She seeks an award of damages, a reasonable rate of return on her lost investment, interest, exemplary and punitive damages and other relief.

As you know, ERII issued The Power Directors and Officers Liability Insurance Policy, Policy Number 8166-6027, to M&S effective from July 31, 2000 to July 31, 2003 (the "Policy"). The Policy has a $5 million maximum aggregate limit of liability, inclusive of Defense Expenses, and a $50,000 per-claim retention for Insured Persons as to which indemnification by M&S is legally permissible and $100,000 for the Company.

Subject to all Policy terms and conditions, the Policy provides coverage for **Loss** from **Claims** first made against an **Insured** during the Policy Period for **Wrongful Acts**. Under Section II(F) of the Policy, an **Insured** includes the **Company** and any **Insured Person**. Section II(G) defines **Insured Person** as:

(1) any past, present or future director or officer of the **Company**, and
(2)

As the **Company**, M&S is an **Insured**. Mr. Penwarden, however, is alleged to be an employee and a representative of Miller & Schroeder, not a director or officer of the **Company**. Further, this is not a **Claim** involving an **Employment Practices Wrongful Act**. Consequently, Mr. Penwarden is not an **Insured** and is not covered by the Policy.

Section II(B) defines a Claim as "*written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**. A **Claim** will be deemed to have been made when such written notice is first received by any Insured.*" Section II(M) defines Wrongful Act in pertinent part as "*any . . . actual or alleged error, omission, misstatement misleading statement, or breach of duty by the **Company**.*"

This matter appears to constitute a **Claim** as it is written notice that the claimant intends to hold an **Insured**, M&S, responsible for breaches of duty. However, even though this matter constitutes a Claim, it is excluded from coverage pursuant to the following policy provisions.

The facts alleged underlying Edge's claims assert that the securities sold to her by M&S's representative were unsuitable for her and misrepresented to her. Further, claimant alleges that M&S failed to provide complete information on the securities to the claimant and failed to properly supervise its representative with respect to the information surrounding the bonds claimant was sold. Fundamentally, the claimant's allegations solely arise out of the offer or sale of securities. Endorsement No. 3 of the Policy provides that "*this Policy does not apply to any Claim based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of:*

(1) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any other federal law, rule or regulation with respect to the regulation of securities, any rules or regulations of the United States Securities and Exchange Commission, or any amendment of such laws, rules or regulations; or

(2) any state securities or "Blue Sky" laws or rules or regulations or any amendment of such laws, rules or regulations; or

(3) any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.

All of the claimant's allegations, including fraud, misrepresentation, unsuitability, failure to supervise and breach of fiduciary duty arise out of the offer, sale or purchase of securities. As such, Endorsement No. 3 precludes coverage for this matter.

This matter also is excluded pursuant to the General E&O Exclusion found in Endorsement No. 9 of the Policy, which provides that

(1) *No coverage will be available under the Policy for Loss including Defense Expenses for any Claim made against any Insured based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an Insured's actual or alleged rendering or failure to render the following services:*

Investment Banking Services
Security Broker/Dealer Services
Securities Underwriting

(2) *Paragraph (1) above is not intended, however, nor shall it be construed, to apply to Loss, including Defense Expenses, in connection with any Claim against an Insured to the extent that such Claim is for a Wrongful Act by Insured Person in connection with the management or supervision of any division, Subsidiary or group of the Parent Corporation offering any of the aforementioned services.*

The allegations in the Edge Claim are based on and involve the rendering or failure to render Security Broker/Dealer Services, Investment Banking Services, and/or Securities Underwriting. Thus Endorsement No. 9 applies to preclude coverage for the entire matter.

As ERII is denying coverage for this matter for the foregoing reasons, we will not be addressing all of the Policy provisions that may apply to limit or preclude coverage. However, ERII expressly reserves its right under all Policy terms and conditions as well as any applicable law including Sections III(A)(1) fraud and dishonesty exclusion, III(C) punitive damages exclusion, III(D)(3) prior and pending litigation exclusion, III(H) Company contract liability exclusion, and IV(G) notice requirements. Please refer to the Policy form for the complete terms of these provisions.

In the event you believe our declination is improper, M&S may have this matter reviewed by the California Department of Insurance at the following address:

California Department of Insurance
Consumer Services Division
Claims Service Bureau
300 Spring Street
Los Angeles, CA 90013
800-927-4357 (in-state) or 213-897-8921

Please do not hesitate to contact me if you have any questions or any additional information of which we should be aware.

Sincerely,

Sherri McKelvey
Claims Examiner

EXHIBIT
Chapter 3
9/23/04

11/30/01	Discussed with Brian Huff at Hayes Group that I drafted declination, based upon exclusion that we earlier discussed. Also advised that letter is being reviewed by Spvr and will be sent next week. He will review letter and respond. I further advised that I talked to Atty Lindsey Arthur (on First Bank of North claim), and he advised of 2 new D&O claims, Behnke & Moreland. These claims have yet to be assigned to a Chubb examiner, but I advised Brian since claims did not originate with Hayes Group.
11/16/01	Received actual second amended complaint filed by Claimants against Erickson and Frank. It appears that 2 motions to amend complaint were filed by Claimant. One (re: erickson and frank) was granted; the other was denied. Atty's have moved to dismiss complaint against erickson and frank. Discussed issues with counsel, regarding coverage for frank; possible cvg for ericksor will review further with Spvr.
11/07/01	Yesterday I received a Second Amended Complaint on this Claim. The amended complaint appears to add fraudulent inducement allegations against Steven Erickson (Sr. VP of the Insured's Gaming Finance Dept) for false representations made by employees supervised by him. (We are reviewing further; allegations are very poorly drafted & vague regarding employee-involvement). We may have to issue a reservation of rights with regard to that single allegation; however the remainder of the claim is still excluded based upon the Exclusion for claims arising out of Investment Banking services. Note that I discussed my position with Bryan Huft of the Hayes Group. And he still believes the entire claim against both officers are covered (pursuant to the management carveback) merely because they were supervisors. He advises that he will push back on any reservations of rights that we take on this Claim. I advised Keith Doan & Blair McCloud. Keith requested updates if situation changes.
11/05/01	Spoke to UW regarding intent of carveback. He advised that cvg is for vicarious liability situations only. No cvg intended where claim alleges wrongful acts by D&O in area of investment banking. Blair McCloud Underwriter Chubb DFI Bmccloud@Chubb.com 312/454-4275
11/1/01	Broker has raised dispute on meaning and INTENT behind the "Management Carveback" found in the E&O exclusion in the above policy. Left vm message and email with UW Keith Doan for understanding of intent.

