

IN THE DISTRICT COURT OF OKLAHOMA COUNTY JUN 18 2007  
STATE OF OKLAHOMA

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

OKLAHOMA DEPARTMENT OF SECURITIES, )  
*ex rel.*, Irving L. Faught, Administrator, )

Plaintiffs, )

v. )

Case No.: CJ-2006-3311

FARMERS & MERCHANTS BANK, an )  
Oklahoma banking entity; JOHN V. ANDERSON, )  
Individually, and as Officer and Director of )  
Farmers & Merchants Bank; and JOHN TOM )  
ANDERSON, Individually, and as Officer )  
and Director of Farmers & Merchants Bank, )

Defendants, )

and )

ROBERT LYNN POURCHOT, Trustee of the )  
Robert Lynn Pourchot Trust; DONALD W. ORR, )  
Trustee of the Pork Chop Trust; THE WILL )  
FOUNDATION; POURCHOT INVESTMENTS, )  
LP; PHILLIP M. POURCHOT, Trustee of the )  
Phillip M. Pourchot Revocable Trust; RICHARD )  
REYNOLDS; RICHARD REYNOLDS, Trustee of )  
the Richard Reynolds Living Trust; ANNENDA )  
REYNOLDS; STEVEN B. SANDERS; VICKI L. )  
SANDERS; and CRANDALL & SANDERS, INC., )

Intervenors. )

**PETITION IN INTERVENTION**

Plaintiffs/Intervenors, Robert Lynn Pourchot, Trustee of the Robert Lynn Pourchot Trust;  
Donald W. Orr, Trustee of the Pork Chop Trust; the Will Foundation; Pourchot Investments, LP;  
Phillip M. Pourchot, Trustee of the Phillip M. Pourchot Revocable Trust; Richard Reynolds;  
Richard Reynolds, Trustee of the Richard Reynolds Living Trust; Annenda Reynolds; Steven B.

Sanders; Vicki L. Sanders; and Crandall & Sanders, Inc. (collectively, "Plaintiffs"), allege and state as follows:

**DEFENDANTS**

1. Defendant Farmers & Merchants Bank ("F&M Bank") is a state chartered bank located in Crescent, Oklahoma, which also maintains locations in Yukon, Guthrie, and Piedmont, Oklahoma.

2. Defendant John V. Anderson, an individual, resides in or near Crescent, Oklahoma and is, and at all times material to this action was, Chairman of the Board of Directors of F&M Bank.

3. Defendant John Tom Anderson, an individual, resides in or near Crescent, Oklahoma and is, and at all times material to this action was, President/CEO and a director of F&M Bank.

**MARSHA SCHUBERT'S SCHEME**

4. From 1998 to April 2004, Marsha Schubert ("Schubert") was a registered broker-dealer agent of AXA Advisors, LLC ("AXA"), a registered broker-dealer, and operated out of a detached, unregistered office in Crescent, Oklahoma.

5. In May 2004, Marsha Schubert became a registered broker-dealer agent of Wilbanks Securities, Inc. ("Wilbanks"), a registered broker-dealer, and continued to operate out of the detached, unregistered office in Crescent, Oklahoma, until October 2004.

6. During all material times, Marsha Schubert owned and controlled Account Number 34-7477 at F&M Bank ("Schubert F&M Account") and Account Number 35-9424 at F&M Bank ("Kattails Account"). Marsha Schubert controlled other bank accounts, including, but not limited to, the Richard Schubert Farm Account at BancFirst in Kingfisher, Oklahoma

("Farm Account"), and a Schubert and Associates Account at BancFirst in Kingfisher, Oklahoma ("Schubert BancFirst Account").

7. From January of 2000 through October of 2004 (the "Relevant Period"), Marsha Schubert, acting under the supervision of licensed securities principals and employing a bank account at F&M in the name of Schubert & Associates (collectively, "Schubert"), orchestrated a securities-fraud scheme, pursuant to which she convinced hundreds of investors, including the Plaintiffs, that they could realize better returns if they invested through AXA or Wilbanks by writing checks to her for use in a pooled account somewhat like that used in an investment club (the "Pooled Account") which she claimed would be used to purchase various kinds of securities that most appealed to her victims (the "Purported Investment Program"). Almost 100 people lost over Nine Million Dollars (\$9,000,000.00) in the Purported Investment Program.

8. According to the Report prepared by Baird, Kurtz and Dobson released by the Receiver on March 23, 2005 (the "BDK Report"), Plaintiffs lost \$3,896,083.00, exclusive of prejudgment interest and other losses related thereto in the Purported Investment Scheme.

