

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 RICHARD PESHKIN, On Behalf Of  
4 Himself As An Individual, On Behalf Of  
5 Spectrum Select L.P. As A Limited  
6 Partner, And On Behalf Of All Others  
7 Similarly Situated,

8 Plaintiff,

9 v.

10 TREMONT GROUP HOLDINGS, INC.,  
11 TREMONT PARTNERS, INC., RYE  
12 INVESTMENT MANAGEMENT,  
13 OPPENHEIMER ACQUISITION  
14 CORPORATION,  
15 OPPENHEIMERFUNDS, INC.,  
16 MASSACHUSETTS MUTUAL LIFE  
17 INSURANCE COMPANY, KPMG  
18 L.L.P., AND JOHN DOES 1-100  
19 INCLUSIVE,

20 Defendants.

No. CV \_\_\_\_\_

**JURY TRIAL DEMANDED**

1 **CLASS ACTION COMPLAINT**

2  
3 Plaintiff Richard Peshkin (“Plaintiff”) files this Class Action Complaint  
4 against Defendants Tremont Group Holdings, Inc. (“TGH”), Tremont Partners, Inc.  
5 (“TPI”), Rye Investment Management (“Rye Investment Management”) (TGH, TPI,  
6 and Rye Investment Management are collectively referred to as “Tremont”),  
7 Oppenheimer Acquisition Corporation (“Oppenheimer AC”), OppenheimerFunds,  
8 Inc. (“OppenheimerFunds”) (Oppenheimer AC and OppenheimerFunds are  
9 collectively referred to as “Oppenheimer”), Massachusetts Mutual Life Insurance  
10 Company (“MassMutual”), KPMG L.L.P. (“KPMG”), and John Does 1-100  
11 Inclusive (collectively “Defendants”). Plaintiff alleges the following upon personal  
12 knowledge as to himself and his own acts, and as to all other matters upon  
13 information and belief, based upon the investigation made by and through his  
14 attorneys. Plaintiff believes that substantial additional evidentiary support will exist  
15 for the allegations set forth herein after a reasonable opportunity for discovery.

16  
17 **I. NATURE OF ACTION**

18 1. Tremont grossly neglected its professional and fiduciary duties to  
19 manage the capital invested by Plaintiff and other members of the proposed Class  
20 (collectively “Plaintiffs”). Tremont turned over all of Plaintiffs’ capital to Bernard  
21 Madoff (“Madoff”) and Bernard Madoff Investment Securities, Inc. (“BMIS”), who  
22 used that capital in a massive Ponzi-scheme. Tremont failed to perform proper due  
23 diligence, failed to exercise due care in managing private investments, and/or  
24 concealed from Plaintiffs the fact that Tremont was not actively overseeing and  
25 safeguarding Plaintiffs’ investments.

26 2. Over the past several years, Plaintiffs entrusted billions of dollars in  
27 capital to Tremont. Tremont, in turn, invested more than half of its total assets—  
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1 roughly \$3.3 billion dollars of its total assets—with Madoff. Most significantly,  
2 Plaintiffs had invested roughly \$3.1 billion dollars with or through Tremont’s Rye  
3 Investment Management funds (“the Rye Funds”)——virtually all of which was  
4 given to Madoff.

5 3. Tremont accepted substantial investment advisor service fees in  
6 connection with the capital solicited from Plaintiffs. These fees were paid so that  
7 Tremont would vet suitable investment managers, assemble a diversified group of  
8 investments, follow a professional investment strategy, and conduct ongoing due  
9 diligence in order to avoid frauds and other unnecessary investment risks.

10 4. For years, Tremont provided Plaintiffs with documentation of financial  
11 returns, such as account statements, that purported to reflect Tremont’s active  
12 oversight of Plaintiffs’ investment capital.

13 5. All the while, Tremont unfairly, unlawfully, and deceptively neglected  
14 and/or abandoned professional oversight of Plaintiffs’ capital, passing all of it on to  
15 Madoff without safeguards. Madoff then used that capital to pay bogus returns to  
16 other investors. Tremont failed to vet Madoff as a suitable investment manager,  
17 failed to diversify investments, failed to follow a sustainable investment strategy, and  
18 failed to conduct ongoing due diligence in order to identify and avoid massive fraud.

