UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. FRANCISCO ILLARRAMENDI, HIGHVIEW POINT PARTNERS, LLC and MICHAEL KENWOOD CAPITAL MANAGEMENT, LLC, Defendants, and HIGHVIEW POINT MASTER FUND, LTD., HIGHVIEW POINT OFFSHORE, LTD., HIGHVIEW POINT LP, MICHAEL KENWOOD ASSET MANAGEMENT, LLC, MK ENERGY AND INFRASTRUCTURE, LLC, and MKEI SOLAR, LP, Relief Defendants.	Civil Action No. 11-cv-78 (JBA) JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges the following against Defendants Francisco Illarramendi ("Illarramendi"), Highview Point Partners, LLC ("Highview Point Partners"), Michael Kenwood Capital Management, LLC ("MK Capital Management") and Relief Defendants Highview Point Master Fund, Ltd. (the "HP Master Fund"), Highview Point Offshore, Ltd. (the "HP Offshore Fund"), Highview Point LP ("HPLP"),

Michael Kenwood Asset Management, LLC ("MK Asset Management"), MK Energy and Infrastructure, LLC ("MK Energy") and MKEI Solar, LP ("MKEI Solar"):

SUMMARY

1. This case involves the misappropriation and misuse of investor assets by two investment advisers located in Stamford, Connecticut – namely, Highview Point Partners and MK Capital Management – which were controlled, at relevant times, by Illarramendi.

2. Beginning in or about 2006, Illarramendi served as the majority owner and control person of a group of affiliated entities organized as The Michael Kenwood Group, LLC (the "MK Group"), a Stamford, Connecticut-based holding company. Through MK Capital Management, an unregistered investment adviser, Illarramendi advised several hedge funds, including the Short Term Liquidity Fund, I, Ltd. (the "Short Term Liquidity Fund"), the MK Venezuela Fund, Ltd. (the "MK Venezuela Fund"), and the MK Special Opportunities Fund ("MK SOF") (collectively, the "MK Funds"). The investors in the MK Funds are primarily offshore individuals and entities, including a pension fund for a foreign corporation (the "Pension Fund").

3. In addition, from 2005 through fall 2010, Illarramendi and two other individuals (the "Highview Co-Owners") together owned and controlled Highview Point Partners, a registered investment adviser located in Stamford, Connecticut. Highview Point Partners advised the HP Master Fund and two feeder funds (the HP Offshore Fund and HPLP) (collectively, the "Highview Funds"). Highview Point Partners is organized under Delaware law and has been registered with the Commission since 2006. Similar to the MK Funds, virtually all Highview Funds investors are offshore individuals and entities, some of whom are also investors

in the MK Funds. In fall 2010, Illarramendi left Highview Point Partners, and it is now in the control of the two Highview Co-Owners.

4. From 2005 through fall 2010, Illarramendi caused Highview Point Partners and the Highview Funds to engage in scores of extraordinarily complex and multi-layered transactions as part of a fraudulent scheme. Illarramendi conducted the fraud using the Highview Funds and the MK Funds in tandem, engaging in many related transactions between the two groups which included purported loans and extensive undocumented transfers of cash between them. In essence, the Highview Funds are akin to early investors in a Ponzi scheme in that Illarramendi and Highview Point Partners misappropriated and misused investor monies from the Highview Funds and then attempted to hide those losses by transferring investor monies from the MK Funds to the Highview Funds. As a result, and as further described below in this Complaint, the Highview Funds are both victims and beneficiaries of the fraud and are now holding tainted assets.

5. During roughly the same period, beginning as early as 2006, Illarramendi and MK Capital Management were also misappropriating investor assets and using the MK Funds as vehicles for Ponzi activity. For example, according to Illarramendi, as of the end of 2010, the purported value of one of the MK Funds, the Short Term Liquidity Fund, was $540 million. In fact, however, the assets of the Short Term Liquidity Fund at that time were substantially less than that because many of its assets were used during 2010 to pay redemptions to investors in the MK Venezuela Fund.

