

1 ALAN S. WEINGER  
Deputy Commissioner  
2 MICHELLE LIPTON (CA BAR NO. 178078)  
Senior Corporations Counsel  
3 Department of Corporations  
320 West 4<sup>th</sup> Street, Suite 750  
4 Los Angeles, CA 90013  
Telephone: (213) 576-7591 Fax: (213) 576-7181  
5

6 BEFORE THE DEPARTMENT OF CORPORATIONS  
7 OF THE STATE OF CALIFORNIA  
8

9 In the Matter of THE CALIFORNIA ) FILE NO. 4161  
CORPORATIONS COMMISSIONER, )  
10 ) **ADMINISTRATIVE CONSENT ORDER**  
11 Complainant, )  
12 vs. )  
13 )  
14 MORGAN ASSET MANAGEMENT, INC., a )  
wholly owned subsidiary of MK Holding, Inc., a )  
15 wholly owned subsidiary of Regions Financial )  
Corporation; and )  
16 )  
17 MORGAN KEEGAN & COMPANY, INC., a )  
wholly owned subsidiary of Regions Financial )  
18 Corporation. )  
19 )  
20 Respondents. )  
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**ADMINISTRATIVE CONSENT ORDER**

1           WHEREAS, Morgan Keegan & Company, Inc. (“MKC”) is a broker-dealer in the state of  
2 California; and

3           WHEREAS, Morgan Asset Management, Inc. (“MAM”) is an affiliate of MKC and notice-  
4 filed as an investment adviser in the state of California; and

5           WHEREAS, coordinated investigations into the activities of MKC, MAM and Kelsoe, in  
6 connection with certain violations of the California Corporate Securities Laws (“CSL”) and other  
7 states’ securities acts, and certain business practices, have been conducted by a multistate task force  
8 (“Task Force”) and an additional investigation has been conducted by the United States Securities  
9 and Exchange Commission (“SEC”) and the Financial Industry Regulatory Authority (“FINRA”)  
10 (collectively, the “Regulators”); and

11           WHEREAS, MKC and MAM have cooperated with the Task Force conducting the  
12 investigations by responding to inquiries, providing documentary evidence and other materials, and  
13 providing Regulators with access to facts relating to the investigations; and

14           WHEREAS, MKC and MAM have advised the Regulators of their agreement to resolve the  
15 investigations; and

16           WHEREAS, MKC and MAM elect to permanently waive any right to a hearing and appeal  
17 under the CSL and Administrative Procedure Act, with respect to this Administrative Consent Order  
18 (the “Consent Order”); and

19           WHEREAS, MKC and MAM admit the jurisdictional allegations herein, and further admit to  
20 the allegations in paragraphs 41 through 43 of Section II, relating to the maintenance of books and  
21 records, but MKC and MAM, except as admitted above, otherwise neither admit nor deny any of the  
22 findings of fact, allegations, assertions or conclusions of law that have been made herein in this  
23 proceeding;

24           NOW, THEREFORE, the California Department of Corporations (“Department”), through  
25 the California Corporations Commissioner, as administrator of the CSL, hereby enters this Consent  
26 Order:  
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RESPONDENTS AND PERSONS/ENTITIES AFFILIATED WITH THE  
RESPONDENTS

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3           1.       Respondent **Morgan Keegan & Company, Inc.** (“MKC”) (CRD No. 4161), a  
4 Tennessee corporation, is a registered broker-dealer with the Department and the SEC, as well as a  
5 federally registered investment adviser with the SEC. At all relevant times MKC was properly  
6 registered and notice-filed with the Department. MKC is a wholly owned subsidiary of Regions  
7 Financial Corporation (“RFC”) which is headquartered in Birmingham, Alabama. MKC’s primary  
8 business address is 50 Front Street, Morgan Keegan Tower, Memphis, Tennessee 38103-9980.  
9

10           2.       Respondent **Morgan Asset Management, Inc.** (“MAM”), a Tennessee corporation,  
11 is a federally registered investment adviser with the SEC (CRD No. 111715) and at all relevant times  
12 was properly notice-filed with the Department. MAM is a wholly owned subsidiary of MK Holding,  
13 Inc., a wholly owned subsidiary of RFC. MAM is headquartered in Alabama with a principal  
14 business address of 1901 6<sup>th</sup> Avenue North, 4<sup>th</sup> Floor, Birmingham, Alabama 35203.  
15

16           3.       **Wealth Management Services** (“WMS”), a division of MKC, developed,  
17 recommended, and implemented asset allocation strategies for MKC and was to perform due  
18 diligence on traditional and alternative funds and fund managers for the benefit of MKC, its  
19 Financial Advisers (alternatively referred to as “FAs”, “sales force” or “agents”), and certain  
20 investor clients.  
21

22           4.       **James C. Kelsoe, Jr.** (“Kelsoe”) (CRD No. 2166416) was Senior Portfolio Manager  
23 of the Funds, as defined in paragraph II.7 below, and was responsible for selecting and purchasing  
24 the holdings for the Funds. Kelsoe was an employee of MAM and registered through MKC.  
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**II.**

**FINDINGS OF FACT**

5. The seven (7) funds at issue are Regions Morgan Keegan Select Intermediate Bond Fund (“Intermediate Bond Fund”), Regions Morgan Keegan Select High Income Fund (“Select High Income Fund”), Regions Morgan Keegan Advantage Income Fund (“Advantage Income Fund”), Regions Morgan Keegan High Income Fund (“High Income Fund”), Regions Morgan Keegan Multi-Sector High Income Fund (“Multi-Sector High Income Fund”), Regions Morgan Keegan Strategic Income Fund (“Strategic Income Fund”), and Regions Morgan Keegan Select Short Term Bond Fund (“Short Term Bond Fund”) (collectively, the “Funds”).

6. Six (6) of the seven (7) Funds were largely invested in mezzanine and lower subordinated “tranches,” or slices, of structured debt instruments, which carry more risk than the senior tranches.<sup>1</sup> The Funds were comprised of many of the same holdings. On June 30, 2007, approximately two-thirds (2/3) of the holdings of the four (4) closed-end funds and the Select High Income Fund were substantially identical. Approximately one quarter (1/4) of the Intermediate Bond Fund’s holdings corresponded to the holdings of the five (5) high yield Funds. The Funds were highly correlated, meaning they behaved like each other under similar market conditions. The combination of subordinated tranche holdings and the high correlation of the Funds caused investors owning more than one (1) of these funds to have a heightened risk of over concentration.

7. The Funds were created and managed by Kelsoe, MAM Senior portfolio manager. Kelsoe was also principally responsible for the purchase and sale of all of the holdings in the Funds.

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<sup>1</sup> The seventh, the Short Term Bond Fund, had significant investments in mezzanine and subordinated tranches of structured debt instruments.