19 6. KPMG provided professional auditing services with respect to the  
20 Tremont funds, for which KPMG accepted substantial fees. Tremont and KPMG  
21 failed to use due care to prepare and disseminate accurate and complete financial  
22 reports regarding those funds that were managed by Madoff. Tremont’s reporting  
23 was at odds with generally accepted accounting practices (GAAP). KPMG failed to  
24 conduct due diligence as Tremont’s auditor, and it failed to conduct audits in  
25 accordance with generally accepted auditing standards (GAAS).



1 affiliate of OppenheimerFunds. According to Schulman, Tremont increased its  
2 earnings and revenues five-fold during the 2002 to 2007 time-frame.

3 11. Tremont Partners, Inc. is headquartered in Rye New York. It is the  
4 general partner and manager of the Rye Funds, and a subsidiary of Tremont Group  
5 Holdings, Inc.

6 12. Defendant Rye Investment Management, based in Rye, New York, is a  
7 hedge fund group (the “Rye Funds”) set up as a division of Defendant Tremont  
8 Group Holdings, Inc. Rye Investment Management gave virtually all of its capital—  
9 roughly \$3.1 billion—to Madoff. In 2007, Schulman stepped aside as Tremont’s  
10 long-time Chief Executive Officer to become President of Rye Investment  
11 Management and to focus on its build-out. At some point in 2008, Schulman  
12 appears to have stepped down from serving as President of Rye Investment  
13 Management.

14 13. Defendant Oppenheimer Acquisition Corporation is a securities  
15 investment advisory service company headquartered in New York, New York. It is a  
16 subsidiary of Massachusetts Mutual Life Insurance Co.

17 14. Defendant OppenheimerFunds, Inc. is one of the largest asset  
18 management companies in the United States. It is headquartered in New York, New  
19 York, and has a number of controlled affiliates. OppenheimerFunds owns Tremont  
20 Group Holdings, Inc.

21 15. Defendant Massachusetts Mutual Life Insurance Company,  
22 headquartered in Springfield, Massachusetts, is a mutually owned financial  
23 protection, accumulation and income management company. MassMutual and its  
24 subsidiaries had more than \$500 billion in assets under management at year-end  
25 2007. MassMutual is the majority owner of OppenheimerFunds. Oppenheimer’s  
26 Chief Executive Officer in 2008, John Murphy, was previously an Executive Vice  
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1 President of Defendant MassMutual and a Director of Defendant Tremont Group  
2 Holdings, Inc.

3 16. Defendant MassMutual, as parent company to the Oppenheimer  
4 Defendants, and Oppenheimer as parent company to the Tremont Defendants, had  
5 the power to exercise complete control over Tremont with respect to the use of  
6 Madoff as an investment manager (MassMutual and Oppenheimer are collectively  
7 referred to herein as the “Tremont Affiliates”). On information and belief,  
8 Oppenheimer paid a purchase price for Tremont that was roughly 10 times its  
9 tangible net worth, and roughly 25 times its net income. The Tremont Affiliates  
10 pushed for high-return investments through use of investment managers like Madoff.  
11 Consequently, Tremont gave virtually all of the Rye Funds to Madoff, causing  
12 serious financial injury to Plaintiffs.

13 17. Defendant KPMG L.L.P. is a limited liability company based in  
14 New York, New York. KPMG provides audit, tax, and advisory services. KPMG  
15 LLP is the United States member firm of KPMG International, a Swiss Cooperative  
16 that is known as one of the “Big Four” auditing firms.

17 18. Upon information and belief, John Does 1-100 (“Doe Defendants”) are  
18 individuals or entities whose names and addresses are presently unknown. Plaintiffs  
19 do not know the specific identities of the Doe Defendants at this time, however,  
20 Plaintiffs will amend the complaint once their identities are learned.

#### 21 22 **IV. GENERAL ALLEGATIONS**

##### 23 24 **The Madoff/BMIS Ponzi-Scheme**

25 19. Madoff is a former chairman of the Board of Directors of the Nasdaq  
26 stock market. He controls the investment adviser services and finances at BMIS,  
27  
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1 and he is the sole owner of BMIS, a company which Madoff appears to have  
2 founded in the 1960s.

3 20. Defendant BMIS is a broker-dealer and investment adviser registered  
4 with the SEC. BMIS formally engaged in three operations, which include  
5 investment adviser services, market making services, and proprietary trading.