9. Instead of actually investing the funds that had been entrusted to her, Schubert placed them in various accounts that she controlled. While the vast majority of the investment proceeds were deposited at least initially in the Schubert F&M Account, some of the money was deposited into the Kattails Account, the Farm Account, and the Schubert BancFirst Account.

10. The securities fraud had two basic components: (a) a "Ponzi" scheme in which most of the money entrusted to Marsha Schubert by participants in the Purported Investment Program was not invested in a legitimate venture, but instead, was paid out as purported returns to other participants in the Purported Investment Program; and (b) a check exchange scheme. The check exchange scheme involved a consistent movement of funds primarily between the

accounts of three individuals, Lance Berry, Bob Mathews, and Marvin Wilcox, and the Schubert F&M Account. The scheme created a "float" that Marsha Schubert utilized to pay purported investment returns.

11. The Plaintiffs did not and could not with the exercise of reasonable diligence have known of the misconduct of Defendants described herein until the public release of the BKD Report by the Receiver on March 23, 2005.

**DEFENDANTS INVOLVEMENT IN THE SECURITIES FRAUD**

12. Defendants and their agents materially aided and/or participated in Marsha Schubert's acts, practices, and course of business that operated as a fraud upon the Plaintiffs by: (a) clearing checks written on uncollected funds, thereby providing Marsha Schubert with millions of dollars in unsecured loans and the financial ability to extend the life of the Purported Investment Program; (b) facilitating hundreds of wire transfers from the pooled accounts belonging to investors to AXA in furtherance of the "Ponzi" scheme; (c) making loans to Marsha Schubert for purported purchases of cattle, vehicles, equipment, a mobile home and real estate, and then depositing the loan proceeds into the Schubert F&M Account, allowing Marsha Schubert to further the "Ponzi" scheme; (d) requesting deposits from Marsha Schubert to cover overdrafts when, in fact, Marsha Schubert did not have the means and ability to cover overdraft payments, other than by misappropriating the monies of others; (e) preventing the discovery of the truth and bolstering Marsha Schubert's credibility through the illusion of a prospering and legitimate investment venture; (f) referring bank customers and other individuals to participate in the Purported Investment Program; and (g) assisting bank customers in participating in the Purported Investment Program.

13. Pursuant to Section 1-509 of the Oklahoma Uniform Securities Act of 2004, 71 Okla. Stat., Sections 1-101 through 1-701 (Supp. 2003) (the "Act") and Section 408 of the Oklahoma Securities Act, 71 Okla. Stat. Sections 1-413,501,701-703 (1991 & Supp. 2003) (the "Predecessor Act"), Defendants are liable, jointly and severally, with and to the same extent as Marsha Schubert, for the securities fraud.

**NON-DEFENDANTS ASSOCIATED WITH F&M BANK**

14. In addition to John V. Anderson and John Tom Anderson, several individuals associated with F&M Bank assisted Schubert in perpetuating the scheme.

15. Edward Stanton ("Stanton") worked at F&M Bank for approximately ten (10) years. At the time of his resignation from the bank in March of 2004, and at all previous times material hereto, Stanton was Vice President and Secretary of F&M Bank. Stanton had lending authority and was responsible for regulatory compliance, internal controls, and security for F&M Bank. Prior to 2003, Stanton was the designated Bank Secrecy Act Officer ("BSA Officer") for F&M Bank. Stanton was employed as a state banking examiner prior to his employment at F&M Bank.

16. Chad Johnson ("Johnson") is Senior Vice President and a loan officer at F&M Bank who previously held the position of Assistant Vice President of F&M Bank. At all material times, Johnson was the assigned loan officer for Marsha Schubert.

17. Justin Tarrant ("Tarrant") was a loan officer at F&M Bank at the time of his resignation from the bank in February 2004, and at all previous times material to this action. He resigned his position at F&M Bank to work with Marsha Schubert as a registered agent of AXA.

18. Beth Armer ("Armer") was a teller at F&M Bank at all times material to this action.

19. Prior to April 2004, John V. Anderson, John Tom Anderson, Stanton, Johnson, and Tarrant composed the F&M Bank Loan Committee ("Loan Committee"). After the resignations of Stanton and Tarrant from the bank, John V. Anderson, John Tom Anderson, and Johnson continued to serve on the Loan Committee.

20. Stanton, Johnson, Tarrant, and Beth Armer personally benefited from the Purported Investment Program. Stanton, Johnson, Tarrant, and Armer received distributions from the Purported Investment Program in amounts that exceeded the principal amounts, if any, transferred to Marsha Schubert for their participation in the program.