1           8.       When WMS ceased reporting and dropped its coverage of the Select Intermediate  
2 Bond Fund and Select High Income Fund in July 2007, it failed to announce the drop in coverage in  
3 writing until November, 2007. WMS did not publish a withdrawal of its prior analysis or  
4 recommend the Funds' replacement.  
5

6           9.       On January 19, 2007, WMS announced it was reclassifying the Intermediate Bond  
7 Fund on the Select List from "Fixed Income" to "Non-Traditional Fixed Income." Meanwhile, WMS  
8 profiles for the Intermediate Bond Fund continued to label it as the "Intermediate Gov't/Corp Bond."  
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10          10.       Certain of the Funds' annual, semi-annual, and quarterly reports filed with the SEC  
11 did not adequately disclose the risks of subordinated tranches and the quantity of subordinated  
12 tranches held within the Funds.

13          11.       MAM produced quarterly glossies for all seven (7) Funds. In the glossies, MAM did  
14 not adequately describe the risks of owning the lower tranches of structured debt instruments or the  
15 quantity of such holdings within the Funds.  
16

17          12.       MKC, through WMS, produced quarterly Fund Profiles for the Intermediate Bond  
18 Fund, the Select High Income Fund, and the Short Term Bond Fund that did not adequately describe  
19 the risks of owning the lower tranches of structured debt instruments or the quantity of such holdings  
20 within the Funds.  
21

22          13.       In SEC filings and state notice filings of March and June 2007 involving the Funds,  
23 Four Hundred Million Dollars (\$400,000,000.00) of what MAM characterized as corporate bonds  
24 and preferred stocks were, in fact, the lower, subordinated tranches of asset-backed structured debt  
25 instruments. MAM eventually reclassified certain of these structured debt instruments in the March  
26 2008 Form N-Q Holdings Report for the three (3) open-end funds.  
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1           14.     In SEC filings, MAM compared the four (4) closed-end funds and the Select High  
2 Income Fund (collectively the “RMK high-yield funds”), which contained approximately two-thirds  
3 (2/3) structured debt instruments, to the Lehman Brothers U.S. High Yield Index (“Lehman Ba  
4 Index”). The Lehman Ba Index is not directly comparable to the RMK high-yield funds given the  
5 fact that the Lehman Ba Index contained only corporate bonds and no structured debt instruments.  
6

7           15.     Certain marketing materials and reports minimized the risks and volatility associated  
8 with investing in funds largely comprised of structured debt instruments. In the June 30, 2007  
9 glossy, and in previous quarterly glossies created by MAM, MAM and MKC marketed the  
10 Intermediate Bond Fund as a fund appropriate for “Capital Preservation & Income.” MAM later  
11 revised the Intermediate Bond Fund glossy in September 2007 by removing the caption “Capital  
12 Preservation & Income” and replacing it with “Income & Growth,” and by removing the word  
13 “stability,” which had previously been used to describe the fund.  
14

15           16.     The Intermediate Bond Fund glossies dated June 30, 2007, and September 30, 2007,  
16 stated that the Intermediate Bond Fund “...does not invest in speculative derivatives.” However, the  
17 Intermediate Bond Fund did use derivatives, including interest-only strips, and collateralized debt  
18 obligations (CDOs), which are derived from the mezzanine and lower tranches of other debt  
19 securities.  
20

21           17.     Respondent MKC through WMS labeled the Intermediate Bond Fund with varying  
22 names. None of the three labels “Taxable Fixed Income”, “Enhanced Low-Correlation” and  
23 “Intermediate Gov’t/Corp Bond” used by MKC adequately portrayed the nature of the Intermediate  
24 Bond Fund, of which approximately two-thirds (2/3) of the portfolio was invested in the mezzanine  
25 or lower subordinated tranches of structured debt instruments. The label “Gov’t/Corp Bond,” which  
26 first appeared on the December 31, 2006 profile sheet, was never changed after that date.  
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1           **A. SUPERVISION AND SUPERVISORY DUE DILIGENCE**

2           18.     During the period January 1, 2007 through July 31, 2007, preceding the collapse of  
3 the subprime market, MAM made 262 downward price adjustments for the purpose of adjusting the  
4 net asset value of the Funds. In some instances, MAM’s communications led MKC, through its  
5 sales force, to actively discourage investors from selling the Funds—even while fund prices  
6 continued to decline -- by advising investors to “hold the course.” Some members of MKC, MAM,  
7 and their management personnel continued during this period to advise FAs and investors to buy the  
8 Funds through, *inter alia*, statements that characterized the decline as “a buying opportunity.”  
9

10           19.     MKC and MAM failed to adequately supervise the flow of information to the MKC  
11 sales force concerning the Funds. For example, in conference calls with the sales force, the senior  
12 portfolio manager for the Funds cited sub-prime fears and liquidity as the primary factors for a  
13 decline in the net asset value of the Funds without fully explaining the market impact on certain  
14 securities held by the Funds.  
15

16           20.     WMS did not complete a thorough annual due diligence report of the open-end funds  
17 and the management of the open-end funds in 2007. A fixed income analyst for WMS, attempted to  
18 complete an annual due diligence review of the open-end funds and the management of the open-end  
19 funds in the summer of 2007, but was unsuccessful due to Kelsoe’s and MAM’s failure to provide  
20 sufficient information and Kelsoe’s failure to be available for a meeting during normal operating  
21 hours. Subsequently, WMS failed to notify the MKC sales force of WMS’s failure to complete the  
22 annual on-site due diligence review. An incomplete draft of WMS’s annual due diligence report for  
23 internal use only was submitted by the WMS analyst, but it was neither completed nor released to  
24 the sales force.  
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1           21.     On July 31, 2007, WMS dropped coverage of all proprietary products, which  
2 included the funds for which WMS could not produce a thorough report. This fact was not disclosed  
3 in writing to the sales force until November 2007.