EXHIBIT Z

	Advised Broker that the Claimant (Bremer Business Finance Corp) alleges tha 2 officers of the Insured fraudulently induced Bremer to fund a $2M participation in a loan made by the Insured on a gambling casino development. Such activities fit within Investment Banking Services. Broke requested definition; none in policy. I requested actual copy of Amended Complaint, if any filed yet. What was submitted was memorandum in support of m/file amended complaint. A "General E&O Exclusion (with Management Carveback)" is endorsed onto the Policy (The Policy is Chubb-ER's *The Power* D&O Liability Insurance Policy). I believe there is NO coverage for the Claim, based upon the E&O exclusion, however, the Broker (Bryan Huff from Hayes Group) argues there should be coverage based upon the carve-back in Paragraph 2 of the Exclusion. The Exclusion carves-back Claims in connection with the management or supervision of any division, subsidiary or group of the Parent Corporation offering any of the excluded services. The Broker interprets this carve-back to mean that the Policy provides coverage for the Officers in this case, because simply because they were the Senior VP and Managing Director in charge of the division that performed the investment banking services. I disagree, and believe that there is no coverage, because the allegations against the Officers pertain to Wrongful Act that they committed (in the area of investment banking services), and not just their failure to supervise/recognize Wrongful Acts committed by their employees/division.
10/31/01	Returned Bryan Huff's call, and advised that I have reviewed allegations against the Officer, per the m/amend complaint. And the allegations relate to investment banking services, which are excluded from cvg under the policy.
10/30/01	Bryan Huff at Hayes called to ask whether defense costs will be covered. The Insd has retained counsel to prepare m/dismiss officers from case.
10/29/01	Broker, Bryan Huff at Hayes Group called. Returned his call & left message.
10/15/01	Called Insd contact, Ken Larson and discussed case. Original action agains Insd filed on 12-26-00; therefore, prior and pending exclusion applies. Insd submitted info that D/O to be added pending decision on m/amend file i Sept 01. Claimant alleges investment banking functions which are excluded under policy. M/Amend may have been granted; Brian Palmer at Dorsey and Whitney is counsel. 612-340-2797. Advised Insd of coverage issues.
10/15/01	SENT ACK LTR - DAB
10/12/01	24 hr. contact/ss - Left voicemail message for Ken Larson advising him that Cheryl O'Malley is the adjuster. Claimant: Bremer Business Finance Corporation Ken Larson Miller & Schroeder, Inc. 150 South 5th Street Suite 3000 Minneapolis, MN 55402 Phone - 612/376-1310 Fax – 612/692-5192

	Agent: Bryan Huft The Hays Group, Inc. 80 South 8th Street Suite 1650 Minneapolis, MN 55402 Phone - 612/373-9454 Fax - 612/373-7270
10/11/01	FAXED & MAILED NEW CLAIM TO PITTSBURGH. APPS. WILL BE SENT AT A LATER DATE. RB

10/16/01- MAILING APPLICATIONS AND SUMMARY SHEET TO PITTSBURGH. RB

***Investigation**
01/25/2002: CNO Conference call with Carrie Campi and Joel Townsend in late Dec to discuss Miller & Schroeder E&O exclusion; all new claims will go to Carrie in Simsbury. Joel explained that E&O exclusion not intended to carve back E&O for supervisors; doesn't make sense.

Spoke with Bryan Huff at Hayes Group on 1/17. Advised that we are addressing his request for reconsideraiton, with assistance from Joel Townsend in Simsbury. Sent Joel a draft response for comments.

Bryan Huff called again today, 1/25, requesting status of review.

***Coverage**
02/26/2002: DB2 COVERAGE LETTER SENT - FILED IN ATTACHED DOCUMENTS

***Investigation**
08/22/2002: CNO Rec'd letter from Brian Palmer at Dorsey & Whitney requesting that Chubb reevaluate its cvg position re: Mr. Erickson, given that recent ruling that dismissed Erickson from case, and the findings that Erickson had no direct contact with the Claimants. Insd argues that this proves that Insd-Erickson was acting in managerial capacity only, and cvg should be extended to him based upon carve back.

will review with Spvr.

***Administrative**
02/10/2003: KPE Memo to File.

***Administrative**

02/12/2003: KPE Attorney Correspondence sent.

***Diary Review**
02/27/2003: MMK

Note that coverage challenge was reviewed and responded to on 2/7/03. Chubb's coverage position was not changed.

WIll rediary 45 dyas and review file for closure.

MMK

***Status**
05/07/2003: MMK Based upon info to date, file can be closed.

MMK

#46121

11/30/01: Attempted to make 24 hour contact. Left vm with Broker to get Insured contact.

Later: T/C with Bryan Huft, the broker. The contact is Ken Larson at 612-376-1310. Left vm with Mr. Larson.

Insured: Miller & Schroeder Inc.
Claimant: Mr. and Mrs. Spanglor
Claim #: 46121

Policy Information:
Old Power # 8166-6027
LOL: $5M
Ret: $50K for individuals and $100K for the Company
Pertinent Endorsements: No 9, General E&O Exclusion with Management Carveback; No. 1, Minnesota Amendatory Endorsement, Excluding punitive damages.

NASD Arbitration to be venued in San Diego, CA

Loss Description: Unsuitability of investment.

Facts: Frank and Joanne Spanglor invested money through Miller & Schroeder. They complain that Jeffrey Hill was a financial consultant for the Spanglors and an employee of M&S. James Dlugosch is named as the M&S CEO and a control person. The Spanglor's allege that Hill, Dlugosch and M&S are responsible for them investing in a bond that was unsuitable for their investment needs. The allegations are fraud, negligence, fraudulent misrepresentation and omission and breach of fiduciary duty. The Spanglors have brought an NASD arbitration claim against the defendants. The plaintiffs are seeking compensatory damages in the amount of $50,000, punitives, interest, costs and attorney's fees.

Coverage issues:
The E&O exclusion precludes coverage for Hill and M&S. There is a management carveback that would at least possibly trigger the duty to defend for Dlugosch.

The broadform securities exclusion appears to be at issue.

Fraud
Punitive damages
Capacity issue with regard to the management or supervision of Mr. Spanglor.