#### THE PONZI SCHEME

21. As she accepted money for purported "investment" purposes, Marsha Schubert operated a classic Ponzi scheme. Marsha Schubert did not make the investments that she represented she would make, but instead, used the money to make distributions to other persons. Marsha Schubert falsely represented such distributions as investment profits.

22. In furtherance of the scheme, Marsha Schubert created periodic account statements for participants that showed exceptional, although entirely fictitious, returns. In other instances, Marsha Schubert verbally reported the fictitious returns to participants. When a participant requested a "withdrawal," the request was honored primarily by using money Marsha Schubert had received from more recent participants in the Purported Investment Program.

23. The "Ponzi" scheme gained momentum when W. R. Mathews and Johnny Stanbrough became involved with Marsha Schubert.

24. In or around May 2000, W. R. Matthews deposited funds with Marsha Schubert to invest which she deposited into an AXA Account styled "W. R. Matthews Trust". She also opened an AXA account styled "Betty R. Matthews Trust."

25. In addition to her authority over the AXA accounts for the W. R. Mathews Trust and the Betty R. Mathews Trust (collectively, the "Mathews Trusts"), during the Relevant Period, Marsha Schubert exclusively controlled the bank accounts for the Mathews Trusts at Gold Bank in Kingfisher, Oklahoma. Marsha Schubert maintained physical control of the checkbooks, determined the amount of each disbursement from the accounts, and filled out blank checks previously signed by W. R. Mathews, in the amounts she determined, for deposit in accounts controlled by her, including the Schubert F&M and Kattails Accounts.

26. During the Relevant Period, Marsha Schubert exclusively controlled the bank account of Johnny Stanbrough who suffered from cancer. Marsha Schubert maintained physical control of the checkbook, determined the amount of each disbursement from the account, and filled out blank checks previously signed by Johnny Stanbrough, in the amounts she determined, for deposit in accounts controlled by her, including the Schubert F&M and Kattails Accounts.

27. The primary source of the funding of the disbursements from the Schubert F&M Account to Stanbrough were deposits to the Schubert F&M Account from the Farm Account, other participants in the Purported Investment Program, and Stanbrough himself.

28. As deposits to Marsha Schubert from the accounts of the Mathews Trusts and Johnny Stanbrough became more frequent, a pattern developed whereby Marsha Schubert received an amount of money from one or more of the accounts on a given day and then returned a disbursement of a similar or increasing amount very soon thereafter.

29. The perceived success of the Purported Investment Program enhanced the credibility of Marsha Schubert with existing participants as well as potential participants in the program. Over the course of many months, the magnitude of the scheme, in terms of dollar amounts, the number of transactions, and the number of participants dramatically increased.

30. Bob Mathews, Marvin Wilcox, and Lance Berry eventually replaced Johnny Stanbrough and the Mathews Trusts as the major participants in the check exchange scheme.

#### THE CHECK EXCHANGE SCHEME

31. Robert "Bob" Mathews ("Mathews") maintained a checking account at NBanC in Kingfisher, Oklahoma ("NBanC"), through which Marsha Schubert purportedly engaged in day trading and/or options trading on his behalf ("Mathews NBanC Account").

32. During the Relevant Period, Marsha Schubert exclusively controlled the Mathews NBanC Account. Marsha Schubert maintained physical control of the checkbook, determined the amount of each disbursement from the account, and filled out blank checks previously signed by Mathews, in the amounts she determined, for deposit into accounts controlled by her, including the Schubert F&M and Kattails Accounts. On or about November 10, 2003, Mathews opened a checking account at F&M Bank through which Marsha Schubert conducted the same activity for less than thirty (30) days.

33. During the Relevant Period, F&M Bank also maintained a lending relationship with Mathews.

34. Marvin Wilcox ("Wilcox") served as a Vice President of NBanC until his retirement at the end of 2002. Wilcox maintained a checking account at NBanC through which Marsha Schubert purportedly engaged in day trading and options trading on his behalf ("Wilcox NBanC Account").

35. During the Relevant Period, Marsha Schubert exclusively controlled the Wilcox NBanC Account. Marsha Schubert maintained physical control of the checkbook, determined the amount of each disbursement from the account, and filled out blank checks previously signed by Wilcox, in the amounts she determined, for deposit into accounts controlled by her, including

the Schubert F&M and Kattails Accounts. On or about November 10, 2003, Wilcox opened a checking account at F&M Bank through which Marsha Schubert conducted the same activity for less than thirty (30) days.

36. Lance Berry ("Berry") maintained a checking account at NBanC through which Marsha Schubert purportedly engaged in day trading and options trading on his behalf ("Berry NBanC Account").