4           22.     Based on WMS's one (1) page, one (1) paragraph report of the August 18, 2006 on-  
5 site due diligence review, the due diligence visits by the WMS fixed income analysts were not  
6 "detailed, thorough, and exhaustive," as advertised by MKC. There are two (2) WMS profiles of the  
7 Intermediate Bond Fund dated September 30, 2006. The sections titled "investment philosophy" in  
8 the profile sheets contain substantial differences. The first WMS profile for the Intermediate Bond  
9 Fund, based on the information for the quarter ending September 30, 2006, is titled "Taxable Fixed  
10 Income." The first profile, much like previous quarterly profiles, does not refer to any of the  
11 holdings as "inferior tranches." Neither does it mention potential lack of demand and lack of  
12 liquidity. Further, it includes the statement that "The fund does not use derivatives or leverage."  
13

14           23.     WMS's changing of the Intermediate Bond Fund profile label indicated WMS's  
15 inability and lack of supervision in the creation of these marketing pieces to accurately categorize  
16 the Intermediate Bond Fund. Within one (1) quarter, WMS identified the Intermediate Bond Fund  
17 three (3) different ways:  
18

- 19           • *September 30, 2006 - Taxable Fixed Income*
- 20           • *September 30, 2006 - Enhanced Low Correlations Fixed Income*
- 21           • *December 31, 2006 - Intermediate Gov't/Corp Bond*

22           24.     The "Gov't/Corp Bond" label implied that the Intermediate Bond Fund holdings were  
23 predominately government and corporate bonds carrying a certain degree of safety. This improper  
24 labeling indicates a failure to conduct proper due diligence, a duty of MKC.  
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1           25.     In addition, all profiles for the Intermediate Bond Fund from March 31, 2006, through  
2 June 30, 2007, stated that Kelsoe was joined by Rip Mecherle (“Mecherle”) as assistant portfolio  
3 manager. Mecherle left MAM in 2004. The failure to detect the errors in promotional materials  
4 relating to management does not reflect the “detailed, thorough, and exhaustive due diligence”  
5 claimed by MKC in its sales and promotional material distributed to investors.  
6

7           **B. SUITABILITY OF RECOMMENDATIONS**

8           26.     Respondent MAM indicated that risks and volatility were minimized in the  
9 Intermediate Bond Fund portfolio. In the June 30, 2007 glossy, and previous quarterly glossies  
10 created by MAM, Respondents marketed the Intermediate Bond Fund’s broad diversification of  
11 asset classes three (3) times on the first page of each of the glossies, when in fact, approximately  
12 two-thirds (2/3) of the Intermediate Bond Fund portfolio was composed of structured debt  
13 instruments which included risky assets. The four (4) closed-end funds also advertised  
14 diversification among asset classes, despite the similarities in asset classes as set forth in Section C  
15 below.  
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18           27.     Furthermore, the glossies emphasized the Select High Income Fund’s net asset value  
19 as being less volatile than typical high-yield funds. The glossies failed to state that a reason for any  
20 lower volatility was that the structured debt instruments within the Select High Income Fund were  
21 not actively traded, and that the daily fair value adjustments of certain holdings were imprecise in a  
22 market that became illiquid.  
23

24           28.     In certain cases, MKC and its sales force failed to obtain adequate suitability  
25 information regarding risk tolerance that was necessary to determine suitability for using the Funds  
26 for regular brokerage account customers. New account forms for regular brokerage accounts  
27 provided a menu of four (4) investment objectives to choose from: Growth, Income, Speculation,  
28

1 and Tax-Advantaged. Risk tolerance was not addressed by the form, was not noted by the sales force  
2 whose records were examined during the investigation, and may not have been taken into  
3 consideration when the sales force made its recommendations.

4  
5 29. In at least one instance, an agent of MKC provided a customer with a self-made chart  
6 assuming the hypothetical growth of One Hundred Thousand Dollars (\$100,000.00) over five (5)  
7 years, and comparing the rate of return on CDs to the return on the Intermediate Bond Fund. The  
8 chart failed to address any risks of investing in the fund, save the caption “Not FDIC Insured.”

9  
10 **C. ADVERTISEMENTS BY RESPONDENTS**

11 30. Marketing glossies prepared by MAM for the Intermediate Bond Fund and Select  
12 High Income Fund contained allocation pie charts dividing the categories of holdings by percentages  
13 of the total portfolio. Between June 2004 and March 2005, the pie charts for both funds changed  
14 significantly: MAM divided the category originally titled “asset-backed securities” into multiple  
15 categories. These changes indicated that the holdings of these Funds were more diversified than  
16 they actually were because the majority of the portfolios continued to be invested in asset-backed  
17 securities.  
18

19 a. In the Intermediate Bond Fund glossy dated June 30, 2004, the Asset-Backed  
20 Securities (ABS) and Commercial Mortgage Backed Securities (CMBS) are  
21 listed under a single heading comprising seventy percent (70%) of the  
22 portfolio.  
23

24 b. In the Intermediate Bond Fund glossy dated December 31, 2004, the pie chart  
25 was revised and the ABS and CMBS are shown as separate categories, but  
26 together still comprise seventy-six percent (76%) of the portfolio.  
27  
28

1 c. The Intermediate Bond Fund glossies dated March 31, 2005, show the ABS  
2 category further split into six (6) categories that, together with CMBS,  
3 comprised seventy-seven percent (77%) of the portfolio. Those six (6)  
4 categories were: "Manufactured Housing Loans," "Home Equity Loans,"  
5 "Franchise Loans," "Collateralized Debt Obligations," "Collateralized  
6 Equipment Leases," and "Other." Subsequent glossies continue to show the  
7 ABS split into six (6) categories.  
8

9  
10 d. In the Select High Income Fund glossy dated June 30, 2004, the ABS and  
11 CMBS are listed under a single heading comprising sixty percent (60%) of the  
12 portfolio.  
13

14 e. In the Select High Income Fund glossy dated December 31, 2004, the pie  
15 chart was revised and the ABS and CMBS are shown as separate categories,  
16 but together still comprise fifty-nine percent (59%) of the portfolio.  
17

18 f. The Select High Income Fund glossy dated March 31, 2005, shows the ABS  
19 category further split into six (6) categories which, together with CMBS,  
20 comprised sixty-four (64%) of the portfolio. Those six (6) categories were:  
21 "Collateralized Debt Obligations," "Manufactured Housing Loans,"  
22 "Collateralized Equipment Leases," "Franchise Loans," "Home Equity  
23 Loans," and "Other." Subsequent glossies continue to show the ABS split  
24 into six (6) categories.  
25  
26

27 31. The pie charts in the glossies for the High Income Fund were also changed in a  
28

1 similar manner between June 2004 and March 2005.

2 32. Similar changes were also made to pie charts in glossies for the Advantage Income  
3 Fund and the Strategic Income Fund between December 2004 and March 2005.