6. In 2010, during the course of the Commission's investigation in this matter, Illarramendi and Highview Point Partners attempted to hide the fact that they had misused approximately $169 million in investor assets from the Highview Funds by creating phony loan

documents purporting to document a loan between the Highview Funds and the MK Venezuela Fund. In fact, no such loans existed. Furthermore, in December 2010 and January 2011, again during the course of the Commission's investigation in this matter, Illarramendi and MK Capital Management attempted to hide the fact that the Short Term Liquidity Fund was missing assets by providing the Commission staff with a false letter from an accountant in Venezuela, purporting to verify the existence of at least $275 million in assets held there by the Short Term Liquidity Fund. In fact, those assets do not exist.

7. As part of the scheme, Illarramendi and MK Capital Management also misappropriated at least $53 million from the MK Funds by first transferring monies from the MK Funds' accounts into bank accounts that Illarramendi personally controlled, and then making unauthorized investments of the monies in long-term private equity investments. Illarramendi misappropriated the MK Funds' assets by causing MK Capital Management to use the MK Funds' assets to purchase interests in private companies for the benefit of Illarramendi and other entities that he controls.

8. Finally, Illarramendi, Highview Point Partners and MK Capital Management have taken substantial compensation directly from the Highview Funds and the MK Funds, in the form of management fees which were purportedly based on a percentage of assets under management and on fund performance. These fees were fraudulent because Illarramendi, Highview Point Partners, and MK Capital Management fraudulently manufactured both the assets under management and the performance figures for the Highview Funds and the MK Funds.

9. By engaging in the conduct alleged herein, Defendants violated Sections 206(1), (2) and (4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8

thereunder. Defendant Highview Point Partners also violated Section 10(b) of the Exchange Act and Rule 10b-5 by, *inter alia*, misrepresenting the nature of the investment and the use of investor funds.

10. Based on these violations, the Commission seeks: (1) entry of a permanent injunction prohibiting Defendants from further violations of the relevant provisions of the federal securities laws; (2) disgorgement of Defendants' ill-gotten gains, plus pre-judgment interest; (3) disgorgement by the Relief Defendants of all unjust enrichment and/or ill-gotten gain, plus prejudgment interest; and (4) the imposition of a civil monetary penalty against Defendants due to the egregious nature of their violations. In addition, because of the risk that Defendants will continue violating the federal securities laws and the danger that any remaining investor funds will be dissipated or concealed before entry of a final judgment, the Commission seeks preliminary equitable relief, to wit, a temporary restraining order and upon notice a preliminary injunction, to: (1) prohibit Defendants from continuing to violate the relevant provisions of the federal securities laws; (2) freeze Defendants' and Relief Defendants' assets and otherwise maintain the status quo; (3) require Defendants and Relief Defendants' to submit an accounting of investor funds and other assets in their possession; (4) require Defendants to repatriate assets that were transferred outside of the United States; (5) prohibit Defendants from soliciting or accepting additional investments; (6) prevent Defendants from destroying relevant documents; (7) authorize the Commission to undertake expedited discovery; and, (8) appoint a receiver pursuant to Federal Rule of Civil Procedure 66.

JURISDICTION AND VENUE

11. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 21(d) of the Exchange Act [15 U.S.C. §§78u(d)] and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)]. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, Sections 21(d) and (e) and 27 of the Exchange Act [15 U.S.C. §§78u(e) and 78aa] and Section 214 of the Advisers Act [15 U.S.C. §80b-14].

12. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2), Section 27 of the Exchange Act [15 U.S.C. §78aa] and Section 214 of the Advisers Act [15 U.S.C. §§ 77v(a), 78aa, and 80b-14], because a substantial part of the acts constituting the alleged violations occurred in the District of Connecticut and because Illarramendi's primary residence is in the District of Connecticut and the principal place of business of all of the entities named as defendants is in the District of Connecticut.

13. In connection with the conduct alleged in this Complaint, Defendants directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, the facilities of a national securities exchange, or the mails.

14. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

DEFENDANTS

15. Illarramendi, age 42, is a resident of New Canaan, Connecticut. Illarramendi is not registered with the Commission in any capacity. Illarramendi is the majority owner of the MK Group and was previously associated with Highview Point Partners. On March 7, 2011, Illarramendi entered a guilty plea before the Honorable Stefan R. Underhill to counts of

securities fraud, investment adviser fraud, wire fraud and obstruction of justice filed by the United States Attorney's Office for the District of Connecticut in connection with the conduct described in this Complaint. *See* Exhibit A (Criminal Information, *United States* v. *Illarramendi*, 3:11 Cr. 41 (SRU)) and Exhibit B (Transcript of Defendant's Waiver and Plea, *United States* v. *Illarramendi*, 3:11 Cr. 41 (SRU) (March 7, 2011)) (attached hereto).

16. Highview Point Partners is organized under the laws of Delaware and its principal place of business is in Stamford, Connecticut. It has been registered with the Commission since 2006. From 2005 through fall 2010, Illarramendi partially owned and controlled Highview Point Partners, along with two other individuals not named herein.

17. MK Capital Management was incorporated in Delaware in 2006 and its principal place of business is in Stamford, Connecticut. It is wholly owned by the MK Group and is therefore controlled by Illarramendi. It is not registered with the Commission in any capacity.

RELIEF DEFENDANTS

18. The HP Master Fund was established in 2006 by Highview Point Partners. From at least 2006 through fall 2010, the HP Master Fund was controlled, in part, by Illarramendi.

19. The HP Offshore Fund was established in 2004 by Highview Point Partners. From at least 2006 through fall 2010, the HP Offshore Fund was controlled, in part, by Illarramendi.

20. HPLP was established in 2005 by Highview Point Partners. From at least 2006 through fall 2010, HPLP was controlled, in part, by Illarramendi.

21. MK Asset Management was incorporated in Delaware in 2006 and its principal place of business is in Stamford, Connecticut. It is wholly-owned by the MK Group and controlled by Illarramendi. It is not registered with the Commission in any capacity. MK Asset

Management is the record owner of shares in a private company, which were purchased using the Funds' assets.

22. MK Energy was incorporated in 2010 in Delaware and its principal place of business is Stamford, Connecticut. The precise ownership of MK Energy is currently unknown, but it is controlled by Illarramendi either as a direct owner or as the owner of MK Group. On information and belief, MK Energy may be partially owned by a relative of Illarramendi. MK Energy is the record owner of shares of at least two private companies – shares that were purchased with investor assets, and thus rightfully constitute the property of the MK Funds.

23. MKEI Solar is the record owner of certain shares in a private company, which were purchased using the investor money from the MK Funds.

FACTUAL ALLEGATIONS

A. Illarramendi Used a Shell Company to Funnel Highview Funds Investor Money to Himself and Third Parties

24. By at least 2006, the Highview Funds had sustained millions of dollars in investment losses, a fact that Illarramendi and Highview Point Partners attempted to conceal from investors. As Illarramendi publicly acknowledged during his plea allocution in the related criminal case, he began engaging in this scheme in 2006 to hide from investors and creditors the "hole" between the fund assets and liabilities. *See* Exhibit A (Criminal Information, *United States v. Illarramendi*, 3:11CR-41 (SRU)) and Exhibit B (Plea Allocution, *United States v. Illarramendi*, dated March 7, 2011).

25. As an example of the methods used to perpetuate the fraudulent scheme, from 2006 through at least 2008, Illarramendi and Highview Point Partners repeatedly transferred money from the Highview Funds to an offshore entity called Naproad Finance, S.A. ("Naproad"). Highview Point Partners falsely listed the Naproad transfers on the Highview

Funds' books as "investments" in Venezuelan bonds; in truth and in fact, Naproad was an entity controlled by Illarramendi that was used to funnel money to himself, other entities he controlled or to third parties. Indeed, the Naproad bank statements show the same address as Highview Point Partners' and they were delivered "in care of" Highview Point Partners. In fact, Highview Point Partners had formal "power of attorney" for Naproad.

26. The bank and brokerage statements for Naproad reveal the sham nature of the transactions and the misappropriation of money from the Highview Funds. For example, on January 5, 2006, Illarramendi and Highview Point Partners caused $5.5 million to be transferred from the Highview Funds to Naproad. Between January 6 and January 13, 2006 they caused $5.2 million of that amount to be wired to a Highview Funds' investor, $50,000 to be wired to Illarramendi's personal bank account, and $100,000 to be wired to the personal bank account of one of the Highview Co-Owners. In another transaction on February 1, 2006, Illarramendi and Highview Point Partners caused $9.5 million to be transferred from the Highview Funds to Naproad. The next day, the total amount was wired to a Panamanian company controlled by Illarramendi. Similarly, on February 7, 2006, $10 million was transferred from the Highview Funds to Naproad. The next day, the total amount was wired to the same Panamanian company controlled by Illarramendi.