Duty to Defend: The broker indicated that M&S has typically used Dorsey & Whitney as counsel in Milwuakee. They are not on panel counsel. We do not have any NASD attorney's in Milwaukee. We have one in Chicago with Seyfarth Shaw. If we consent to use the same attorney for all defendants, we should allocate defense expenses. CLC

12/6/01: Left vm with Ken Larson again. CLC

Later: T/C with Ken Larson. Explained our coverage position. They are preparing to file bankruptcy in the next few weeks and have not been defending anything. He said that I need to speak with David Reinhardt at 612-376-1354, one of the principles in the Insured regarding the status. He is going to call him and he said that either David or Ken will call me back today. I stated that we would be appointing defense counsel for Mr. Dlugosch. Got a recommendation from Mai of Steven Wasserman of Sedgwick Detert Moran and Arnold. CLC

EXHIBIT AA

12/10/01: Left vm with David Reinhardt. CLC

12/11/01: Dave called and left vm. I left another vm. CLC

12/12/01: Left vm with Dave again. CLC

12/17/01: Called Dave again and the phone rang continuously. Left vm with Ken Larson. CLC

12/18/01: Left vm with Dave again. Called Brian Huft and told him that I was having a problem getting a hold of the Insured and need the contact information for Dlugosch. He will get back with me tomorrow. CLC

12/19/01: Left vm with Dave again. T/C with Dave. The attorney on the matter is Linzie Arthur 612-339-3500. He is going to email him that I am going to call. There are several claims that have recently been submitted. Dave is going to send me a matrix outlining the outstanding claims. Called Keith Doan in Chicago Bkrg to let him know that this account could hit fairly hard. Sent email to all of the other claims examiners to discuss the nature of the other claims. CLC

The following notes have been made in the anticipation of potential litigation.

Later: It has been brought to my attention that there is a broad form securities endorsement that appears to preclude coverage for this matter. I am calling the underwriters to discuss intent between the securities exclusion and the E&O exclusion with a management carveback. CLC

12/27/01: T/C with Greg Barabas about the potentially inconsistant endorsements. He stated that I should talk with Cabot Wigger in the Chicago office. Sent him the information. HE will be out until 1/7/02/ Called Kevin Pyne in the Chicago Retail office and left vm. Keith Doan is the DFI Practice Leader. Allison Rose from the Western Zone appears to have a related Heritage Bond case. She has taken the position that the Securities exclusion precludes coverage. However it appears that it might be inconsistent with the management carveback in the E&O Exclusion. Greg also suggested that I get Joel Townsend involved in this matter. Sent email to discuss with Joel. Sent letter to the Insured stating that we are continuing to investigate our coverage position. CLC

1/2/02: T/C with Joel Townsend. After the discussion with Joel, it appears that this matter should be excluded. The E&O exclusion would apply. There is no allegation of a failure to supervise that would bring the E&O carveback into play. The general securities exclusion would appear to apply to disclaim any coverage even if there were a failure to supervise allegation.

Will try to set up conference call to discuss with all of the claims examiners throughout the country. CLC

1/4/01: Attended a conference call with Joel Townsend, Dannielle Francis, Allison Rose and Cheryl O'Malley. Agreed that I would handle all of the claims so that there is coordination. Agreed also that these matters should be denied. CLC

1/14/01: T/C with Ken Larsen at the Insured and explained the coverage position. He seemed to understand it. I sent the following email to confirm receipt of a bunch of similar claims.

Mr. Huft, Mr. Larsen and Mr. Arthur,

I have received several of the actions filed recently against Miller & Schroeder and wanted to acknowledge the receipt of them in a consolidated fashion. We understand that these matters have been submitted for coverage under Executive Risk Indemnity Inc. ("ERII") policy #8166-6027 (the "Policy"). This email is not intended to indicate that there is coverage for any of the following matters under the Policy. ERII expressly reserves all rights under the Policy terms and conditions as well as any applicable law. We are currently conducting an investigation with regard to coverage, but expect to deliver coverage letters as soon as possible.

I have the following matters assigned to my attention:

Hermann, et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration Reference No. 46559
Hermann, et al v. Miller & Schroeder Financial Inc., et al - Class Action CA state court 46559
Spanglor, et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 46121
Moreland v. Miller & Schroeder Financial Inc., et al 45979
Onderwyzer et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47195
Salley et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47196
Formica et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47197
Hyde et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47198
Johansen et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47199
Cates et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47200
McGuire, et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47201
Timmerman et al v. Miller & Schroeder Financial Inc., et al - NASD Arbitration 47203
Baker Living Trust et al v. Miller & Schroeder Financial Inc. et al - NASD Arbitration 47204

We have two other actions open in our system. We understand that the Behnke matter, Reference No. 45978, which is assigned to Ruthann Rozenek, settled below the retention on the Policy. The other matter, Bremer Business Finance Corp., Reference No. 44840, is continuing to be handled by Cheryl O'malley in our Pittsburgh office.

If you have any questions, please feel free to contact me.

Carrie L. Campi, Esq.
Claims Examiner
Chubb Specialty Insurance
82 Hopmeadow St.
Simsbury, CT 06070
Direct dial (860)408-2733
Fax (860) 408-2851

Email ccampi@chubb.com

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***Investigation**
02/08/2002: CLC Drafted coverage letter for Moreland action, another claim against Miller & Schroeder with similar allegations. Joel Townsend reviewed letter denying coverage. Told broker, Bryan Huft of our coverage position. Ken Larsen is no longer with M&S, he is now with Marshall Miller and Schroeder (MM&S). KEn said that Dave Reinhardt is the only one still affiliated with M&S, which is now in bankruptcy proceedings, Chapter 7. No trustee has been appointed as yet.

Sent denial letter. Calendaring ahead for closure.

***Settlement/Resolution**
08/15/2002: CLC Closing claim as denial has not been further disputed.

***Administrative**
06/14/2004: DBS Returned file to archives.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

- -

IN RE:

SRC HOLDING CORP. F/K/A
MILLER & SCHROEDER, INC., AND
ITS SUBSIDIARIES,

DEBTOR,

BKY CASE NO.
VS. 02-40284 TO 02-40286

BRIAN F. LEONARD, TRUSTEE,

PLAINTIFF,

VS. ADV CASE NO. 03-4284

EXECUTIVE RISK INDEMNITY, INC.,

DEFENDANT.

- -

THE MARSHALL GROUP, INC., JEROME A.
TABOLOICH, JAMES E. IVERSON, EDWARD
J. HENTGES, KENNETH R. LARSEN,
STEVEN W. ERICKSON, PAUL R, EKHOLM,
AND MARY JO BRENDEN,

INTERVENORS.

- -

DEPOSITION OF

JAMES F. DLUGOSCH

SEPTEMBER 29, 2004 - 2:00 P.M.

REPORTED BY: JAMES M. TRAPSKIN
RPR, CM, CALIF. CSR 8407
2205-30TH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55406

DEPOSITION OF JAMES F. DLUGOSCH, taken at the Law Offices of Bassford Remele, Suite 3800, 33 South Sixth Street, Minneapolis, Minnesota 55402, commencing at 2:00 p.m., on the 29th day of September 2004, before James M. Trapskin, a Notary Public and Merit Professional Reporter.