6 21. A number of fund managers recently expressed wariness of investing  
7 with Madoff because there was little or no transparency to link his reported financial  
8 returns to actual securities transactions.

9 22. In the first week of December 2008, a senior BMIS employee  
10 apparently understood that the company's investment advisory business had between  
11 \$8 billion and \$15 billion in assets under management. On or about December 9,  
12 2008, Madoff informed another senior employee that Madoff wanted to pay early  
13 bonuses to BMIS employees.

14 23. On or about December 10, 2008, the two senior employees met with  
15 Madoff at his apartment in Manhattan. At that time, Madoff informed them that, in  
16 substance, his investment advisory business was a fraud. Madoff is reported to have  
17 stated that he was "finished," that he had "absolutely nothing," that "it's all just one  
18 big lie" and that the business was "basically, a giant Ponzi-scheme."

19 24. In substance, Madoff admitted that he had for years been paying returns  
20 to certain investors out of the principal received from other investors. Madoff also  
21 stated that BMIS was insolvent, and that it had been for years. Madoff also  
22 estimated the losses from this fraud to be approximately \$50 billion dollars.

23 25. Madoff further informed the two senior employees that he planned to  
24 surrender to authorities, but first, he still had about \$200 million to \$300 million  
25 dollars left, and he intended to distribute it to certain selected employees, family, and  
26 friends.

1           26. There were several red flags with regard to Madoff’s illicit use of  
2 investment funds, including the following: (i) Madoff’s investment returns appeared  
3 to outperform the market with a vengeance despite the fact that money managers  
4 rarely beat the market indexes by any substantial amount over time; (ii) Madoff’s  
5 investment returns appeared to earn steady monthly increases of 1% or more, even  
6 when markets went bad; (iii) no one was able to replicate Madoff’s remarkable  
7 results with the strategies he claimed to be using; (iv) Madoff was not using  
8 professional auditors commensurate with the \$17 billion that he claimed to have  
9 under management (he reported using a tiny office in upstate New York that  
10 apparently was not even open all of the time); (v) Madoff claimed to hold publicly  
11 traded investments in his own advisory firm, without using a reliable custodian,  
12 namely a large, independent financial institution that distributes financial reports  
13 directly to investors; (vi) Madoff kept the records of his investment advisory  
14 business under lock and key, with little or no internal oversight of his activities;  
15 (vii) Madoff’s suspicious investment activities had been cited to the SEC on more  
16 than one occasion; and (viii) a number of other hedge-fund advisers say that they had  
17 examined Madoff’s operations and warned investors off.

18  
19 **Tremont And Tremont Affiliates**

20           27. Tremont has engaged and continues to engage in the business of  
21 managing private capital investments.

22           28. Oppenheimer has touted Tremont to the investment community: “In the  
23 world of hedge funds, where information is more difficult to obtain than in more  
24 conventional financial arenas, Tremont is a name that commands respect. Founded  
25 in 1984, Tremont is a global leader in the hedge fund industry.” In particular,  
26 Oppenheimer emphasized Tremont’s expertise in managing other fund managers:  
27 “Tremont’s history and manager expertise bring a strong investment team to the  
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1 table to work for you. Because of their ‘hedge fund of funds’ approach, Tremont’s  
2 team has extensive experience managing other fund managers.”

3 29. In this case, however, Tremont essentially abandoned its professional  
4 responsibilities. Tremont negligently and/or recklessly mismanaged the capital  
5 invested by Plaintiffs, failed to monitor and oversee that capital, failed to safeguard  
6 that capital, and/or failed to warn Plaintiffs thereof. Most notably, Tremont solicited  
7 clients to invest in the Rye Funds, turned over virtually all of the capital in the Rye  
8 Funds to Madoff as an exclusive investment manager, and abdicated Tremont’s  
9 responsibility to supervise and safeguard that capital.

10 30. Tremont was founded by Sandra Manzke in 1985, and sold Madoff-  
11 managed investments since 1997. Tremont promised “disciplined risk budgeting and  
12 monitoring” and “a strategic investment approach” that is considered “rigorous”.

13 31. According to Tremont’s website: “Effective investment strategies and  
14 oversight, thorough manager research, careful due diligence, advanced risk  
15 allocation and time-tested portfolio management form the cornerstones of a  
16 comprehensive platform that has been refined over a 23-year span of dedicated  
17 strides to maximize our clients’ objectives.” Tremont promised to assess risk at  
18 every aspect of its investment process and to provide strong corporate oversight.