37. During the Relevant Period, Marsha Schubert exclusively controlled the Berry NBanC Account. Marsha Schubert maintained physical control of the checkbook, determined the amount of each disbursement from the account, and filled out blank checks previously signed by Berry, in the amounts she determined, for deposit into accounts controlled by her, including the Schubert F&M and Kattails Accounts. On or about November 12, 2003, Berry opened a checking account at F&M Bank through which Marsha Schubert conducted the same activity for a brief period of time.

38. The exchange of checks between Marsha Schubert and Mathews, Wilcox, and Berry contributed significantly to the perpetuation of the securities fraud.

39. Between September 11, 2001, and October 6, 2004 (the "Mathews Relevant Period"), there were over nine hundred and fifty (950) transactions in the Schubert F&M and Kattails Accounts between Marsha Schubert and Mathews. The deposits to Marsha Schubert from Mathews totaled in excess of Eighty-Six Million Dollars (\$86,000,000.00). Disbursements from Marsha Schubert to Mathews totaled in excess of Eighty-Seven Million Dollars (\$87,000,000.00).

40. During the Mathews Relevant Period, less than ten (10) of the over nine hundred and fifty (950) transactions resulted in a disbursement by Marsha Schubert to a brokerage,

investment, or clearing firm for the purchase of a security or other investment on behalf of or for the benefit of Mathews. Those transactions involved wire transmissions from F&M Bank to DLJ Pershing, the clearing firm for AXA, in amounts totaling less than One Hundred Thousand Dollars (\$100,000.00).

41. Between December 12, 2002, and October 6, 2004 (the "Wilcox Relevant Period"), there were in excess of six hundred and fifty (650) transactions in the Schubert F&M and Kattails Accounts between Marsha Schubert and Wilcox. The check exchange between Marsha Schubert and Marvin Wilcox was initiated following the death of Johnny Stanbrough in early December of 2002. The deposits to Marsha Schubert from Wilcox totaled in excess of Seventy-Seven Million Dollars (\$77,000,000.00). Disbursements from Marsha Schubert to Wilcox totaled in excess of Seventy-Eight Million Dollars (\$78,000,000.00).

42. During the Wilcox Relevant Period, approximately thirty (30) of the six hundred and fifty (650) transactions resulted in a disbursement by Marsha Schubert to a brokerage, investment, or clearing firm for the purchase of a security or other investment on behalf of or for the benefit of Wilcox. Those transactions involved wire transmissions from F&M Bank to DLJ Pershing, the clearing firm for AXA, in amounts totaling less than One Hundred Thousand Dollars (\$100,000.00).

43. Between April 8, 2003, and October 6, 2004 (the "Berry Relevant Period"), there were in excess of six hundred and fifty (650) transactions in the Schubert F&M and Kattails Accounts between Marsha Schubert and Berry. The deposits to Marsha Schubert from Berry totaled in excess of Fifty-Seven Million Three Hundred Thousand Dollars (\$57,300,000.00). Disbursements from Marsha Schubert to Berry totaled in excess of Fifty-Seven Million Three Hundred Thousand Dollars (\$57,300,000.00).

44. During the Berry Relevant Period, less than fifteen (15) of the over six hundred and fifty (650) transactions resulted in a disbursement by Marsha Schubert to a brokerage, investment, or clearing firm for the purchase of a security or other investment on behalf of or for the benefit of Berry. Those transactions involved wire transmissions from F&M Bank to DLJ Pershing, the clearing firm for AXA, in amounts totaling less than One Hundred Thousand Dollars (\$100,000.00).

#### F&M BANK'S CONDUCT

45. The Defendants materially aided and/or participated in Marsha Schubert's fraudulent course of conduct – conduct that occurred over an extensive period of time, that is, from January of 2000 to October of 2004.

46. The Standard operating procedures at F&M Bank include a meeting of the bank's Loan Committee each morning. The Loan Committee reviews the bank's business from the previous banking day to include loans made, overdrafts, insufficient items, accounts with uncollected balances, and "large items."

47. F&M Bank defines a "large item" as any deposit or withdrawal, by check, cash, or wire, in an amount greater than \$2,500.00 ("Large Item").

48. All outgoing wire transfers required the prior approval of a bank officer. During the Relevant Period, John V. Anderson, John Tom Anderson, Stanton and Johnson approved outgoing wire transfers.

49. During the Relevant Period, thousands of transactions were cleared through the Schubert F&M Account involving amounts greater than \$2,500.00. These transactions were subject to the review of the individual Defendants in their capacities as members of the Loan Committee and/or in their capacities as senior management of the bank.

### F&M BANK'S KNOWLEDGE AND ASSISTANCE

50. The Defendants' assistance to Marsha Schubert was unusual in character, scope, and degree; and the Defendants' assistance did not involve routine or normal banking practices.