* * * * *

A P P E A R A N C E S

FOR THE PLAINTIFF BRIAN F. LEONARD, TRUSTEE:

LEONARD, O'BRIEN, SPENCER, GALE & SAYRE
Suite 2500
100 South Fifth Street
Minneapolis, Minnesota 55402

BY: THOMAS C. ATMORE, ESQ.

FOR THE DEFENDANT EXECUTIVE RISK INDEMNITY, INC
WILEY, REIN & FIELDING LLP
1776 K Street NW
Washington, D.C. 20004

BY: DAVID H. TOPOL, ESQ.

FOR THE INTERVENORS:

MASLON, EDELMAN, BORMAN & BRAND, LLP
Suite 3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

BY: KIRK KOLBO, ESQ.

FOR JOHN CLAREY, KENNETH DAWKINS AND THOMAS HALLORAN:

JOHNSON, PROVO-PETERSON, LLP
Suite 975, First National Bank Building
332 Minnesota Street
St. Paul, Minnesota 55101

BY: KLAY C. AHRENS, ESQ.

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Mr. Topol	4
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* * * * *

E X H I B I T I N D E X

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* * * * *

JAMES F. DLUGOSCH,
having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. TOPOL:

Q Would you state your name and address for the record, Mr. Dlugosch?

A It's James Dlugosch, D-L-U-G-O-S-C-H, 2010 Ridge Drive, Number 14, St. Louis Park, 55416.

Q Have you ever been deposed before?

A Yes.

Q How many times?

A Oh, half a dozen, perhaps.

Q Okay. Any of those depositions in connection with Heritage Bonds?

A No.

Q Okay.

A No.

Q Let me, and this may be a refresher course, but just to remind you about a deposition and how it will work, I'll be asking you various questions. And after I, you know, ask questions, you'll answer them. The court reporter here is taking down everything we say word for word, so if we can try not to cut each

EXHIBIT BB

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Q Were you ever involved in decisions concerning insurance coverage for Dain Bosworth?
A No.
Q Do you know whether Dain Bosworth had D&O insurance?
A I don't know firsthand; I, I believe that they did, but I do not know for certain.
Q Do you know whether they had E&O insurance?
A No, they did not.
Q And how do you know that?
A Serving on the management committee, I became aware that they -- I, I was not -- to put it differently, I'm not aware that they had it. That's probably more accurately stated. It never came to our attention on the management committee.
Q So there was never any discussion about whether or not they had E&O insurance?
A That's correct.
Q After you left Dain Bosworth, where did you go?
A Miller & Schroeder.
Q Why did you leave Dain Bosworth?
A Just overall change in the management of the company.
Q And in 1990 you went to Miller & Schroeder?
A 1991 I went to Miller & Schroeder.
Q In 1991 was Miller & Schroeder a privately held company?

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A Yes.
Q What was your position at Miller & Schroeder in 1991?
A I was executive vice president.
Q How long were you in that position?
A Until 1997.
Q What were your responsibilities at Miller & Schroeder as executive vice president from 1991 to 1997?
A Business development, budgeting, personnel review and compensation.
Q In the position of executive vice president at Miller & Schroeder, did you have responsibility for insurance policies?
A No.
Q Did you participate in discussions about insurance policies?
A No.
Q Do you know whether between 1991 and 1997 Miller & Schroeder had D&O insurance?
A To the best of my knowledge, they did not.
Q Do you know whether they had E&O insurance during that period?
A To the best of my knowledge, they did not.
Q Do you know why they didn't have those policies?
A No.
Q Then in 1997, I gather you had a new position at

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Miller & Schroeder.
A That's correct.
Q What was the new position?
A I was president and CEO and chairman of the board.
Q Do you recall when in 1997 you got that position?
A June 30. It might be more accurate July 1.
Q Am I correct there was some kind of a private placement done at that point in time?
A That's correct.
Q Could you just explain to me generally what was the transaction in 1997 of the organization of Miller & Schroeder, what happened?
A I, I put together an investment group that acquired the stock of Miller & Schroeder with a combination of equity and debt.
Q So you bought out the prior owners?
A That's correct.
Q Who were the prior owners, a group of individuals?
A Primarily, it was Roger Wikner W-I-K-N-E-R.
Q This was a private individual?
A Yes. And Jim Iverson, I-V-E-R-S-O-N. A third partner who had 1 percent interest was Steve Erickson.
Q So from July 1997 or June 30th at this time, how much of an ownership interest did you have in Miller &

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Schroeder?
A I had about a 19 percent ownership interest.
Q And I guess the owner was actually, to be precise, it was what, MI Acquisition Corporation doing business as Miller & Schroeder?
A That's correct.
Q And after 1997, July 1997, did Miller & Schroeder continue in the same lines of business?
A Generally, yes.
Q What were those lines of business?
A Underwriting and distributing municipal bonds. Originate and selling commercial real estate loans and trading municipal and corporate bonds and governments.
Q Any other lines of business?
A Pardon?
Q Any other lines of business?
A No.
Q And you, when I asked the question, said generally stayed in the lines of business.
Was there any difference?
A Only in emphasis.
Q What was the change in emphasis?
A The growth area of the firm was in the commercial real estate business and in financing the gaming

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1 industry.
2 Q And you said it was after '97 you tried to move more
3 toward commercial real estate or that's what the
4 business had been?
5 A We, we put more emphasis on that business. The
6 business had existed prior to that time, but we put
7 more emphasis on growing that part of the business.
8 Q And what was the -- can you elaborate in a little bit
9 more detail what was the commercial real estate
10 business?
11 A We provided -- we were the lender to real estate
12 developers doing a variety of different commercial
13 properties, hotels, office buildings, medical
14 facilities. And we were doing commercial, regular
15 commercial real estate loans funding them by the sale
16 of participations in those loans to community banks.
17 Q Until when were you president and CEO of Miller &
18 Schroeder?
19 A I think until January of '01.
20 Q After January '01, did you have any involvement in
21 Miller & Schroeder?
22 A No.
23 Q So at that point you were no longer president or CEO?
24 A That's correct.
25 Q Did you retain an ownership interest after January

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1 '01?
2 A I still have an ownership interest in Miller &
3 Schroeder.
4 Q Did you sell some -- I mean, you mentioned, I guess,
5 in '97 your ownership interest was about 19 percent,
6 and in December of 2000 while you were still the
7 president and CEO, what was your ownership
8 interest --
9 A Approximately --
10 Q -- do you know?
11 A Approximately the same.
12 Q And then, say, in February of '01, what was your
13 ownership interest?
14 A Approximately the same.
15 Q Has it remained at approximately 19 percent?
16 A Yes.
17 Q You said your titles were president and CEO and was
18 there a third one?
19 A Chairman of the board.
20 Q Why did you leave Miller & Schroeder in 2001?
21 A We were closing our company down and that's basically
22 it.
23 Q Where did you -- did you go to work somewhere else
24 after that?
25 A No. I, I started work recently.