27. From at least January 2006 to October 2008, the Highview Funds made transfers totaling $283 million to Naproad, and during that period, the Highview Funds received $143 million back from Naproad. Highview Point Partners falsely recorded those transfers as purchases and sales of "corporate bonds" or "corporate debt" on its trade blotter and monthly portfolio valuation reports.

B. Illarramendi Misappropriates Investor Money from Highview Funds and Uses Investor Money from MK Funds to Hide the Losses

28. As described below, during 2009 and 2010, Illarramendi used investor money from the Highview Funds to make payments to various offshore entities. He then "repaid" the Highview Funds by transferring investor money from the MK Funds to them, as purported returns on investments.

29. Between May 2009 and September 2009, Illarramendi caused the Highview Funds to transfer $79 million (almost 45% of the Highview Funds' assets) to various offshore third parties. Of that $79 million, approximately $10 million was used by Highview Point Partners to repay its own debt to a third party. These cash transfers were all falsely recorded on the Highview Funds trade blotter variously as "investments" in certain (different) overseas entities or in the MK Venezuela Fund.

30. By the end of 2009, Illarramendi began falsely recording the entire $79 million on the Highview Funds books as an investment with the MK Venezuela Fund. In fact, the entire amount had been misappropriated.

31. On December 30, 2009, to avoid having the MK Venezuela Fund investment on the Highview Funds books at year's end, and to attempt to evade scrutiny from the Highview Funds' auditors, Illarramendi and MK Capital Management caused a different MK Fund (the MK Special Opportunities Fund) to transfer $99 million in cash to the Highview Funds, of which $91 million was falsely characterized as a purported redemption of the $79 million MK Venezuela Fund investment, with interest. The result was that Illarramendi and Highview Point Partners had misappropriated $79 million from the Highview Funds during 2009 (including the $10 million it used to repay its own debt) and then Illarramendi and MK Capital Management

replaced those misappropriated assets with $91 million from a different set of investors in the MK Funds.

32. Illarramendi essentially repeated this shell game in 2010. Between January 2010 and March 2010, Illarramendi and Highview Point Partners caused the Highview Funds to transfer approximately $90 million to various offshore third parties. Of that $90 million, Illarramendi misappropriated at least $24 million to pay operating expenses for a private company he controlled and misappropriated an additional $5 million to purchase a private plane. Again, the transfers were falsely recorded in the Highview Funds' trade blotter as purported investments in the MK Venezuela Fund.

33. As with the prior year, Illarramendi "repaid" the misappropriated assets to the Highview Funds using money from other investors. In May 2010, Illarramendi and Highview Point Partners caused the MK Venezuela Fund to transfer $94 million to the Highview Funds. Again, this payment was falsely characterized on the Highview Funds' books as representing repayment plus interest of their interest in the MK Venezuela Fund. Similar to 2009, the result was that Illarramendi and Highview Point Partners had misappropriated $90 million from the Highview Funds, and then Illarramendi and MK Capital Management replaced these misappropriated assets with $94 million from a different set of investors in the MK Funds.

34. In 2010, after the Commission staff requested documentation of transactions, Illarramendi and Highview Point Partners created phony loan documents purporting to document loans between the Highview Funds and the MK Venezuela Fund, in an attempt to conceal their misappropriation of approximately $169 million in investor assets from the Highview Funds. In fact, no such loans existed.

C. Illarramendi Made False and Misleading Statements to the Highview Funds Investors Regarding Use of Investor Funds

35. All of the above transactions and uses of investor funds were wholly inconsistent with the representations made by Illarramendi, Highview Point Partners, and the Highview Funds to investors at the time the investments in the Highview Funds were made, and operated as a fraud on the Highview Funds' investors.