51. While the Loan Committee reviewed the "Large Items" in and out of the Schubert F&M and Kattails Accounts on a daily basis, the Defendants ignored numerous "red flags" and suspicious circumstances.

### VOLUME OF ACTIVITY

52. Over the course of nearly five (5) years, in excess of Two Hundred Sixty-Seven Million Dollars (\$267,000,000.00) flowed into the Schubert F&M Account and then out of the account.

53. While the volume of activity in the Schubert F&M Account increased, there are no corresponding deposits into the account of commission checks from AXA reflecting increased investment activities by Marsha Schubert.

54. The Defendants accepted the explanation that Berry, Mathews, and Wilcox were day trading securities through Marsha Schubert. However, the increased volume in the Schubert F&M Account was, in fact, due to "check trading". This activity peaked at alarming levels between December of 2002 and November of 2003 – a time during which F&M Bank allowed Marsha Schubert to operate on uncollected funds.

### UNCOLLECTED FUNDS

55. F&M Bank allowed Marsha Schubert to operate on uncollected funds, that is, to use funds that were deposited in the Schubert F&M Account by checks that had not yet been cleared through the check collection process and paid by the drawee banks. During the Relevant

Period, financial institutions typically placed a temporary hold on their customers' uncollected funds, making those funds unavailable for withdrawal until the time period of the hold expires.

56. F&M Bank allowed Marsha Schubert to operate on higher amounts of uncollected funds than other bank customers. F&M Bank allowed Marsha Schubert to transfer funds by wire and to purchase cashier's checks utilizing uncollected funds, thereby risking a loss on the amount of the wire or cashier's check if the funds were never collected.

57. In more than one Loan Committee meeting during the Relevant Period, John V. Anderson raised the issue of the uncollected balances in the Schubert F&M Account, and specifically, the frequency and level of such uncollected balances. John V. Anderson expressed concerns that Marsha Schubert was using "the float" as part of her business practices.

58. During the Relevant Period, John V. Anderson monitored the Schubert F&M Account as often as daily by reviewing reports and statements generated by the bank and deposit items. On more than one occasion, John V. Anderson directed F&M Bank tellers to defer the processing of deposits made by Marsha Schubert into the Schubert F&M Account until after his review of the deposit items.

59. On more than one occasion, the Defendants requested that Marsha Schubert make deposits to cover overdrafts in her accounts. Such requests were made by the Defendants with knowledge that Marsha Schubert did not have the means and ability to cover overdraft payments, other than by misappropriating the monies of others.

60. Prior to December of 2002, John V. Anderson met with Marsha Schubert on at least one occasion and asked her to stop operating on uncollected funds.

61. In spite of the concerns expressed by John V. Anderson to Marsha Schubert and the Loan Committee, the Defendants continued to allow Marsha Schubert to operate on uncollected funds until October of 2004.

62. Even though Marsha Schubert deposited large sums of money into the Schubert F&M Account from participants in the Purported Investment Program, the account remained classified as a personal account by the bank until December of 2002. At that time, John V. Anderson directed that the status of the Schubert F&M Account be changed from a personal to a business account. As a result of the reclassification, F&M Bank benefited from the imposition of the service charge on uncollected balances in the Schubert F&M Account during fifteen (15) of the subsequent twenty-two (22) months.

63. Contrary to typical banking practice, F&M Bank did not place a temporary hold on the uncollected funds in the Schubert F&M Account or dishonor checks drawn on uncollected funds. Instead, the Loan Committee routinely approved the payment of such checks.

#### **MANAGEMENT'S KNOWLEDGE OF THE CHECK EXCHANGE SCHEME**

64. The Defendants were fully aware of the check exchange between Marsha Schubert and Berry, Mathews, and Wilcox. Due to the "Large Item" nature of the checks from Berry, Mathews, and Wilcox deposited by Marsha Schubert into F&M Bank accounts and the "Large Item" nature of checks written to Berry, Mathews, and Wilcox from F&M Bank accounts controlled by Marsha Schubert, the Defendants knew of the frequent exchange of checks between Marsha Schubert and the three individuals.

65. Identifiable patterns of deposits and disbursements developed between the Schubert F&M Account and the NBanC accounts of Berry, Mathews, and Wilcox. In addition to the same frequency and timing of transactions, the deposits to the Schubert F&M Account from

the NBanC Accounts of Berry, Mathews, and Wilcox were often in identical amounts. The disbursements from the Schubert F&M Account made in return to Berry, Mathews, and Wilcox were in similar or increasing amounts to the amounts previously deposited to the Schubert F&M Account. With rare exception, the deposits and disbursements were in even dollar amounts.