4 33. Respondent MKC used different index comparisons in the Select High Income Fund  
5 “Profile” sheets produced by WMS. These profile sheets compared the Select High Income Fund to  
6 the Credit Suisse First Boston High Yield Index, as well as the Merrill Lynch US High Yield Cash  
7 BB Index. These two indices only contain corporate bonds and no structured debt instruments. The  
8 Select High Income Fund contained substantially different risks than the portfolios within either of  
9 the two indices, and therefore these benchmarks were not directly comparable.  
10  
11

12 **D. REQUIRED EXAMINATIONS OF CUSTOMER ACCOUNTS TO DETECT AND**  
13 **PREVENT IRREGULARITIES OR ABUSES**

14 34. While the models for WMS managed accounts limited the use of the Intermediate  
15 Bond Fund to certain percentages, usually no more than fifteen percent (15%) of any client’s  
16 portfolio, there was no such limitation for non-managed accounts. Additionally, no guidance was  
17 provided to the FAs regarding limiting concentrations of the Intermediate Bond Fund in non-  
18 managed accounts. As a result, certain customer accounts contained in excess of a twenty percent  
19 (20%) concentration of the Intermediate Bond Fund.  
20

21 35. The four closed-end funds, the Select High Income Fund and the Intermediate Bond  
22 Fund were all highly correlated. However, MKC provided limited guidance to the FAs regarding  
23 limiting concentrations of combinations of the Funds in non-managed accounts.  
24

25 36. Up until six (6) months before the collapse of the fund, WMS classified the  
26 Intermediate Bond Fund as “Core Plus” in the Fixed Income section of the Select List. At that time  
27 it was reclassified as “Alternative Fixed Income” in the Non-Traditional section of the Select List.  
28 Yet MKC’s concentration for many of its non-WMS managed accounts continued to be above

1 twenty percent (20%) which could indicate its use as a core holding. An e-mail chain from Gary S.  
2 Stringer of WMS states as follows:

3 **From:** Stringer Gary [Gary.Stringer@morgankeegan.com]  
4 **Sent:** Tuesday, May 15, 2007 4:10 PM  
5 **To:** Hennek, Roderick  
6 **Subject:** Re: RMK Intermediate Bond Fund

7 Rod,

8 I did notice that you didn't cc anyone on your email, and I appreciate that. We've  
9 always had good, candid conversation.

10 You have a good point in that we have some low correlation equity strategies on the  
11 Traditional side. What worries me about this bond fund is the tracking error and the  
12 potential risks associated with all that asset-backed exposure. **Mr & Mrs Jones don't**  
13 **expect that kind of risk from their bond funds. The bond exposure is not**  
14 **supposed to be where you take risks. I'd bet that most of the people who hold**  
15 **that fund have no idea what's it's actually invested in. I'm just as sure that most**  
16 **of our FAs have no idea what's in that fund either.** They think the return are great  
17 because the PM is so smart. He definitely is smart, but it's the same as thinking your  
18 small cap manager is a hero because he beat the S&P for the last 5 years.

19 **If people are using RMK as their core, or only bond fund, I think it's only a**  
20 **matter of time before we have some very unhappy investors.**

21 (Emphasis added.).

22 Certain MKC brokers and branch managers interviewed during the investigation stated that they  
23 received limited or no guidance as to appropriate concentrations of the Funds to use within clients'  
24 accounts.

25 **E. REQUIREMENT TO CONDUCT AN ADEQUATE AND THOROUGH**  
26 **CORRESPONDENCE REVIEW**

27 37. An agent of MKC provided one known customer with a self-made chart assuming the  
28 hypothetical growth of One Hundred Thousand Dollars (\$100,000.00) over five (5) years, and  
comparing the rate of return on CDs to the return on the Intermediate Bond Fund. The chart failed to  
address any risks of investing in the fund, save the caption "Not FDIC Insured."

1           38.     The MKC agent referred to in the preceding paragraph created a sales illustration in  
2 which he compared the returns for the Intermediate Bond Fund to the returns for traditional bank  
3 CDs. The agent used the illustration in order to market the Intermediate Bond Fund to bank  
4 customers. The agent stated that he created the illustration and that the illustration was not reviewed  
5 or approved by appropriate supervisory personnel of MKC. The chart fails to address any risks of  
6 investing in the Intermediate Bond Fund, save the caption “Not FDIC Insured.”  
7

8           **F. SUPERVISION**

9           39.     Carter Anthony, President of MAM from 2001 until the end of 2006, has testified  
10 under oath that he conducted performance reviews of all MAM mutual fund managers that included  
11 reviews of their portfolios and trading. However, he testified that he did not conduct the same  
12 supervisory review and oversight of Kelsoe and the Funds because he was instructed to “leave  
13 Kelsoe alone.” MAM denies that any such instruction was given.  
14

15           40.     In December 2001, Kelsoe signed a new account form as branch manager, when he,  
16 in fact, was never a branch manager nor held any supervisory/compliance licenses. Proper  
17 supervision of Kelsoe’s activities would have detected such an unauthorized action on his part.  
18

19           **G. MAINTENANCE OF REQUIRED BOOKS AND RECORDS**

20           41.     MAM’s Fund Management fundamental and qualitative research was touted in  
21 marketing and research material.  
22

23           42.     MAM, through its Portfolio Managers, selected securities for investments by the  
24 Funds' portfolios. MAM was consulted regarding the fair valuation of certain securities held by the  
25 portfolios. Adequate documentation was not retained as to pricing adjustments recommended by  
26 MAM to be made to certain of the securities.  
27

28           43.     WMS performed annual due diligence reviews of certain of the Funds and Fund

1 management (MAM and Kelsoe). In mid-2007, MAM and Kelsoe did not provide sufficient  
2 information to allow completion of the 2007 annual due diligence review conducted by MKC  
3 through WMS. Kelsoe did not make himself available for a meeting during normal operating hours,  
4 further delaying the completion of WMS's on-site due diligence review. As a consequence, the  
5 report for two of the open-end funds was not completed. By August 2007, WMS dropped coverage  
6 of proprietary products and a report for 2007 was never released to the MKC sales force.  
7

#### 8 **H. RESPONSIBILITIES AND CONDUCT OF JAMES KELSOE**

9  
10 44. In addition to his duties regarding management of the Funds and selection of  
11 investments, Kelsoe was responsible for reviewing information regarding holdings of the Funds to  
12 be included in marketing materials and filings with the SEC. Kelsoe also was responsible for  
13 supervising his staff's involvement with these processes, as well as their interaction with third  
14 parties. Kelsoe had the most knowledge at MAM about the nature of the holdings of the Funds,  
15 including the types of securities being purchased or sold for the Funds, the risks associated with the  
16 holdings, and the correlation of the holdings among the Funds. Kelsoe and his staff provided  
17 information for the preparation of regulatory filings, marketing materials, reports and  
18 communications about the Funds. Kelsoe contributed to and delivered commentaries for the Funds  
19 and management discussions of fund performance. The SEC filings for the Funds, for which Kelsoe  
20 and his staff furnished information regarding holdings of each of the Funds, were provided to Kelsoe  
21 for his review prior to filing.  
22

23  
24 45. Kelsoe contributed to and was aware of the usage of the glossies and certain  
25 other marketing materials for the Funds by MAM, as described above, including the descriptions of  
26 the Funds, the allocation pie charts, the use of benchmarks, and characterizations of risks and  
27 features of the Funds.  
28





1 bonds and preferred stocks, when they were the lower tranches of asset-  
2 backed structured debt instruments.