36. Between 2006 and 2010, Highview Point Partners falsely reported to investors that the Highview Funds were profitable during the relevant time period. For example, Highview Point Partners falsely claimed that, from the Highview Funds' inception in June 2005 through at least October 2008, it had profits for 40 consecutive months. In periodic statements to investors, Highview Point Partners did not disclose that the Highview Funds' investment "returns" were actually Ponzi payments received from related entities. Highview Point Partners and Illarramendi also failed to disclose that they used millions in investor funds for non-investment activity and to pay debts and expenses of Highview Point Partners.

37. The Commission has interviewed a Florida resident who is an investor in HPLP (the "Florida Investor"). The Florida Investor advised the Commission that he understood that his funds would be used to make investments in developing economies and he was unaware of any transactions with related parties.

38. In or about May 2011, the Highview Co-Owners were subpoenaed by the Receiver previously appointed by the Court in this action, along with the Compliance Officer for Highview Point Partners. All three individuals asserted the Fifth Amendment in response to all questions asked by the Receiver about the subject matter of this Complaint, including, questions regarding the misuse of investor funds in the Highview Funds.

D. Illarramendi and MK Capital Management Used Investor Funds from the Short Term Liquidity Fund to Pay Investors in the MK Venezuela Fund

39. In addition to the extensive fraud perpetrated by Illarramendi and Highview Point Partners, since at least 2008, Illarramendi and MK Capital Management have used money raised from new investors in the MK Funds to pay off, or redeem, earlier investors in the MK Funds. For example, according to Illarramendi, as of the end of 2010, the purported value of the Short Term Liquidity Fund was $540 million. In fact, however, the assets of the Short Term Liquidity Fund were worth substantially less than that, in part because some of its assets were used during 2010 to pay redemptions to investors in the MK Venezuela Fund.

40. This use of Ponzi payments was designed to hide the fact that over the previous several years, Illarramendi and MK Capital Management had misappropriated substantial assets from the MK Funds, including assets used to hide misappropriation and losses in the Highview Funds. The payments were also designed to hide the fact that, over the previous several years, the MK Funds had experienced substantial investment losses. As a result of the hidden misappropriation and investment losses, the liabilities of the MK Funds (the purported value of investor subscriptions and money owed other creditors) now vastly exceed the actual assets held by the MK Funds. As of the date of this action, the "gap" between the liabilities of the MK Funds and their actual assets is as much as hundreds of millions of dollars.

41. As an example of the Ponzi payments, beginning in July 2010, Illarramendi and MK Capital Management attempted to hide the missing assets in the MK Venezuela Fund by redeeming its investors and winding up the fund. They did this by using assets from the Pension Fund investor to pay off (or redeem) the investors in the MK Venezuela Fund, and then by using assets from the Short Term Liquidity Fund to repay the Pension Fund investor.

42. Through an extremely complex series of transactions, apparently designed to hide the true nature of the scheme, Illarramendi and MK Capital Management used at least $57 million from the Short Term Liquidity Fund to partially fund the redemption of the MK Venezuela Fund investors.

43. Illarramendi initiated the transaction by offering the Pension Fund the opportunity to engage in an even exchange of certain bonds maturing in 2027 and 2037 for bonds maturing in 2014. The Pension Fund then transferred the 2027 and 2037 bonds to one of the Highview Funds, without receiving the 2014 bonds in exchange. On July 1, 2010, Illarramendi and Highview Point Partners caused the bonds to be transferred to the MK Venezuela Fund. In early July 2010, the MK Venezuela Fund sold the 2027 and 2037 bonds to a third party for approximately $149 million. Of that $149 million, Illarramendi used $89 million to redeem MK Venezuela Fund investors, and caused approximately $52 million to be transferred to the Short Term Liquidity Fund between July 7 and July 14, 2010.

44. The Short Term Liquidity Fund then used $109 million of its own investor funds to purchase the bonds with a maturity date of 2014. In August 2010, Illarramendi caused the Short Term Liquidity Fund to transfer those bonds, without payment being made in exchange, to the Pension Fund, to complete the even exchange of the 2027/2037 bonds for the 2014 bonds. The result was the Short Term Liquidity Fund paid out $57 million more than it received from the MK Venezuela Fund. Illarramendi and MK Capital Management used that money to redeem the investors in the MK Venezuela Fund, in a classic Ponzi payment which used one set of investors' money to pay off another set of investors.