23

1 Q Where are you currently working?
2 A At, at a bank, Pinehurst Bank Corporation.
3 Q Is that in Minnesota?
4 A Yes.
5 Q What do you do at Pinehurst Bank Corporation?
6 A Business development, real estate lending and selling
7 the bank's services.
8 Q When did you start working at Pinehurst Bank?
9 A Thursday.
10 Q That qualifies as recently.
11 Between Thursday and January 2001, were you
12 employed anywhere else?
13 A No.
14 Q From the period 1997 until January 2001 while you
15 were president and CEO and chairman of the board of
16 Miller & Schroeder, did you have any responsibilities
17 for insurance policies purchased by Miller &
18 Schroeder?
19 A Yes.
20 Q What were those responsibilities?
21 A Initially at the time of acquisition, I requested
22 that there be an insurance coverage, for, for D&O
23 coverage prior -- that I wanted to have in place
24 before closing or at closing.
25 Q I've seen a name on some documents, Brad Mehlhaff,

24

1 M-E-H-L-H-A-F-F.
2 Do you know who that is?
3 A Would you spell that again, please?
4 Q Sure, M-E-H-L-H-A-F-F.
5 A Yes, I know him.
6 Q Who is Brad Mehlhaff?
7 A Brad was in the accounting department at Miller &
8 Schroeder.
9 And I quite honestly can't recall if he left
10 before we bought the stock of the company or after,
11 but he did subsequently leave the company.
12 Q Was he head of the accounting department, do you
13 know?
14 A No, Ken Larsen was head of the accounting department
15 at that time. I don't recall Brad's specific
16 responsibilities, but he, he was a, a senior person
17 in the accounting department.
18 Q Do you know why he left?
19 A Pardon?
20 Q Do you know why he left?
21 A No, I don't. I mean, I do know that he went to work
22 for another company but. . .
23 Q Do you know where he went to work?
24 A He went to work for a, I think it's a plumbing and
25 electric company, and I, I can't remember the name of

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A Yes, I did look at it; I did read it.

(Dlugosch Deposition Exhibit 4 was marked for identification.)

BY MR. TOPOL:

Q I've handed you what I've marked as Exhibit Number 4, which is the 1997 policy. I'll represent that to you.

Take a look through it and see if you agree that that's the 1997 policy issued to MI Acquisition Corp.

A I believe this is it, yes.

Q You say you recall reading it. Do you recall whether you read it in 1997 at the time it was issued?

A Yes, I did.

Q Do you recall whether you read the policy before it issued?

A I don't recall.

Q Do you recall about how long you spent reading it?

A No, I don't.

Q Do you have expertise in D&O insurance?

A No, I do not.

Q Had you read any D&O policies before this policy was issued in 1997?

A No.

Q This was the first D&O policy you ever read?

A Yes.

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(Dlugosch Deposition Exhibit 5 was marked for identification.)

BY MR. TOPOL:

Q I hand you what's marked Exhibit Number 5, Hays 002004. The document at the top says, "Miller & Schroeder Agenda 10-22-97."

I ask you, do you recall whether you've seen this document before?

A No, I have not.

Q Do you know whether you might have seen it in 1997?

A I don't believe I did.

Q If there were a meeting in October of 1997 to talk about Miller & Schroeder's insurance coverage, would you have attended that meeting?

A Not necessarily.

Q Do you know who would have attended?

A Chief financial officer, accounting department. Probably, probably counsel but I'm not certain.

Q You see under Item Number 4 there's some diamonds and the second diamond says, "E&O coverage option"? Do you see that?

A Yes.

Q Do you know whether in October 1997 Miller & Schroeder had E&O coverage?

A I believe we did at that time, yes.

35

Q And do you know who issued the coverage?

A I believe that -- when I say I believe that we did, obtaining the E&O coverage was an important issue for myself and for the directors. And I would have -- I thought it was in place before October 22nd of '97. That's why I say I believe it was, but this is -- the only E&O coverage that the firm got was through the Hays Group. And so if this says that it was not in place at that time, then I presume it was not in place.

Q Why was E&O coverage important?

A Well, it was important because we did not want to have the directors -- I'm sorry, E&O coverage. I, I'm going to back up -- back off.

Q You were referencing D&O before?

A I was, I was thinking of D&O coverage.

Q Okay.

A So I'll -- why don't you --

Q Why don't we start the line again.

A Start the line again.

Q Okay. So in July of '97 there was D&O coverage, correct?

A That's what I recall. I mean, that's what I intended was to have D&O coverage in place.

Q And that's what Exhibit Number 4 is, it's your

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understanding.

A Yes. And so we did not have E&O coverage, and I do not believe we had it prior to that time, and I do not believe we had it after, but I can't say that for certain.

Q Why was D&O, officers and directors, coverage important?

A Because it was critical for us to have protection of our directors and our officers for acts that were not -- that they weren't directly responsible for.

Several of the directors had wanted to make certain that we had D&O coverage. And I can't recall which of them, but one of them was in the insurance industry for all his life, so he probably was the one that -- and it was important to me to have insurance covering the potential exposures of directors and officers to claims by customers and others for, for perceived wrongdoings of the company.

Q Did the company consider getting E&O coverage?

A I don't recall any discussion about getting E&O coverage.

Q And is it your understanding that D&O coverage provides insurance for suits by customers?

A It would provide coverage for suits against directors and officers but not against the company or the

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1 salespeople.
2 Q It would provide coverage to directors and officers
3 in all circumstances or just if they, as you framed
4 it, had no responsibility?
5 A It would protect them if they were not directly
6 responsible for the perceived transgression.
7 Q And what do you mean by "not directly responsible"?
8 A That they were not the party who was engaged in the
9 action that brought about the complaint.
10 Q And did you have an understanding as to whether the
11 1997 policy that's Exhibit 4 provided coverage for
12 the directors and officers for customer suits?
13 A It was my understanding that it did, and that was the
14 purpose for obtaining the policy.
15 Q And what's the basis of that understanding?
16 A It was, it was what we requested and, and believed
17 that we had received.
18 Q When you say "we had requested," who is "we"?
19 A I don't recall who all was involved. At the time we
20 were putting the acquisition together, the, the
21 principal parties that were engaged were John Clarey
22 and myself, my son, Jamie, and Paul Tietz at Briggs
23 and Morgan along with Brian Wenger and Laurie Ketola.
24 Q You mentioned there was a director with significant
25 insurance experience.