- 3 c. MKC and MAM used industry benchmarks not directly comparable to the  
4 Funds.
- 5 d. In certain marketing and disclosure materials, MKC and MAM did not  
6 correctly characterize the Funds and their holdings.
- 7 e. In certain instances, MKC and MAM failed to adequately disclose to retail  
8 customers the Funds' risks of volatility and illiquidity.
- 9 f. In certain instances, MKC, through some of its FAs, inappropriately compared  
10 the returns of the Intermediate Bond Fund to the returns of certificates of  
11 deposit and other low risk investments.
- 12 g. In certain marketing materials, MKC and MAM used charts and visual aids  
13 that demonstrated a level of diversification in the Funds that did not exist.

14 3. In violation of CC sections 25218 and/or 25238 and CCR sections 260.218.4 and/or  
15 260.238, MKC and/or MAM failed to reasonably supervise their agents, employees and associated  
16 persons in the following manner:

- 17 a. In certain instances, MKC and MAM allowed the Funds' manager, Kelsoe, to  
18 operate outside of the firm organizational supervisory structure.
- 19 b. In certain instances, MAM and MKC failed to perform adequate supervisory  
20 reviews of Kelsoe.
- 21 c. MKC, through WMS, and MAM failed to perform sufficient due diligence  
22 reviews of the Funds.
- 23 d. MAM and MKC allowed Kelsoe to improperly influence the net asset value  
24 calculations of the Funds in certain instances during the period from January  
25 through July of 2007.
- 26 e. MKC failed to assure adequate training and supervision of certain agents in  
27 the composition and true nature of the funds.
- 28 f. MKC allowed agents to recommend (or in discretionary accounts, to

1 purchase) an overconcentration of the Funds in some client accounts.

2 4. In violation of CC sections 25218 and/or 25238 and CCR sections 260.218.2 and/or  
3 260.238, MKC and/or MAM failed to make suitable recommendations to some investors as  
4 demonstrated by the following:

5 a. MKC allowed agents to recommend (or in discretionary accounts, to  
6 purchase) an overconcentration of the Funds in some client accounts.

7 b. MAM and MKC recommended and sold the Intermediate Bond Fund and the  
8 Short Term Bond Fund to clients as a low risk, stable principal, liquid  
9 investment opportunity.

10 c. In a number of instances, MKC sold or recommended investments to retail  
11 investors without determining the risk tolerances of the investors.

12 5. In violation of CC sections 25218 and/or 25238 and CCR sections 260.218.4 and/or  
13 260.238, MKC failed to enforce their supervisory procedures in the following manner:

14 a. MKC failed to review certain customer accounts for over concentration and  
15 proper diversification.

16 b. MKC failed to adequately determine suitability of the Funds as it related to  
17 the investment needs of certain of their clients.

18 6. In violation of CC sections 25218 and/or 25238 and CCR sections 260.218.4 and/or  
19 260.238, MKC and/or MAM in many instances failed to review correspondence and marketing  
20 materials used by associated persons to sell the Funds:

21 a. MKC failed to discover that an agent used a comparison of the return of the  
22 Intermediate Bond Fund to the returns of a bank certificate of deposit.

23 b. MAM and MKC allowed marketing materials containing inaccurate  
24 representations relating to the composition of the Funds to be used by their  
25 agents.

26 c. MAM and MKC allowed marketing materials that represented that no  
27 derivative products were contained in the Select Intermediate Fund to be used  
28 by agents, when in fact some derivative products were contained in the Fund.



1 IT IS HEREBY ORDERED:

2 1. Entry of this Consent Order concludes the investigation by the Department and any  
3 other action that the Department could commence under the CSL on behalf of the Department as it  
4 relates to MKC and MAM, any of their affiliates, and any of their past or present employees or other  
5 agents in any way relating to the Funds, and acceptance by the Department of the settlement offer  
6 and payments referenced in this Consent Order shall be in satisfaction of and preclude any action  
7 that the Department could commence under the CSL against the foregoing; provided however, that  
8 excluded from and not covered by this paragraph are (a) individual sales practice violations that  
9 could have been brought even had the violations asserted herein against MKC or MAM not  
10 occurred, and (b) any claims by the Department arising from or relating to violations of the  
11 provisions contained in this Consent Order. Nothing in this paragraph shall preclude the Department  
12 from opposing a request for expungement by a past or present employee or other agent before a  
13 regulatory or self-regulatory entity, any court of competent jurisdiction, or any hearing officer, under  
14 circumstances it deems appropriate.

15 2. This Consent Order is entered into for the purpose of resolving in full the referenced multistate investigation with  
16 respect to Respondents who have executed this Consent Order and any of their affiliates. 3. MKC and MAM will  
17 DESIST and REFRAIN from violating the CSL, and will comply with the CSL.

18 4. Pursuant to this California Consent Order and related Consent Orders of the states of  
19 Alabama (SC-2010-0016), South Carolina (File No.: 08011), Kentucky (Agency Case No.: 2010-  
20 AH-021/Administrative Action No.: 10-PPC0267), Tennessee Consent Order (Docket No.: 12.06-  
21 107077J/Order No. 11-005), and Mississippi (Administrative Proceedings File No. S-08-0050), the  
22 offer of settlement in SEC Administrative Proceeding (File No. 3-13847) (the "SEC Order") and the  
23 FINRA Letter of Acceptance, Waiver and Consent No. 2007011164502, MKC and MAM has or  
24 shall pay in resolution of all of these matters, within ten (10) days of the entry of the SEC Order the  
25 sum of Two Hundred Million Dollars (\$200,000,000.00) to be distributed as follows: 1) One  
26 Hundred Million Dollars (\$100,000,000.00) to the SEC's Fair Fund to be established in this matter  
27 for the benefit of investors in the Funds that are the subject of the SEC Order; and 2) One Hundred  
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1 Million Dollars (\$100,000,000.00) to a States' Fund to be established in this matter for the benefit of  
2 investors in the Funds that are the subject of this Consent Order. Any costs, expenses, and charges  
3 associated with the Fair Fund and States' Fund management and distributions shall be paid by MKC  
4 and MAM and shall not diminish the fund corpus. The Fair Fund and the States' Fund shall be  
5 distributed pursuant to distribution plans drawn up by the administrator(s) ("Fair Fund  
6 Administrator" for the SEC's portion and "Fund Administrator" for the States' portion). The  
7 administrator(s) are to be respectively chosen by a representative designated by the state agencies of  
8 Alabama, Kentucky, Tennessee, South Carolina and Mississippi ("States' Fund Representative"),  
9 and the SEC. Nothing in this paragraph shall require or limit the SEC's and the States' choice of  
10 fund administrators which may or may not be the same entity or person for both funds.