66. The Defendants knew, or in the exercise of reasonable care could have known, that the transactions occurring between Marsha Schubert and Berry, Mathews, and Wilcox did not involve the day trading of securities or any other type of legitimate investment activity.

#### USE OF INVESTMENT PROCEEDS

67. During the Relevant Period, Defendants eagerly accepted the implausible explanation that Marsha Schubert was day trading in stocks or buying and selling options, on behalf of her investment customers.

68. A red flag clearly visible to the Defendants was the absence of evidence of Marsha Schubert using the funds of participants in the Purported Investment Program to actually purchase stocks, options or any other type of investment.

69. Of the investor funds deposited in the Schubert F&M Account, just less than Two Million Dollars (\$2,000,000.00) was wired to Schubert's clearing brokers (either Pershing for AXA or Raymond James for Wilbanks). This was not only a very small part of the investor funds, but each wire bore the notation of the investor's name or account number as it was wired to the clearing broker. The Defendants, thus, had actual knowledge that it was holding pooled investor funds outside the AXA or Wilbanks accounts and did know or should have known this conduct by Schubert was in violation of multiple rules of the National Association of Securities Dealers ("NASD").

70. The insignificant number of outgoing wires transmitted through F&M Bank raised another red flag. While the wire activity in the Schubert F&M Account exceeded that in any other customer account at F&M Bank, the amount of money wired from the account represented less than one percent (1%) of the over Two Hundred Sixty-Seven Million Dollars (\$267,000,000.00) deposited into the Schubert F&M Account during the Relevant Period.

71. Disbursements to participants in the Purported Investment Program from the Schubert F&M Account were not accompanied by deposits into the account of the proceeds from corresponding sales of securities on behalf of such participants.

72. The dollar amount of wires to and from Pershing, Raymond James or any other brokerage, investment or clearing firm was miniscule in comparison to the total dollar amount of deposits in and out of the Schubert F&M Account for purported investment purposes.

73. Barry L. Anderson and Don Spicer were registered brokers and employees of F&M Bank. Thus, Defendants, through their agents Barry L. Anderson and Don Spicer, knew, or in the exercise of reasonable care could have known, that this activity violated numerous NASD rules and was a huge red flag that Marsha Schubert was engaging in fraudulent conduct.

74. Moreover, F&M Bank's relationship with Barry L. Anderson and Spicer's broker-dealers was governed by, among other things, the Federal banking regulators' *Interagency Statement on Retail Sales of Nondeposit Investment Products* ("Interagency Statement"), which requires the bank to, among other things, monitor the applicable banking and securities laws and regulations and the brokerage firm's policies and procedures. By virtue of its obligations under the Interagency Statement, the Defendants knew, or in the exercise of reasonable care could have known, that Marsha Schubert's activities violated the applicable banking and securities laws and regulations and the brokerage firm's policies and procedures.

75. Funds from participants in the Purported Investment Program that were deposited into the Schubert F&M Account were used for other "Large Item" purposes including, but not limited to the payment of purported profits to other participants in the investment program, restoration of a muscle car, and the purchase of a condominium in Branson, Missouri. The condominium was purchased with a cashier's check in the amount of Two Hundred Nine Thousand Six Hundred Forty-One Dollars and Forty-Five Cents (\$209,641.45) issued by F&M Bank and signed by John Tom Anderson.

76. On at least two occasions in connection with loans made to Marsha Schubert, F&M Bank accepted loan payments made out of the Schubert F&M Account from funds deposited by participants in the Purported Investment Program.

#### UNAUTHORIZED ACTIVITY

77. During the Relevant Period at least two accounts were maintained at F&M Bank for the Estate of Leland F. Schubert, the father-in-law of Marsha Schubert. Richard Schubert was the executor of his father's estate.

78. Marsha Schubert had no signatory or other authority over the Leland Schubert estate accounts at F&M Bank ("Estate Accounts").

79. On more than one occasion in 2004, F&M Bank allowed Marsha Schubert to transfer funds between the Estate Accounts and the Schubert F&M Account. Marsha Schubert would then disburse those funds to known participants in the Purported Investment Program, including an F&M Bank employee. These disbursements were "Large Items" reviewed by the Loan Committee.

80. Another example of unauthorized activity by Marsha Schubert involved a certificate of deposit owned by Schubert Implement Co., Inc. ("Schubert Implement CD").

Schubert Implement Co., Inc. ("Schubert Implement") was a company owned by Leland Schubert. Marsha Schubert was not authorized to act on behalf of Schubert Implement.