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1 Do you know who that person was?
2 A Yeah, Bill Sexton.
3 Q Do you know where he worked at the time?
4 A He was retired.
5 Q And you say "we had requested."
6 Do you know who this was request was conveyed
7 to?
8 A To the best of my recollection, it was conveyed to
9 one of the principals of The Hays Group. And I'm not
10 sure if his name appears anywhere in these documents,
11 I don't believe it does. So I'm not remembering his
12 name.
13 Q But not to Mary Marshall, somebody else?
14 A No, not to Mary Marshall.
15 Q Was it conveyed in writing, do you know?
16 A Not by myself. It could have been by counsel but it
17 was not by me.
18 Q Did you ever get a written opinion from the lawyers
19 as to what coverage was provided by the 1997 policy?
20 A Not to my recollection.
21 Q Did you ever ask for a written opinion?
22 A No.
23 Q Did you ever ask for a written opinion from The
24 Marshall Group as to what coverage was afforded by
25 the D&O policy?

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1 A I'm sorry.
2 Q For what coverage, what the extent of coverage was?
3 A Who is The Marshall Group?
4 Q I'm sorry, strike that, you're right. From The Hays
5 Group. Did you ever ask The Hays Group for a written
6 opinion as to what coverage is available, and in
7 particular whether there was coverage for customer
8 suits?
9 A No, I don't recall requesting that.
10 Q Did you ever take any notes documenting information
11 about whether the 1997 policy would provide coverage
12 for customer suits by customers?
13 A I can't recall whether I did or not.
14 Q Do you know whether anybody else ever documented this
15 understanding?
16 A I don't know.
17 Q Do you recall discussions about the -- we talked
18 earlier about SIPC insurance coverage.
19 A Yes.
20 Q Who would you have had discussions with about that
21 coverage?
22 A With our sales manager, with salespeople, with the
23 chief financial officer. And probably the other
24 members of our management committee.
25 Q Would you have discussed that with the law firm,

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1 Briggs and -- what did you call it, Briggs and --
2 A Briggs and Morgan?
3 Q Yes.
4 A No, I don't recall it, and I don't believe I did.
5 Q Would you have discussed it with The Hays Group?
6 A I would have -- I wouldn't have directly discussed it
7 with them, no.
8 Q You would have directed somebody else --
9 A Yes.
10 Q -- to talk to them about the coverage?
11 A Yes.
12 Q Did Miller & Schroeder have general liability
13 insurance coverage, or commercial liability?
14 A Not that I recall. I don't know one way or the other
15 whether we had commercial liability coverage.
16 Q Do you know whether you had workers' compensation
17 coverage?
18 A Yes, we did.
19 Q Were you involved in those decisions?
20 A No.
21 Q So how do you know that they had workers'
22 compensation insurance?
23 A I, I know that we had workers' compensation claims
24 that were filed, and I'm making an assumption that we
25 had workers' comp insurance coverage.

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Q Do you know whether there was any negotiation about which of these -- about what specific types of business would be included here?
A I don't recall any negotiation of that issue.
Q Do you recall whether Miller & Schroeder requested any changes to this endorsement?
A No, I don't recall that we did.
Q Do you recall whether this endorsement ever had a different form to it?
A Not that I recall.
Q Do you recall whether there was any language or communications concerning the form of the endorsement?
A Do I --
Q Do you recall whether there were any communications concerning the content of this endorsement?
Let me rephrase that. Do you recall whether there were any communications you ever saw between any parties discussing changes in the language of this endorsement?
A No, I don't recall any.
Q If there were, would you have seen those communications?
A Yes, I would have.
Q And why do you think you would have seen those

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communications.
A It's part of my responsibility as CEO, and I was concerned about -- yeah, I think it was well known that I was concerned about this aspect of the exposures.
Q So your recollection today is that you had discussions clarifying that there would be coverage for directors and officers for suits by customers --
A Regarding --
Q -- correct?
A Yes.
Q But you don't recall that there were ever any communications about the language of this endorsement.
A No, I don't recall that.
Q Did you do anything before this deposition to refresh your recollection as to your testimony that there were --
A No.
Q -- that there was coverage for this endorsement?
A No, I did not.
Q I'm handing you what is Endorsement Number 3 called "Securities Exclusion," SRC1540. I ask you to take a look at that.
Do you recall whether you looked at the

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securities exclusion before?
A Yes, I did.
Q Do you recall whether you looked at this exclusion in 1997?
A Yes, I did.
Q Why did you look at it in 1997?
A I reviewed the whole policy in 1997, including endorsements, and wanted to ensure that that endorsement was not going to exclude coverage for directors and officers for the items in the Endorsement Number 9.
Q And were you -- did you reach a conclusion as to whether or not it would?
A Yes, I concluded that it would cover.
Q And how did you reach that conclusion?
A Discussions with counsel, and I'm not -- I don't recall whether I had direct discussions with The Hays Group on it or not, but I was given assurance that it was.
Q Did you ask for an explanation for why or just their assurance?
A Just the assurance.
Q Did you ask them to document the assurance?
A No.
Q Do you have an understanding as to why, you know,

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from conversations from with them or any other reason, why endorsement Number 3 wouldn't not apply to directors and officers?
A The discussion was that Endorsement Number 9 was a clarification to ensure that Endorsement Number 3 was not going to be, would not expose the directors and officers to claims.
Q Can you turn ahead to Endorsement Number 9?
When you say a clarification of Endorsement Number 9, are you referring to a specific part of Endorsement Number 9?
A The, the concern that I had -- the assurance that I was looking for was that Paragraph 2 in Number 9 did, in fact, give us assurance that the directors and officers would be covered from claims arising from these actions.
Q And Paragraph 2 starts out by making a reference to Paragraph Number 1, correct? It says, "Paragraph (1) above is not intended however, nor shall be it construed," dot, dot, dot, is that correct?
A That's correct.
Q It doesn't make any reference to Endorsement Number 3, does it?
A No, it doesn't.
Q So why did you think this provision in Endorsement