19 32. The Rye Funds, in particular, appear to have been touted by Tremont as  
20 an exclusive opportunity for limited investors. A minimum investment to get into  
21 the “Rye Select Broad Market Fund”, for example, was listed at \$500,000 (although  
22 investors could be granted the privilege of joining for less). According to Tremont’s  
23 marketing materials, in order to achieve long-term capital growth for investors, the  
24 Rye Select Fund “entrusts the management of its assets to investment advisers that  
25 have conservative investment styles. . . .” The same marketing materials show  
26 steady year-to-date returns from 1998-2008 ranging from 8%-16%, and portray the  
27 Rye Select Fund as providing more return *for less risk*. Tremont collected  
28

1 substantial “management” fees (e.g., a 1% annual fee based on assets invested in the  
2 Rye Funds).

3 33. Tremont aggressively solicited new investments in the Rye Funds  
4 during the last few weeks before news of the Ponzi scheme became public. At that  
5 time, Tremont suggested to investors that they had “better move and move quick” if  
6 they wanted a “chance” to invest in the Rye Funds. Moreover, investors were told  
7 that “now is a great time” to invest.

8 34. Tremont managed a total of about \$5.8 billion in investments. Tremont  
9 collected and assumed responsibility for Plaintiffs’ capital in the Rye Funds worth  
10 roughly \$3.1 billion dollars.

11 35. Tremont may have pocketed tens of millions of dollars in fees each year  
12 selling interests in Tremont funds that were solely managed by Madoff. Despite  
13 accepting substantial fees for managing the Rye Funds, Tremont actually gave  
14 virtually all of the Rye Funds’ reported \$3.1 billion to Madoff without supervision,  
15 plus an additional \$200 million from a separate fund.

16 36. According to Forbes online business news (December 16, 2008): “When  
17 asked who was responsible for Rye’s investment strategy -- which, essentially,  
18 consisted of giving Madoff all the money – [Tremont’s spokesman] refused to  
19 comment.”

20 37. Defendants were aware, or should have been aware, of the many red  
21 flags described above. Defendants knew, or reasonably should have known, that  
22 Madoff’s investment holdings and returns had not been properly verified, and that  
23 Plaintiffs’ capital was not being safeguarded by a reliable custodian.

24 38. Among other things, Tremont and the Tremont Affiliates failed: (a) to  
25 perform due diligence as to Madoff’s investment activities; (b) to investigate each of  
26 the various red flags with regard to Madoff’s use of Plaintiffs’ capital; (c) to  
27 independently verify Madoff’s financial statements; (d) to monitor the ongoing risks  
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1 associated with Madoff’s use of Plaintiffs’ capital; (e) to inform investors that  
2 Madoff’s use of their funds was unsupervised; and (f) to safeguard Plaintiffs’  
3 investments from excessive risks of loss.

4 39. Tremont provided account statements and/or other routine indications to  
5 Plainiffs that Tremont was managing and overseeing their capital investments.  
6 Tremont failed to disclose the lack of vetting, monitoring, supervision, and  
7 safeguards with respect to Plaintiffs’ investments.

8 40. Defendants’ actions, and failures to act, enabled Madoff to plunder the  
9 capital that Plaintiffs had invested with Tremont, thereby injuring Plaintiffs.

10  
11 **KPMG’s Conduct**

12 41. In offering its auditing services, KPMG promised to provide rigorous  
13 independent audits of client financial reports, audits that are designed to meet  
14 national auditing standards. The KPMG methodology purportedly included effective  
15 risk assessment and control testing.

16 42. In addressing past failures at KPMG, the SEC has explained that:  
17 “[A]ccounting firms must assume responsibility for ensuring that individual auditors  
18 properly discharge their special and critical gatekeeping duties.”

19 43. In this case, KPMG failed to identify a massive fraud that covered more  
20 than 50% of Tremont’s investment capital.

21 44. Through its audits, KPMG represented to investors that Tremont’s  
22 financial reports presented fairly, in all material respects, the financial position of the  
23 Rye Funds.

24 45. KPMG, as Tremont’s auditor, was required to assure Tremont’s  
25 compliance with GAAP, and to review and consider risk factors for fraud, such as  
26 deficient internal controls at Tremont.