81. On or about December 15, 2003, Johnson allowed Marsha Schubert to liquidate the Schubert Implement CD. Johnson credited the Schubert F&M Account in the amount of the proceeds on the purported premise that Marsha Schubert was going to invest the proceeds for the benefit of the Estate of Leland Schubert. Instead, Marsha Schubert used the proceeds to perpetuate the scheme by disbursing them to Berry, Wilcox, Mathews, and Kattails.

82. The liquidation of the Schubert Implement CD, the corresponding credit to the Schubert F&M Account, and the disbursements to Berry, Wilcox, Mathews, and Kattails were all "Large Items" reviewed by the Loan Committee on the next banking day.

83. The Defendants ignored, and failed to act on, the absence of evidence of the purchase of stocks, options or any other type of investment on behalf of Schubert Implement Co., Inc., or the Estate of Leland Schubert.

#### LENDING ACTIVITY

84. During the Relevant Period, F&M Bank entered into over seventy-five (75) new loans and refinancings with Marsha Schubert for purported purchases of cattle, vehicles, equipment, a mobile home, and real estate. The principal amount of such financings totaled over One Million Four Hundred Thousand Dollars (\$1,400,000.00). The interest rate charged by F&M Bank on these loans ranged from six percent to fifteen percent (6% - 15%).

85. Johnson, acting under the supervision of John Tom Anderson, was the loan officer assigned to Marsha Schubert. Circumstances surrounding certain of the lending activity between F&M Bank and Marsha Schubert produced another red flag ignored by Defendants.

86. On more than one occasion, F&M Bank deposited proceeds of cattle loans made to Marsha Schubert into the Schubert F&M Account, thereby knowingly commingling loan proceeds with funds contributed by participants in the Purported Investment Program.

87. On at least one occasion, F&M Bank loaned money to Marsha Schubert for the purported purchase of cattle without a proof of sale from the seller. Instead, F&M Bank accepted a note, handwritten by Marsha Schubert in the presence of a bank officer, as proof of the cattle purchase.

88. On more than one occasion, F&M Bank deposited proceeds of cattle loans into the Schubert F&M Account; however, there were no equivalent disbursements from the account for the purchase of cattle.

89. Bank employees, to include Stanton, Johnson, and Tarrant, knowingly received purported profits from the Purported Investment Program through checks drawn on the same F&M Bank account into which loan proceeds were deposited.

#### **OTHER COMMINGLING OF FUNDS**

90. During the Relevant Period, F&M Bank allowed Marsha Schubert to commingle the funds received from participants in the Purported Investment Program with funds in the Kattails Account. Kattails was a small gift shop that also offered embroidery services.

91. The Defendants ignored and failed to act on the simultaneous diversion of purported investment monies to a gift shop.

#### **CONFLICTS OF INTEREST**

92. The personnel policy of F&M Bank prohibits bank employees from acting as an attorney, consultant, agent, broker, or employee for any customer having business dealings with the bank. In addition, bank employees are prohibited from accepting gifts, services, or favors

from customers of the bank. Bank employees are also prohibited from representing the bank in any transaction if their personal interest might conflict with the interests of the bank.

93. As part of F&M Bank's bribery policy, employees, officers, directors, and agents of the bank are prohibited from "self-dealing, conflicts of interest, or otherwise trading on their positions with [the bank]"[.]

94. F&M Bank designated Stanton as its compliance officer for purposes of the bank's bribery policy.

95. John V. Anderson and John Tom Anderson had knowledge of the financial relationship between Marsha Schubert and Stanton, Johnson, and Armer.

96. Stanton made no financial contribution to the Purported Investment Program, yet, between March 26, 2002, and October 5, 2004, received twelve (12) disbursements from Marsha Schubert totaling in excess of \$100,000.00. Ten (10) of the disbursements were made by checks drawn on the Schubert F&M account.

97. Tarrant made no financial contribution to the Purported Investment Program, yet, between February 28, 2003, and September 30, 2004, received twelve (12) disbursements from Marsha Schubert totaling in excess of Forty-Nine Thousand Dollars (\$49,000.00).

98. Johnson made no financial contribution to the Purported Investment Program, yet, between December 2, 2003, and July 15, 2004, received six (6) disbursements from Marsha Schubert totaling \$35,200.00.

#### ASSISTANCE TO BANK CUSTOMERS

99. During the Relevant Period, F&M Bank maintained a banking relationship with over twenty (20) participants in the Purported Investment Program. Some of these participants used their purported profits to make payments on their personal loans to F&M Bank.

100. In addition, on or about March 9, 2001, F&M Bank loaned Twenty-Five Thousand Dollars (\$25,000.00) to Richard Hedrick ("Hedrick"). The proceeds of the loan were to be invested in the Purported Investment Program.