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Number 9 wouldn't apply to Endorsement Number 3?
A People that I discussed it with assured me that it didn't.
Q And who are those people?
A Counsel.
Q And you don't recall which counsel?
A No.
Q Who had the final -- strike that.
Who made the final decision to go ahead and purchase this D&O policy? Was it you?
A Yes.
Q Was the decision approved by the board?
A I don't believe so, no.
Q Can you flip -- in between Number 3 and Number 9 is an Endorsement Number 6. It's called "Limited Securities Coverage Endorsement." Could you take a look at this?
A Yes.
Q Do you have an understanding as to what this provision means?
A Yes.
Q What is that?
A It, it protected -- it protected the directors and officers from claims that might arise from people who allege that the offering memorandum that was used to

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secure the capital that was used in acquiring the company, that that offering memorandum had -- that that offering wasn't accurate. Or anyway, I believe that this provision was intended to protect the officers and directors from claims by shareholders that there would be a -- that the disclosures weren't adequate in the offering for the stock that was sold to -- by the company.
Q Is this something that you specifically wanted in the policy?
A No, I don't recall whether I had asked for it specifically or whether it was offered.
Q Did you at any point when the 1997 policy was being purchased, did you have any conversations with Executive Risk about the terms of coverage?
A No, I don't believe I did. I'm sure that I did not.
Q Did you at any point thereafter?
A No.
Q Did you have any conversations with anybody at any insurance company about the terms of D&O coverage?
A Not that I recall, no.
Q Did you instruct anybody who worked for you at Miller & Schroeder to -- well, I guess then MI Acquisition Corporation -- to speak with Executive Risk Indemnity about the terms of the insurance policy?

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A Not that I recall, no.
Q At any point after 1997, did you ever instruct anybody to speak with Executive Risk about the terms of the insurance policy?
A Not that I recall.
Q Are you aware of any representation by Executive Risk Indemnity, Inc. as to whether this policy would provide coverage for suits by customers?
A No, I don't.
Q Do you know whether any of the lawyers who you spoke with at Briggs and Morgan spoke with anyone at Executive Risk about the terms of the coverage?
A No, I don't.
Q Did you ask anybody there to speak with Executive Risk?
A No.
Q Do you know whether anybody at The Hays Group spoke with anyone at Executive Risk about insurance coverage?
A No, I don't.
Q Did you ever ask them to speak with anybody at Executive Risk?
A No.
Q Stay on the record for a second.
Why don't we do this. I want to -- we're

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probably at a good point to take a break. And then the other -- the next question I'll have is, and I'll ask it and then we can take a break and you can look at it when you get a chance, if you would flip through this insurance policy.
And you mentioned that you specifically recall thinking and talking to people about Endorsements Number 3 and 9. And I would just ask you to go through the policy, after you take a break, get a drink or whatever else, and if there are any other provisions that you recall having conversations about at the time this policy was bought.
A Okay. Can I ask you how much time you believe we're going to be needing to complete this?
Q Oh, today overall? I would think I'll be done within an hour.
MR. KOLBO: Probably less.
MR. TOPOL: Maybe probably less. I'm just being conservative.
MR. KOLBO: I just have a few questions.
MR. ATMORE: Probably none.
MR. TOPOL: I would think by 5.
THE WITNESS: Okay. I would hope that we could get done a little earlier than that because I have somebody coming to my home at 5:00 to do some

A No.
Q Have you ever pled guilty in any criminal action?
A No.
Q After Chubb denied coverage for the litigation, did you have any discussions with anybody about whether or not the policy provided coverage to you for the lawsuits?
A Yes.
Q Who did you have conversations with?
A Counsel at Arthur Chapman.
Q And that was the counsel who was representing you?
A Yes.
Q Other than counsel at Arthur Chapman, did you have conversations with anyone else?
A Yes, with people from The Hays Group, John Arvold.
Q John who?
A Arvold.
Q Do you know how to spell that?
A A-R-V-O-L-D.
Q Anyone else?
A I don't think so. I might have, I might have had conversations with Dick Perrine at that time, but I don't remember.
Q Dick who, I'm sorry?
A Perrine.

Q Oh, I'm sorry. Okay.
What did you discuss with Mr. Arvold?
A Whether he believed that the policy provided the coverage that we thought it did.
Q And what did he tell you?
A He believed that it did.
Q And did he tell you why he believed that it did?
A He read the policy, and his conclusion was that it covered us.
I also had discussions with a person who was responsible for insurance at Bemis, the Bemis Company in town here, who was a friend of mine. He reviewed the policy and also concluded that, after he read it, that it provided coverage.
Q What's the Bemis Company?
A It's a corporation, a publicly held company in the Twin Cities. Their primary business is packaging.
Q And John Arvold was not, he was not involved in 1997 when the policy was originally purchased, was he?
A Well, John, John was the chief financial officer at Miller & Schroeder up until the acquisition, and then upon acquisition, he went over to The Hays Group.
Q And he went over to be CFO at The Hays Group or some other position?
A He was, he was a principal there and involved in

marketing.
Q Well, when we talked earlier this afternoon about who in 1997 you spoke with from The Hays Group about the terms of the insurance policy, you hadn't mentioned John Arvold's name.
Do you recall whether you spoke to him in 1997 about the insurance policy?
A I don't recall speaking to him in '97.
Q And Dick Perrine, you don't recall specifically speaking with him after the lawsuits were filed.
A That's correct.
Q And the gentleman from the Bemis Company, did you speak with him at all when the policy was purchased in 1997?
A No.
Q And when the policy was renewed in 2000, you didn't at that point speak with Mr. Arvold about coverage under the policy, did you?
A I, I believe that I spoke to him about renewal of the policy but did not discuss specific terms of the policy.
Q And how about the gentleman from the Bemis Company, did you speak with him?
A No, I did not.
MR. TOPOL: That's all I have.

MR. KOLBO: I just have a few questions.

EXAMINATION

BY MR. KOLBO:
Q Mr. Dlugosch, when you were forming the company or thinking about forming the company in 1997, Miller & Schroeder, was it your idea to go out and obtain directors and officers liability coverage or was that idea suggested to you by somebody else?
A No, it was my idea.
Q Okay. Did you have discussions with the soon-to-be other officers and directors of Miller & Schroeder about your decision to seek directors and officers coverage?
A Yes, some of them.
Q And do you remember who they were that you talked to or not?
A I believe I discussed it with John Clarey, with Ken Dawkins. Bill Sexton, Jim Arias, A-R-I-A-S. And that would -- there may have been others but I can't recall.
Q And did you initiate those discussions about D&O coverage with those individuals, or did they initiate a conversation with you about that subject?
A I believe that Mr. Sexton and Mr. Arias made separate

1 inquiries. That's the best of my recollection. I'm
2 not positive, but I believe that they had asked me
3 about it. But I -- otherwise I was taking the
4 initiative on communicating about it.
5 Q Did you develop an understanding as to whether
6 obtaining directors and officers liability coverage
7 were important to any of these other officers and
8 directors?
9 A Yes.
10 Q What did you learn in that regard?
11 A That it was an important issue for them in becoming
12 directors.
13 Q Then let me ask you this: it sounds like you had some
14 expectation or understanding about what kind of
15 coverage you were obtaining, directors and officers
16 coverage, correct?
17 A Yes.
18 Q And you testified that you've been named as a
19 defendant or a respondent in some of the Heritage
20 Bond litigation, correct?
21 A Yes.
22 Q Can you tell me whether the kind of claims that have
23 been made against you in the Heritage Bond
24 litigation, are those the kind of claims that you
25 thought you were purchasing D&O coverage for in 1997?