11  
12 5. MKC and MAM shall pay the sum of **\$122,528.00** to the Department as a monetary  
13 penalty, which amount constitutes the State of California's share of the state settlement amount of  
14 Ten Million Dollars (\$10,000,000.00), which shall be payable as follows: Make check payable to  
15 the Department of Corporations and send to Senior Corporations Counsel Michelle Lipton, 320 W.  
16 4<sup>th</sup> Street, #750, Los Angeles, CA 90013. All funds shall be delivered to the office of the  
17 Department within ten (10) days of the execution of this Consent Order. In the event another state  
18 securities regulator determines not to accept the settlement offer, the total amount of the payment to  
19 the State of California shall not be affected.

20 6. If the payment is not made by MKC or MAM, the Department may vacate this  
21 Consent Order, at its sole discretion, upon thirty (30) days notice to MKC and/or MAM, or as  
22 appropriate, Kelsoe, and, without opportunity for an administrative hearing, enter a final order or  
23 decree if such default is not cured to the satisfaction of the regulators within the thirty (30) day  
24 notice period. Any dispute related to any payments required under this Consent Order shall be  
25 construed and enforced in accordance with, and governed by, the laws of the state of California  
26 without regard to any choice of law principles.

27 7. This Consent Order shall not disqualify MKC and MAM, or any of their affiliates or  
28 registered representatives from any business that they otherwise are qualified or licensed to perform

1 under any applicable state law and is not intended to and shall not form the basis for any  
2 disqualification or suspension in any state. Further, this Consent Order is not intended to and shall  
3 not form the basis for any disqualifications contained in the federal securities law, the rules and  
4 regulations thereunder, the rules and regulations of self-regulatory organizations, or various states'  
5 securities laws including but not limited to any disqualifications from relying upon the registration  
6 exemptions or safe harbor provisions.

7           8.       MKC, MAM, and all of their existing and future affiliates and subsidiaries are  
8 prohibited from creating, offering or selling a proprietary fund<sup>2</sup> that is a registered investment  
9 company and is marketed and sold to investors other than institutional and other qualified investors  
10 as defined in Section 3(a)(54) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(54),  
11 (“proprietary fund”) for a period of two (2) years from the entry of the first of the State Consent  
12 Orders to be entered in this matter. MKC, MAM, their affiliates or subsidiaries, may seek  
13 permission to resume offering or begin offering a proprietary fund in California after the lapse of the  
14 first year of the prohibition, but may not proceed with the offer and sale of such proprietary fund in  
15 California prior to receiving the express written consent and approval of the Administrator of the  
16 Department.

17           9.       In addition to any state regulatory audits or examinations authorized by the CSL, the  
18 state regulatory authority may conduct appropriate audits or examinations of the offices and branch  
19 offices of the Respondents MKC and MAM. Appropriate costs associated with such audits or  
20 examinations conducted within two (2) years from June 21, 2011, the date of the first of the State  
21 Consent Orders in this matter, shall be borne by MKC and/or MAM. This provision in no way limits  
22 the assessment of costs by states which routinely assess registrants with the costs of audits.  
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28 <sup>2</sup>Any such proprietary fund is specifically deemed to be subject to the oversight in paragraph 11.

1           10.     If prior to January 1, 2016, MKC and/or MAM shall again form and sell any  
2 proprietary investment products<sup>3</sup>, they shall at that time retain, for a period of three (3) years, at their  
3 own expense, an independent auditor, acceptable to the representative designated by the state  
4 agencies of Alabama, Kentucky, Mississippi, Tennessee, and South Carolina (“States’  
5 Representative”) and the SEC. The independent auditor cannot be an affiliated entity of MKC or  
6 MAM. Further, to ensure the independence of the independent auditor, MKC and/or MAM: (a)  
7 shall not have the authority to terminate the independent auditor without prior written approval of  
8 the States’ Representative; (b) shall not be in and shall not have an attorney-client relationship with  
9 the independent auditor and shall not seek to invoke the attorney-client or any other privilege or  
10 doctrine to prevent the independent auditor from transmitting any information, reports, or documents  
11 to the States; and (c) during the period of engagement and for a period of two (2) years after the  
12 engagement, shall not enter into any employment, customer, consultant, attorney-client, auditing, or  
13 other professional relationship with the independent auditor.  
14

15 The scope of the independent auditor’s engagement shall be approved by the States’ Representative  
16 prior to the commencement of the audit, and shall include, but is not limited to, reviews and  
17 examinations of:

- 18           a.       All firm policies and procedures, relating to proprietary products and/or  
19                    proprietary offerings including, but not limited to, supervisory, books and  
20                    records, compliance and document retention policies and procedures;
- 21           b.       The composition of each proprietary fund sold or recommended to clients at  
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23 <sup>3</sup> The term “proprietary investment product” or “proprietary product” or “proprietary fund,” as used  
24 in this Consent Order, refers to those investment products or offerings which MKC and/or MAM  
25 have created or may create and for which they or any of their existing or future affiliates is the issuer  
26 and lead underwriter. This definition, however, shall not apply to proprietary products or offerings  
27 in existence at the time of affiliation with MKC or MAM through any future acquisition, merger or  
28 other form of business combination with an entity not currently under common control with MKC or  
MAM. Nor shall this definition apply to future proprietary products or offerings that are created  
following such acquisition, merger or other form of business combination, unless such proprietary  
products are created by MKC or MAM.

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- least annually;
  - c. All proprietary product and/or proprietary offering marketing materials used or distributed by their agents, representatives, or other employees or affiliates, at least quarterly;
  - d. Potential/actual conflicts of interest with any affiliates, including Regions Morgan Keegan Trust, F.S.B., MKC and MAM, or affiliated persons/control persons. Said review shall be annual unless an increased frequency is deemed necessary by state, federal, and SEC entities; and
11. Further, the independent auditor shall:
- a. Consult with the States’ Representative and the SEC about areas of concern prior to entering into an engagement document with MKC and MAM;
  - b. Draft and provide reports as often as may be agreed upon by the States’ Representative and the independent auditor with an assessment of the status, compliance, and recommendations pertaining to the organizational, procedural, and policy issues that are the subject of the engagement;
  - c. Simultaneously distribute copies of the reports from paragraph 12b above to MKC, MAM, the States’ Representative and the SEC; the States’ Representative may distribute the report to NASAA members as the States’ Representative deems appropriate. These reports will be deemed confidential and, upon receipt of any legal process or request pursuant to a state’s public information statute or a federal Freedom of Information Act (“FOIA”) request for access, the state regulator shall promptly notify MKC and/or MAM, in order that the Respondents have an opportunity to challenge the release of the information;
  - d. Submit copies of all drafts, notes, and other working papers to coincide with the issuance of the reports;



- e. Issue recommendations for changes to policies, procedures, compliance, books and records retention programs, and all other areas that are the subject of the engagement;
- f. Establish reasonable deadlines for the implementation of the recommendations provided in the report; and
- g. For any recommendations noted but not included in the final report, provide justification for excluding the recommendation from the final report.