101. On the same day, Hedrick wrote a check on his F&M Bank account to "Schubert Associates" in the amount of \$35,000.00, which Marsha Schubert deposited into the Schubert F&M Account.

102. On the following banking day, the Loan Committee reviewed the following "Large Items": the loan to Hedrick, Hedrick's check to "Schubert Associates," Marsha Schubert's deposit of the check into the Schubert F&M Account, and disbursements to Kattails and other participants in the Purported Investment Program.

103. The Defendants ignored, and failed to act on, the absence of evidence of the purchase of stocks, options or any other type of investment by Marsha Schubert for the benefit of Hedrick.

#### **CAUSE OF ACTION – AIDING AND ABETTING SECURITIES FRAUD**

104. Paragraphs 1 through 103 above are realleged and incorporated by reference herein.

105. As set forth more fully above, Marsha Schubert, in connection with the offer, sale, or purchase of securities, directly and indirectly: (a) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (b) engaged in an act, practice, or course of business that operated as a fraud or deceit, in violation of Section 1-501 of the Act and Section 101 of the Predecessor Act.

106. As detailed above, the Defendants knew, or in the exercise of reasonable care could have known, that there were no disbursements to or from a brokerage, investment or clearing firm that corresponded to the over Two Hundred Sixty-Seven Million Dollars (\$267,000,000.00) flowing in and out of the Schubert F&M and Kattails Accounts. The Defendants knew, or in the exercise of reasonable care could have known, that the transactions between Marsha Schubert and Berry, Mathews, and Wilcox did not involve the day trading of securities or any other type of legitimate investment activity.

107. The Defendants knew, or with the exercise of reasonable care could have known, of the "Ponzi" and check exchange schemes orchestrated by Marsha Schubert through the Schubert F&M Account for almost five (5) years. Both schemes involved unsafe and unsound banking practices that went unimpeded by the Defendants. The Defendants knew, or with the exercise of reasonable care could have known, that Marsha Schubert's acts, practices, and course of business evidenced a massive securities fraud. On a daily basis, the Defendants ignored, and failed to respond to, numerous suspicious circumstances that continually arose in connection with Marsha Schubert's securities fraud. The Defendants provided substantial assistance to Marsha Schubert's securities fraud and securities law violations.

108. As a result of Defendants' actions, Plaintiffs each suffered losses in excess of \$10,000.00.

109. Based on the forgoing, Defendants materially aided and/or participated in Marsha Schubert's fraudulent conduct, acts, practices, and course of business, thereby violating the Act and the Predecessor Act. Accordingly, Defendants are liable, jointly and severally, with and to the same extent as Marsha Schubert, for the securities fraud.

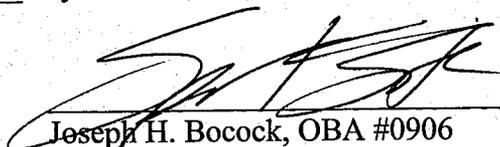
110. Defendants' actions were willful and wanton or were undertaken with gross disregard for the rights of each Plaintiff for the purpose of reaping substantial profits through a highly irregular and improper banking relationship with Schubert. Accordingly, Plaintiffs are entitled to an award of punitive damages by way of example in order to deter like conduct by others similarly situated. Such an award should be equal to at least ten times the profit F&M Bank realized from this relationship.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs/Intervenors, Robert Lynn Pourchot, Trustee of the Robert Lynn Pourchot Trust; Donald W. Orr, Trustee of the Pork Chop Trust; the Will Foundation; Pourchot Investments, LP; Phillip M. Pourchot, Trustee of the Phillip M. Pourchot Revocable Trust; Richard Reynolds; Richard Reynolds, Trustee of the Richard Reynolds Living Trust; Annenda Reynolds; Steven B. Sanders; Vicki L. Sanders; and Crandall & Sanders, Inc., pray for:

- A. Actual damages for each Plaintiff in excess of \$10,000.00;
- B. Prejudgment interest at the statutory rate proscribed by the Act from and after the date of each deposit into F&M Bank;
- C. Punitive damages equal to at least ten (10) times the profit made by the Defendants from their dealings with Schubert;
- D. A reasonable attorneys' fee together with costs of this action; and
- E. Such other and further relief to which they may prove themselves to be entitled.

Respectfully submitted this 13<sup>th</sup> day of June, 2007.



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**ATTORNEYS FOR INTERVENORS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of June, 2007, a true and correct copy of the foregoing was mailed, via U.S. First Class Mail, postage prepaid, to the following counsel of record:

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