E. Illarramendi and MK Capital Management Attempt to Hide Missing Assets By Obtaining a False Letter Verifying Non-Existent Assets

45. During the investigation which led to the filing of this action, Illarramendi and MK Capital Management attempted to hide the fact that the MK Funds were missing assets by obtaining a fraudulent letter from a Venezuelan accountant, which purported to verify the existence of loans due to the MK Funds from entities in Venezuela. The letter, dated December 6, 2010, purported to verify that the value of the assets was at least $275 million.

46. During December 2010 and January 2011, in response to requests from the Commission staff for documentation to verify the existence of MK Fund assets, the Defendants provided the false letter to Commission staff. During the same time period, the Defendants also misled the Commission staff by falsely asserting that the assets purportedly verified in the letter were part of the consideration transferred from the MK Venezuela Fund to the Short Term Liquidity Fund in the above-described transaction between the two Funds.

47. In fact, the assets described in the letter do not exist at all.

F. Illarramendi Misappropriates $53 Million in Investor Funds to Make Private Equity Investments in the Names of Entities That He Personally Controlled

48. Beginning in or around late 2009, Illarramendi made numerous multi-million dollar investments in private equity deals using the investor monies from two of the MK Funds: namely, the MK Venezuela Fund and the Short Term Liquidity Fund. The investors in the MK Funds are offshore individuals and entities, including the Pension Fund.

49. The largest of Illarramendi's private equity investments was in a West Coast-based Nuclear Energy Company. From approximately April 22, 2010 to approximately November 23, 2010, Illarramendi invested almost $23 million from the MK Funds into the Nuclear Energy Company. Specifically, in or about April 2010, approximately $10.5 million in investor funds

were transferred from an MK Venezuela Fund account to Relief Defendant MK Asset Management, and $7 million of which was wired from MK Asset Management to the Nuclear Energy Company the next day. From August 2010 through November 2010, approximately $13 million was wired from a Short Term Liquidity Fund account to MK Asset Management, which then made five transfers totaling approximately $16 million from its account to the Nuclear Energy Company shortly after the receipt of monies from the Short Term Liquidity Fund. Although Illarramendi used assets of the MK Funds to make the investment, he caused the shares in the Nuclear Energy Company to be registered in the name of Relief Defendant MK Asset Management, an entity he owns and controls.

50. Based on information and belief, the Nuclear Energy Company is in the early development stage of product design, and does not expect to have federal approval for the sale of its product until at least 2014. Accordingly, the Nuclear Energy Company is not anticipated to generate investor returns, if any, until at least 2014 or upon the purchase of the shares by another investor, either privately or through an initial public offering.

51. In addition to the $23 million investment in the Nuclear Energy Company, in or about May 2010, Illarramendi authorized the transfer of approximately $20 million from the Short Term Liquidity Fund's account to pay for shares in a manufacturing company that is in the early development stage of creating zero-emissions mass transportation alternatives (the "Clean Transportation Manufacturer"). The shares in the Clean Transportation Manufacturer were registered not in the name of the MK Funds, but in the name of Relief Defendant MK Energy, an entity owned and controlled by Illarramendi.

52. In or about September 2010, Illarramendi authorized the transfer of $4 million in investor funds from the Short Term Liquidity Fund account to pay for shares in a development

stage energy technology company (the "Technology Company"), which were then registered in the name of Relief Defendant MKEI Solar, an entity owned and controlled by Illarramendi.

53. In or about December 2009, Illarramendi authorized the transfer of more than $3.5 million from an account in the name of Highview Point Offshore Ltd. to a Spanish company that produces rolled steel (the "Spanish Steel Company"). These shares were registered to MK Energy. On information and belief, this Highview Point Offshore, Ltd. Account held money belonging to the MK Venezuela Fund. Illarramendi authorized the transfer of this MK Venezuela Fund money to the Spanish Steel Company directly. In or about March 2010, Illarramendi authorized another transfer of approximately $2 million from the Short Term Liquidity Fund to the Spanish Steel Company, and an additional $1.2 million in or about August 2010. In total, Illarramendi authorized a total of approximately $6.7 million in investor funds to the Spanish Steel Company. Notwithstanding that the shares were purchased using money from the Funds, the shares were registered in the name of Relief Defendant MK Energy, an entity owned and controlled by Illarramendi.