12. MKC and MAM shall:

- a. Review the reports submitted by the independent auditor;
- b. Within sixty (60) days of the issuance of an audit report, submit, in writing, to the States' Representative and the SEC any objections to implementation of any of the recommendations made by the independent auditor;
- c. If no objection to a recommendation is made within the sixty (60) day deadline, the recommendation will be implemented within the time frame established for the recommendation by the independent auditor in the report; and
- d. If objection is timely made to a recommendation, the States' Representative and the SEC will consider the objections, review the recommendation and determine jointly whether implementation shall be required over the objections of MKC and MAM.

13. MKC and MAM shall verify that they retained within sixty (60) days of the entry of the first of the State Consent Orders, at their own expense, an independent consultant ("Consultant"), acceptable to the States' Representative, and the SEC. The Consultant shall review MKC's and/or MAM's: (i) current written supervisory and compliance procedures concerning product suitability; (ii) current written supervisory and compliance procedures regarding recommendations and disclosures relating to registered investment companies; (iii) current written supervisory and

1 compliance procedures relating to advertising and sales literature regarding the purchase and sale of  
2 registered investment companies; and (iv) the implementation and effectiveness of (i) through (iii);  
3 provided that the lookback period for (i) through (iii) shall not exceed the twelve (12) month period  
4 prior to the entry of the first of the State Consent Orders.

- 5 a. Within one hundred twenty (120) days after the entry of the first of the State  
6 Consent Orders, the Consultant shall make an Initial Report with  
7 recommendations thereafter on such policies and procedures and their  
8 implementation and effectiveness. The Initial Report shall describe the  
9 review performed and the conclusions reached, and will include any  
10 recommendations for reasonable changes to  
11 policies and procedures. MKC and MAM shall direct the Consultant to  
12 submit the Initial Report and recommendations to the States' Representative  
13 and the SEC at the same time it is submitted to MKC and MAM.
- 14 b. The parties hereto recognize that the Consultant will have access to privileged  
15 or confidential trade secrets and commercial or financial information and  
16 customer identifying information the public dissemination of which could  
17 place MKC and MAM at a competitive disadvantage and expose their  
18 customers to unwarranted invasions of their personal privacy. Therefore, it is  
19 the intention of the parties that such information shall remain confidential and  
20 protected, and shall not be disclosed to any third party, except to the extent  
21 provided by applicable FOIA statutes or other regulations or policies.
- 22 c. Within thirty (30) days of receipt of the Initial Report, MKC and MAM shall  
23 respond in writing to the Initial Report. In such response, MKC and MAM  
24 shall advise the Consultant, the States' Representative, and the SEC, the  
25 recommendations from the Initial Report that MKC and MAM have  
26 determined to accept and the recommendations that they consider to be unduly  
27 burdensome. With respect to any recommendation that MKC and MAM deem  
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1 unduly burdensome, MKC and MAM may propose an alternative policy,  
2 procedure or system designed to achieve the same objective or purpose.

- 3 d. MKC and MAM shall attempt in good faith to reach agreement with the  
4 Consultant within sixty (60) days of the date of the receipt of the Initial Report  
5 with respect to any recommendation that MKC and MAM deem unduly  
6 burdensome. If the Consultant and MKC and MAM are unable to agree on an  
7 alternative proposal, MKC and MAM shall submit, in writing, to the States'  
8 Representative and the SEC, their objections and any alternative proposal(s)  
9 made to the Consultant, and the States' Representative and the SEC shall  
10 determine jointly whether implementation shall be required over the  
11 objections of MKC and MAM or whether to accept the alternative proposal(s).  
12 Within ninety (90) days of the date of the receipt of the Initial Report or, in  
13 instances in which an alternative proposal is submitted, ninety (90) days from  
14 a joint decision by the States' Representative and the SEC regarding any  
15 objectionable portions of the Initial Report, MKC and MAM shall, in writing,  
16 advise the Consultant, the States' Representative, and the SEC of the  
17 recommendations and proposals that they are adopting.
- 18 e. No later than one (1) year after the date of the Consultant's Initial Report,  
19 MKC and MAM shall cause the Consultant to complete a follow-up review of  
20 MKC's and MAM's efforts to implement the recommendations contained in  
21 the Initial Report, and MKC and MAM shall cause the Consultant to submit a  
22 Final Report to the States' Representative, and the SEC. The Final Report  
23 shall set forth the details of MKC's and MAM's efforts to implement the  
24 recommendations contained in the Initial Report, and shall state whether  
25 MKC and MAM have fully complied with the recommendations in the Initial  
26 Report.  
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1 f. MKC and MAM shall cause the Consultant to complete the aforementioned  
2 review and submit a written Final Report to MKC, MAM, the States'  
3 Representative, and the SEC within three hundred sixty (360) days of the date  
4 of the Initial Report. The Final Report shall recite the efforts the Consultant  
5 undertook to review MKC's and MAM's policies, procedures, and practices;  
6 set forth the Consultant's conclusions and recommendations; and describe  
7 how MKC and MAM are implementing those recommendations.

8 g. To ensure the independence of the Consultant, MKC and/or MAM: (a) shall  
9 not have the authority to terminate the Consultant without prior written  
10 approval of the States' Representative; (b) shall compensate the Consultant,  
11 and persons engaged to assist the Consultant, for services rendered pursuant to  
12 this Order at their reasonable and customary rates; (c) shall not be in and shall  
13 not have an attorney-client relationship with the Consultant and shall not seek  
14 to invoke the attorney-client or any other privilege or doctrine to prevent the  
15 Consultant from transmitting any information, reports, or documents to the  
16 States; and (d) during the period of engagement and for a period of two (2)  
17 years after the engagement, shall not enter into any employment, customer,  
18 consultant, attorney-client, auditing, or other professional relationship with the  
19 Consultant. Notwithstanding the foregoing, the Consultant may serve as a  
20 Consultant for both MKC and MAM.  
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22 14. MKC and MAM shall provide, for a period of three (3) years from June 21, 2011, to  
23 all of their registered agents and investment adviser representatives mandatory, comprehensive, and  
24 ongoing (i) product/offering training on each of the proprietary products/offering that they sell or  
25 recommend to clients, and (ii) training on suitability and risks of investments generally. The training  
26 required pursuant to this paragraph shall be in addition to any continuing education training required  
27 to maintain the registrations of the registered agents and investment adviser representatives and shall  
28 include, at a minimum, training on all of the following:

- a. Suitability as it applies to the various types of products/offerings, proprietary or otherwise, the FA sells at MKC;
- b. The type and nature of the holdings and risks attendant thereto in any proprietary product/offering sold by the firm, for which the firm or any affiliate purchased the underlying holdings, that the registered person will be selling or recommending to clients;
- c. The risks associated with the proprietary product/offering; and
- d. Conflicts of interest that may arise as a result of the sale/recommendation of the proprietary product/offering.