1           46. Tremont had no internal system for evaluating the veracity of financial  
2 returns claimed by Madoff. Moreover, Tremont was unable or unwilling to analyze  
3 the financial returns claimed by Madoff , nor the data available to it to conduct such  
4 an analysis. Since the financial returns were routinely fabricated, it is apparent that  
5 neither the Tremont Defendants nor KPMG conducted any such analysis.

6           47. In truth, the account statements from Tremont misrepresented the actual  
7 returns, assets under management, and losses or liabilities of the Rye Funds. The  
8 reports were also incomplete in that they failed to disclose the lack of internal  
9 controls and lack of evidence to support the stated financial results.

10           48. There were repeated audit failures in connection with KPMG's audits of  
11 Tremont's financial reporting. KPMG knew or reasonably should have known that  
12 Tremont improperly recognized and reported returns, assets, losses and/or liabilities  
13 associated with the capital given to Madoff for management.

14           49. KPMG's auditors relied excessively on Tremont's management's  
15 representations even when those representations were not supported by their audit  
16 work. The auditors thus failed to exercise professional skepticism and due care.

17           50. In essence, KPMG gave Tremont a clean bill of health even though  
18 Tremont had not provided sufficient evidence to support the reported returns, assets,  
19 losses and/or liabilities. KPMG also knew or reasonably should have known that it  
20 had failed to obtain sufficient competent evidence from Madoff and BMIS about  
21 Madoff-managed capital to support Tremont's financial reports. KPMG's audits of  
22 Tremont's reports were grossly negligent insofar as KPMG failed to properly plan  
23 and perform due diligence in the course of its audits.

24           51. KPMG's audits did not comply with generally accepted auditing  
25 standards (GAAS). Had KPMG planned and performed proper due diligence, had it  
26 not relied excessively on management's representations, had it exercised  
27 professional skepticism and due care, and/or had it obtained sufficient evidence  
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1 about the use of the capital invested with Tremont, then KPMG's audits would have  
2 uncovered Tremont's true financial return data and the lack of adequate safeguards  
3 in place to protect Plaintiffs' investments.

4  
5 **V. CLASS ACTION ALLEGATIONS**

6 52. Plaintiff brings this action as a class action pursuant to Federal Rule of  
7 Civil Procedure 23(a) and (b)(3) on behalf of a proposed Class consisting of all  
8 persons or entities who, directly or indirectly, had capital invested with or through  
9 Rye Investment Management (a Division of Tremont Group Holdings, Inc.),  
10 including without limitation Tremont's Rye Select Broad Market Fund and Rye  
11 Select Broad Market Fund XL, as of December 12, 2008, where such capital was  
12 passed on to Bernard Madoff and/or Bernard Madoff Investment Securities.  
13 Excluded from the proposed Class are Defendants, their officers and directors, and  
14 members of their immediate families or their legal representatives, heirs, successors  
15 or assigns, and any entity in which Defendants have or had a controlling interest.

16 53. The members of the proposed Class are so numerous that joinder of all  
17 members is impracticable. While the exact number of Class members is unknown to  
18 Plaintiff at this time and can only be ascertained through appropriate discovery,  
19 Plaintiff believes that there are several hundred, if not thousands, of members in the  
20 proposed Class. Members of the proposed Class may be identified from records  
21 maintained by the Defendants.

22 54. Plaintiff's claims are typical of the claims of the members of the  
23 proposed Class as all members of the proposed Class are similarly affected by  
24 Defendants' wrongful conduct as alleged herein.

25 55. Plaintiff will fairly and adequately protect the interests of the members  
26 of the proposed Class and has retained counsel competent and experienced in  
27 complex class litigation.