54. In total, between December 2009 and November 2010, Illarramendi misappropriated $53 million in investor funds to make investments in private entities in the names of companies that he owned and controlled.

55. During the investigation leading to the filing of this action, Illarramendi and MK Capital Management, asserted to Commission staff that, in fact, the $53 million transferred from the Funds to private equity investments were loans from the Funds to entities controlled by Illarramendi.

56. However, investors were not informed that the Funds were used to make "loans" to entities controlled by Illarramendi to invest in private equity ventures. Moreover, the purported

"loans" from the Funds to entities controlled by Illarramendi were unsecured and, with a single exception, never documented. Indeed, Commission staff have learned that loan documents only exist for the investment in the Clean Transportation Manufacturer, which was due to be repaid to the Short Term Liquidity Fund in November 2010 at LIBOR plus 9%, and that these terms were subsequently extended through January 2011.

G. Illarramendi Made False and Misleading Statements to MK Funds Investors Regarding Use of Investor Funds

57. All of the above transactions and uses of investor funds were wholly inconsistent with the representations made by Illarramendi, MK Capital Management, the MK Venezuela Fund and the Short Term Liquidity Fund to investors in the MK Funds at the time the investments in the MK Funds were made.

58. With regard to the Short Term Liquidity Fund (and as the fund's name necessarily implies), the Private Offering Memorandum contemplated that the investments in said fund would be short term in nature:

> While the Fund may, from time to time, invest in longer-term securities, its primary investment strategy seeks to take advantage of products offered in the global fixed income and derivatives markets to generate gains through short-term (under one year) investments[.] . . . [T]he Investment Manager may pursue any strategies, employ any investment techniques and purchase any type of security it considers appropriate to achieve the investment objective of the Fund, as long as they are constrained to fixed income securities and derivatives referencing fixed income securities.

59. Consistent with the goals of a self-described short term liquidity fund, the Private Offering Memorandum provided that investors may generally redeem their investments upon 30 days' notice. The Private Offering Memorandum did not disclose that investor funds would be used to redeem investors in other Funds, and it did not provide for loans to be made to the adviser or entities under common ownership or control of the adviser without notice to the investors.

60. The Commission staff has interviewed an executive at the Pension Fund (the "Pension Fund Executive"). The Pension Fund Executive indicated to the Commission staff that although he was aware that Illarramendi was investing certain of the pension funds in private equity transactions, he was unaware that any of the pension funds were used to make loans.

61. In addition, Commission staff has interviewed two other investors in the Short Term Liquidity Fund ("Investor A" and "Investor B"). Investors A and B advised Commission staff that their understanding was that their funds would be used solely for short term currency transactions involving Venezuelan bonds.

62. Furthermore, Illarramendi and MK Capital Management misappropriated at least $53 million from the MK Funds by first transferring monies from the MK Funds' accounts into bank accounts that Illarramendi personally controlled, and then making unauthorized investments of the monies in long-term private equity investments. Illarramendi misappropriated the Funds' assets by causing MK Capital Management to use the MK Funds' assets to purchase interests in private companies for the benefit of Illarramendi and other entities that he controls. This self-dealing created an undisclosed conflict of interest and was in breach of Illarramendi's fiduciary duty to the MK Funds.

H. Illarramendi, Highview Point Partners and MK Capital Management Improperly Paid Themselves Management Fees Based on Fraudulent Inflated Fund Returns

63. Finally, Illarramendi, Highview Point Partners and MK Capital Management have taken substantial compensation directly from the Highview Funds and the MK Funds, in the form of management fees which were purportedly based on a percentage of assets under management and on fund performance. These fees were fraudulently obtained because Illarramendi, Highview Point Partners, and MK Capital Management fraudulently manufactured

both the assets under management and the performance figures for the Highview Funds and the MK Funds.

First Claim for Relief
(Violation of Section 10(b) of Exchange Act and Rule 10b-5 by Highview Point Partners)

64. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 63 above as if set forth fully herein.