1 A Yes.
2 MR. KOLBO: That's all I've got.
3
4 EXAMINATION
5 BY MR. ATMORE:
6 Q Just a quick question. You explained or gave an
7 explanation of what the credit committee's
8 responsibilities were. And I'm not sure I quite
9 followed.
10 Could you tell me again, what is the
11 responsibility of the credit committee? And if you
12 would just relate it to the Heritage Bonds issues.
13 A The -- first of all, care was taken not to have the
14 credit committee be viewed as an underwriter, and
15 that was a conscious decision or conscious objective
16 to avoid underwriting the transactions.
17 The credit committee, its primary role was to be
18 determining whether the credit was, as described, was
19 adequately -- was appropriate for sale to the
20 investors that it was being targeted for.
21 So if it was intended for an institutional
22 private placement, there would be one, there would be
23 one category of investor that, that would be expected
24 to be more sophisticated. If it was intended for
25 retail by individual sales, there would be a

1 different category of investors.
2 And so the, the quality of the credit, as it was
3 described in the material that was presented to the
4 credit committee, would help them determine whether
5 it was appropriate to be marketed to a particular
6 group.
7 Q But what does "credit" mean when used by the credit
8 committee, what does that refer to?
9 A The, the quality of the -- the credit refers to the
10 quality of the cash flow and the strength of the
11 borrower.
12 Q And so the broker on the Heritage Bond deals brought
13 the deals to the credit committee.
14 A No.
15 Q How would it work?
16 A The underwriter.
17 Q The underwriter.
18 A The investment banker.
19 Q One of the things you said earlier was that the D&O
20 coverage would provide coverage for claims but not
21 claims against the company.
22 Do you remember saying something to that effect?
23 A Yes.
24 Q Did you have an understanding, when this policy that
25 is at issue was purchased, that there was coverage

1 purchased for the company?
2 A I, I'm not sure I can specifically state that, but
3 my, my experience and understanding has always been
4 that claims brought against brokers can also name the
5 company, and, and particularly in arbitrations, that
6 awards can be made against the company as well as the
7 broker. And we weren't seeking coverage for that.
8 Q Okay. The claim you made in bankruptcy for your fees
9 and for the settlement you paid, the claim you've
10 made against the bankruptcy estates of the involved
11 entities, is that because you want those companies to
12 indemnify you for what you paid, is that the basis of
13 the claim?
14 A Yes. It's the -- there are two bases for the claim.
15 One is that, that corporations should be indemnifying
16 their officers and directors from claims and kept
17 providing for their defense.
18 The other issue is that the -- I understood that
19 the trustee would be making a claim against Chubb,
20 and so my objective was to make certain that if there
21 was a payment made on the Chubb policy that, that I
22 would have a beneficial claim against a portion of
23 that.
24 MR. ATMORE: That's all I have.
25 MR. AHRENS: I don't have any questions.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding Corp. f/k/a Miller & Schroeder, Inc. and its subsidiaries, Debtor.	)	Chapter 7 Case BKY Case No. 02-40284 to 02-40286 Jointly Administered
Brian F. Leonard, Trustee, Plaintiff, vs. Executive Risk Indemnity, Inc., Defendant.	)	ADV Case No. 03-4284 **NON-CORE PROCEEDING**
The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden, and John M. Clarey, Kenneth E. Dawkins, and Joseph K. Halloran, Intervenors.	)	

ORDER

This matter came for hearing before The Honorable Nancy C. Dreher on December 16, 2004 on the Motion of Intervenors The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden ("Intervenors") for Partial Summary Judgment declaring that there is coverage under

the policy of insurance issued by Defendant Executive Risk Indemnity, Inc. as alleged in the Intervenors' Complaint filed in the above-referenced adversary proceeding.

Thomas C. Atmore, of Leonard, O'Brien, Spencer, Gale & Sayre, Ltd., appeared on behalf of Plaintiff. David H. Topol, of Wiley Rein & Fielding, LLP, appeared on behalf of Defendant. Kirk O. Kolbo and Matthew P. Lewis, of Maslon Edelman Borman & Brand, LLP, appeared on behalf of the Intervenors The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden. Klay C. Ahrens, of Johnson Provo-Peterson, LLP, appeared on behalf of Intervenors John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran.

Based on all of the pleadings, files, affidavits, and papers supplied by counsel, and the Court's findings of fact and conclusions of law,

NOW, THEREFORE IT IS HEREBY ORDERED AS FOLLOWS:

1. Intervenors' Motion for Partial Summary Judgment is hereby GRANTED.

Dated: _____, 2004

_____
The Honorable Nancy C. Dreher
United States Bankruptcy Judge

#360800 v1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding Corp. f/k/a Miller & Schroeder, Inc. and its subsidiaries, Debtor.	)	Chapter 7 Case BKY Case No. 02-40284 to 02-40286 Jointly Administered
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CERTIFICATE OF SERVICE

Chris Robertson, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being first duly sworn on oath, deposes and says that she is a secretary in the office of Maslon Edelman Borman & Brand, LLP, located at 3300 Wells Fargo Center, Minneapolis, Minnesota, and that on October 29, 2004, she made service of the following documents:

1. Notice of Motion and Motion of Intervenors The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden for Partial Summary Judgment;

2. Memorandum of Law in Support of Motion for Partial Summary Judgment of Intervenors The Marshall Group, Inc., Jerome A. Tabolich, James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, and Mary Jo Brenden;

3. Affidavit of Kirk O. Kolbo in Support of Motion for Partial Summary Judgment; and

4. *Proposed* Order.

upon the persons listed on the attached Service List by Federal Express Mail and United States Mail to said persons as indicated on the attached service list.

e/Chris Robertson
Chris Robertson

Subscribed and sworn to before me
this 29th day of October, 2004.

e/Diane P. Runyan
Notary Public

#360772 v1

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