1           56. Common questions of law and fact exist as to all members of the  
2 proposed Class and predominate over any questions solely affecting individual  
3 members of the proposed Class. Among the questions of law and fact common to  
4 the proposed Class are:

- 5           a. Whether Defendants owed fiduciary duties to Plaintiffs as alleged  
6           herein, including without limitation the following duties:
- 7                   i. To exercise due diligence and reasonable care in vetting
  - 8                   investment managers and the use of Plaintiffs' capital;
  - 9                   ii. To monitor, oversee and safeguard Plaintiffs' capital;
  - 10                  iii. To disseminate proper account statements;
  - 11                  iv. To perform competent audits;
  - 12                  v. To disclose conflicts of interest and other material information
  - 13                  affecting Plaintiffs' investments; and/or
  - 14                  vi. To warn Plaintiffs when their capital has been placed at an
  - 15                  excessive risk of loss.
- 16           b. Whether Defendants breached any or all of their fiduciary duties to
- 17           Plaintiffs;
- 18           c. Whether Defendants concealed or neglected to disclose material
- 19           information about the lack of vetting, monitoring, oversight and
- 20           safeguards with respect to Plaintiffs' investments;
- 21           d. Whether Defendant engaged in deceptive business acts or practices
- 22           under New York state law; and
- 23           e. To what extent the members of the Class have sustained damages,
- 24           and the proper measure of damages.

25           57. A class action is superior to all other available methods for the fair and  
26 efficient adjudication of this controversy since joining all members is impracticable,  
27 and this action will be manageable as a class action.

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1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CLAIM:**

3 **BREACH OF FIDUCIARY DUTY**

4 **AGAINST ALL DEFENDANTS EXCEPT KPMG**

5 58. Paragraphs 1 thorough 57 are realleged and incorporated by reference as  
6 if set forth fully herein.

7 59. Plaintiffs entrusted their capital to Defendants in exchange for  
8 substantial fees. Defendants therefore assumed, and owed to Plaintiffs, the following  
9 fiduciary duties (among others):

- 10 a. The duty to use reasonable care, and the competence of a skilled  
11 investment advisor, when performing due diligence and ensuring the  
12 legitimacy of opportunities for investing Plaintiffs' capital;  
13 b. The duty to use reasonable care, and the competence of a skilled  
14 investment advisor, in managing, overseeing and safeguarding  
15 Plaintiffs' invested capital;  
16 c. The duty to use reasonable care, and the competence of a skilled  
17 investment advisor, in disseminating proper account statements;  
18 d. The duty to deal fairly and in good faith with Plaintiffs;  
19 e. The duty to avoid and disclose conflicts of interests with Plaintiffs;  
20 and  
21 f. The duty to warn Plaintiffs when their capital has been placed at an  
22 undue risk of loss.

23 60. Defendants breached their fiduciary duties owed to Plaintiffs. Among  
24 other things:

- 25 a. Defendants failed to perform proper due diligence;  
26 b. Defendants failed to manage Plaintiffs' investments;  
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- 1 c. Defendants failed to use reasonable care, or the competence or skill  
2 of a professional investment advisor, to avoid the unlawful Ponzi-  
3 scheme operated by Madoff and BMIS;
- 4 d. Defendants failed to use reasonable care, or the competence or skill  
5 of a professional investment advisor, in giving virtually all of  
6 Plaintiffs' invested capital to Madoff and BMIS;
- 7 e. Defendants failed to use reasonable care, or the competence or skill  
8 of a professional investment advisor, when they abandoned  
9 management and oversight of Plaintiffs' invested capital;
- 10 f. Defendants concealed and/or failed to disclose the nature and scope  
11 of their activities in funneling Plaintiffs' capital to Madoff and  
12 BMIS, which capital ultimately was used in a massive Ponzi-  
13 scheme;
- 14 g. Defendants failed to use reasonable care, or the competence or skill  
15 of a professional investment advisor, insofar as they failed to provide  
16 proper account statements;
- 17 h. Defendants failed to deal fairly and in good faith with Plaintiffs;
- 18 i. Defendants failed to avoid conflicts of interest with Plaintiffs when  
19 Defendants engaged in transactions with Madoff and BMIS in order  
20 to advance Defendants' own self-interests; and
- 21 j. Defendants failed to warn Plaintiffs that Plaintiffs' capital was being  
22 subjected to an unreasonably high risk of loss from fraud.

23 61. As a direct and proximate result of Defendants' breaches of fiduciary  
24 duties, Plaintiffs lost their investment capital, and thereby suffered damages in an  
25 amount to be proven at trial.  
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1 **SECOND CLAIM:**  
2 **BREACH OF FIDUCIARY DUTY**  
3 **AGAINST DEFENDANT KPMG**

4 62. Paragraphs 1 through 61 are realleged and incorporated by reference as  
5 if set forth fully herein.