65. Defendant Highview Point Partners, directly or indirectly, acting intentionally, knowingly or recklessly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or the facilities of a national securities exchange or the mail: (a) has employed or are employing devices, schemes, or artifices to defraud; (b) has made or are making untrue statements of material fact or have omitted or are omitting to state material fact(s) necessary to make the statements made not misleading; or (c) has engaged or are engaging in acts, practices, or courses of business which operate as a fraud or deceit upon certain persons.

66. By engaging in the conduct described above, Highview Point Partners has violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

Second Claim for Relief
(Violation of Sections 206(1) of the Advisers Act)

67. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 63 above as if set forth fully herein.

68. At all times relevant to this Complaint, the Defendants acted as investment advisers to the Highview Funds and/or the MK Funds.

69. Defendants, while acting as investment advisers, by use of the mails, and the

means and instrumentalities of interstate commerce, directly or indirectly, employed devices, schemes or artifices to defraud their clients or prospective clients.

70. At all times relevant to this Complaint, the Defendants acted with scienter.

71. By engaging in the conduct described above, Defendants have violated, and unless enjoined will continue to violate, Section 206(1) of the Advisers Act [15 U.S.C. §80b-6(1)].

Third Claim for Relief
(Violation of Section 206(2) of the Advisers Act)

72. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 63 above as if set forth fully herein.

73. At all times relevant to this Complaint, the Defendants acted as investment advisers to the Highview Funds and/or the MK Funds.

74. Defendants, while acting as investment advisers, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon their clients or prospective clients.

75. By engaging in the conduct described above, Defendants have violated, and unless enjoined will continue to violate, Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)].

Fourth Claim for Relief
(Violation of Sections 206(4) of the Advisers Act and Rule 206(4)-8)

76. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 63 above as if set forth fully herein.

77. At all times relevant to this Complaint, the Defendants acted as investment advisers to the Highview Funds and/or the MK Funds.

78. Defendants, while acting as investment advisers, by use of the mails, and the

means and instrumentalities of interstate commerce, directly or indirectly, engaged in acts, practices or courses of business which were fraudulent, deceptive, or manipulative. The Defendants made untrue statements of a material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, and otherwise engaged in acts, practices or courses of business that were fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

79. By engaging in the conduct described above, Defendants have violated, and unless enjoined will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4) and Rule 206(4)-8 [17 C.F.R. 275.206(4)-8] thereunder.

Fifth Claim for Relief
(Other Equitable Relief, Including Unjust Enrichment and Constructive Trust, Against Relief Defendants)

80. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 63 above as if set forth fully herein.

81. Section 21(d)(5) of the Exchange Act [15 U.S.C. §78u(d)(5)] states: "In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors."

82. The Relief Defendants have received investor funds under circumstances dictating that, in equity and good conscience, they should not be allowed to retain such funds.

83. Further, specific property acquired by the Relief Defendants is traceable to Defendants' wrongful acts and there is no reason in equity why the Relief Defendants should be entitled to retain that property.

84. As a result, the Relief Defendants are liable for unjust enrichment and should be required to return their ill-gotten gains, in an amount to be determined by the Court. The Court should also impose a constructive trust on property in the possession of Relief Defendant that is traceable to Defendants' wrongful acts.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a preliminary injunction, order freezing assets and for the repatriation of assts, and order for other equitable relief in the form submitted with the Commission's motion for such relief, and, upon further motion, enter a comparable preliminary injunction, order freezing assets and for the repatriation of assets, and order for other equitable relief;

B. Enter a permanent injunction restraining Defendants and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5];

C. Require Defendants to disgorge their ill-gotten gains and losses avoided, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

D. Require the Relief Defendants to disgorge all unjust enrichment and/or ill-gotten gain received from Defendants, plus prejudgment interest, with said moneys to be distributed in accordance with a plan of distribution to be ordered by the Court;

E. Require Defendants to pay appropriate civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Securities Exchange Act [15 U.S.C. §78u(d)(3)];

F. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered;

G. Appoint a receiver pursuant to Federal Rule of Civil Procedure 66; and

G. Grant such other and further relief as the Court deems just and proper.

JURY DEMAND

The Commission hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

By its attorneys,

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