15. For training related to proprietary products/offerings, MKC and MAM shall develop and implement course evaluations to be completed by each FA in order to assess the effectiveness of the training.

16. MKC and MAM shall:

- a. Maintain a log of each agent/representative's completed courses, copies of which they shall provide to the States' Representative upon request;
- b. Only allow agents/representatives to sell/recommend proprietary products and/or proprietary offerings for which they have completed and verified training;
- c. Maintain an archive of all training material that may be accessed by agents/representatives on an as-needed basis after training is completed, copies of which they shall provide to the States' Representative upon request;
- d. Maintain current training materials on proprietary products and/or proprietary offerings being offered or sold to any of their clients, copies of which they shall provide to the States' Representative upon request;
- e. Maintain a manned product/offering help desk that is available to answer questions from agents/representatives during regular business hours, the person manning such shall be registered with a minimum of a Series 65 or 7 license or registration; and

1 f. Provide to the Department an annual certification that MKC and MAM are in  
2 compliance with the required training and maintenance of training materials.

3 17. One person shall not simultaneously hold the positions of General Counsel and Chief  
4 Compliance Officer for either Respondent.

5 18. Nothing herein shall preclude the state of California, its departments, agencies,  
6 boards, commissions, authorities, political subdivisions, and corporations (collectively “State  
7 Entities”), other than the Department and only to the extent set forth herein, from asserting any  
8 claims, causes of action, or applications for compensatory, nominal and/or punitive damages,  
9 administrative, civil, criminal, or injunctive relief against MKC and MAM in connection with the  
10 marketing and sales practices of the Funds at MKC or MAM.

11 19. Any dispute or default other than related to the payment as referenced in paragraph 6  
12 related to this Consent Order shall be construed and enforced in accordance with, and governed by,  
13 the laws of the state of California without regard to any choice of law principles.

14 20. Unless otherwise stipulated, the parties intend that the monies allocated through the  
15 SEC’s Fair Fund and/or the States’ Fund, including the monies allocated pursuant to this Consent  
16 Order, to the investors of any given State will be treated as an offset against any order for MKC or  
17 MAM to pay any amount (whether designated as restitution, fines or otherwise compensatory in  
18 nature) in any action brought by that State or any of the regulatory agencies thereof and not  
19 concluded by this Consent Order. Notwithstanding the foregoing, and except as delineated in  
20 paragraphs 41 through 43, this Consent Order is presumed to be treated as a settlement for  
21 evidentiary purposes and not as evidence of either damage or liability itself. MKC and MAM  
22 further agree that in the event they should enter into a consent order prior to an adjudication on the  
23 merits with another State’s securities regulator which provides each investor a higher return of losses  
24 per invested dollar than under the terms of this Consent Order, then the Department may, at its  
25 option, obtain the same payout of losses per invested dollar for the investors of this State.  
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1           21. Respondents MKC and MAM agree not to make or permit to be made any public  
2 statement denying, directly or indirectly, any finding in this Consent Order or creating the  
3 impression that this Consent Order is without factual basis. Nothing in this Paragraph affects MKC's  
4 or MAM's : (i) testimonial obligations, or (ii) right to take legal or factual positions in defense of  
5 litigation or arbitration or in defense of other legal proceedings in which the Department is not a  
6 party.

7           22. Nothing herein shall affect any statutory authority of the Department, including but  
8 not limited to, inspections, visits, examinations, and/or the production of documents

9           23. This Consent Order shall be binding upon MKC and MAM, and their successors and  
10 assigns, with respect to all conduct subject to the provisions above and all future obligations,  
11 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.  
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13 Dated: 2/13/12

JAN LYNN OWEN  
California Corporations Commissioner

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16 By \_\_\_\_\_  
ALAN S. WEINGER  
17 Deputy Commissioner  
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1                   **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MORGAN ASSET**  
2                   **MANAGEMENT, INC. AND MORGAN KEEGAN & COMPANY, INC.**

3                   Morgan Asset Management, Inc. and Morgan Keegan & Company, Inc. (“Respondents”)  
4 hereby acknowledge that they have been served with a copy of this Administrative Consent Order  
5 (“Consent Order”), have read the foregoing Consent Order, are aware of each of their right to a  
6 hearing and appeal in this matter, and have waived the same.

7                   Respondents admit the jurisdiction of the California Department of Corporations  
8 (“Department”); admit to the allegations in paragraphs 41 through 43 of Section II, relating to the  
9 maintenance of books and records, but otherwise neither admit nor deny any of the findings of fact,  
10 allegations, assertions or conclusions of law that have been made herein in this proceeding; and  
11 Respondents further consent to entry of this Consent Order by the Department as settlement of the  
12 issues contained in this Consent Order.

13                   Respondents enter into this Consent Order voluntarily and represent that no threats, offers,  
14 promises, or inducements of any kind have been made by the Department or any member, officer,  
15 employee, agent, or representative of the Department to induce Respondents to enter into this  
16 Consent Order other than as set forth in the Consent Order.

17                   Brian B. Sullivan represents that he/she is President of Morgan Asset Management, Inc. and  
18 that, as such, has been authorized by Morgan Asset Management, Inc. to enter into this Consent  
19 Order for and on behalf of Morgan Asset Management, Inc.

20                   James T. Ritt represents that he/she is General Counsel of Morgan Keegan & Company, Inc.  
21 and that, as such, has been authorized by Morgan Keegan & Company, Inc. to enter into this  
22 Consent Order for and on behalf of Morgan Keegan & Company, Inc.

23                   Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax credit  
24 with regard to the State of California for any monetary penalty or restitution that Respondents shall  
25 pay pursuant to this Consent Order. Respondents understand and acknowledge that these provisions  
26 are not intended to imply that the Department would agree that any other amounts Respondents shall  
27 pay pursuant to this Consent Order may be reimbursed or indemnified (whether pursuant to an  
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1 insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax  
2 credit with regard to any state, federal, or local tax.

3 Dated this 8th day of February, 2012.

4 MORGAN ASSET MANAGEMENT, INC.

5 By: Brian B. Sullivan

6 Title: President

7 STATE OF Alabama )

8 ) ss.

9 County of Jefferson )

10  
11 SUBSCRIBED AND SWORN TO before me Brian B. Sullivan, this 8<sup>th</sup> day of Feb., 2012.

12  
13 \_\_\_\_\_  
Notary Public

14 My commission expires:

15 \_\_\_\_\_

16 MORGAN KEEGAN & COMPANY, INC.

17 By: James T. Ritt

18 Title: General Counsel

19 STATE OF Tennessee )

20 ) ss.

21 County of Shelby )

22  
23 SUBSCRIBED AND SWORN TO before me by James T. Ritt, this 3<sup>rd</sup> day Feb., 2012.

24  
25 \_\_\_\_\_  
Notary Public

26 My commission expires: \_\_\_\_\_