6 63. In exchange for substantial service fees, KPMG agreed to provide  
7 rigorous independent audits with respect to Tremont's financial reports. Plaintiffs  
8 were the intended beneficiaries of the audits and recipients of account statements  
9 based on the audits. Therefore, KPMG owed a duty to Plaintiffs to audit Tremont's  
10 financial reports diligently, independently, competently, and consistent with GAAS.  
11 For the same reasons, KPMG had a duty to warn Plaintiffs about any auditing  
12 deficiencies.

13 64. As a result of its auditing activities, KPMG knew or reasonably should  
14 have known that Tremont improperly recognized and reported returns, assets, losses,  
15 and/or liabilities associated with the capital given to Madoff for management.  
16 KPMG also knew or reasonably should have known that Tremont did not have  
17 sufficient evidence regarding capital under Madoff's control to support Tremont's  
18 financial reports.

19 65. KPMG breached its fiduciary duties to perform diligent independent  
20 audits of Tremont's financial reports consistent with GAAS. Among other things:

- 21 a. KPMG failed to identify excessive risks of loss associated with  
22 Tremont giving its entire \$3.1 billion dollar Rye Funds to Madoff;  
23 b. KPMG failed to identify any indicia of the massive fraud being  
24 conducted by Madoff and BMIS with respect to the majority of  
25 Tremont's capital;  
26 c. KPMG failed to perform effective control testing to ensure the  
27 accuracy of Tremont's financial reports;  
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- 1 d. KPMG failed to exercise professional skepticism and due care when  
2 auditing Tremont's financial reports;  
3 e. KPMG approved of Tremont's financial reports without sufficient  
4 evidence to do so, and despite the fact that Tremont's financial  
5 reports were not in conformity with GAAP; and  
6 f. KPMG failed to warn Plaintiffs about the auditing deficiencies  
7 described above.

8 66. As a direct and proximate result of Defendant KPMG's breach of  
9 fiduciary duties, Plaintiffs lost their investment capital, and thereby suffered  
10 damages in an amount to be proven at trial.

11  
12 **THIRD CLAIM:**  
13 **FRAUDULENT CONCEALMENT**  
14 **AGAINST ALL DEFENDANTS EXCEPT KPMG**

15 67. Paragraphs 1 through 66 are realleged and incorporated by reference as  
16 if set forth fully herein.

- 17 68. Defendants concealed the material facts that they were *not*:  
18 a. Performing due diligence in connection with Plaintiffs' investments;  
19 b. Monitoring and overseeing Plaintiffs' investments; and/or  
20 c. Safeguarding those investments from excessive risks of loss.

21 69. Plaintiffs entrusted their capital to Defendants in exchange for  
22 substantial fees. As a result, Defendants had a duty to disclose the facts that they  
23 were not vetting, monitoring, overseeing, and safeguarding Plaintiffs' investments.

24 70. Plaintiffs reasonably, justifiably, and materially relied upon the  
25 expectation that Defendants would vet, monitor, oversee, and safeguard Plaintiffs'  
26 investments.





1 York. Such acts and/or practices violate New York General Business Law  
2 Section 349.

3 84. Defendants obtained Plaintiffs' investment capital by means of the  
4 deceptive acts or practices alleged herein.

5 85. Plaintiffs have been injured by such deceptive acts or practices, which  
6 induced Plaintiffs to invest their capital with Tremont, and ultimately resulted in  
7 substantial financial losses. Plaintiffs have suffered actual damages in an amount to  
8 be proven at trial.

9 86. Plaintiffs reserve the right to identify additional violations of New York  
10 and/or federal law committed by the Defendants as further investigation and  
11 discovery warrants.

## 12 13 **VII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

15 A. Determining that this action is a proper class action, designating  
16 Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule  
17 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

18 B. Awarding compensatory damages in favor of Plaintiff and the other  
19 Class members against all Defendants, jointly and severally, for all damages  
20 sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial,  
21 including interest and any enhanced damages thereon;

22 C. Awarding Plaintiff and the Class their reasonable costs and expenses  
23 incurred in this action, including counsel fees and expert fees; and

24 D. Such other and further relief as the Court may deem just and proper.  
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28

1 DATED: December \_\_\_\_, 2008

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2  
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury, pursuant to Rule 38(b) of the Federal  
3 Rules of Civil Procedure, of all issues so triable.

4  
5 DATED: December \_\_\_\_, 2008

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