

3. On December 31, 2008, Virtus was launched as an independent public company in a spin-off of its predecessor's asset management business. In 2008, due to the global financial crisis, Virtus's asset management business had suffered a loss of \$17 billion in assets under

management, and it reported an impairment charge of \$529 million, or \$91.75 per share, when its share price was trading at \$10 per share. Virtus desperately needed to turn around its fortunes.

4. In the fall of 2009, Virtus began to market and offer funds with an “AlphaSector” strategy through a co-advisory relationship with a newly formed investment advisory firm, F-Squared Investments, Inc. (“F-Squared”). F-Squared developed the AlphaSector strategy, which purported to use proprietary quantitative models that provided signals allowing exchange-traded funds (“ETFs”) allocated across various sectors managed by the strategy to re-allocate and realize gains when the index was up, while avoiding losses while the index was down.

5. Virtus sold and marketed AlphaSector funds under its own name as having attractive risk-adjusted returns back to April 2001, which exceeded performance of the Standard & Poors Index (“S&P Index”). The AlphaSector strategy supposedly had limited investor losses during the stock market crash in fall 2008, because it purportedly moved away from the financial sector before its collapse. The AlphaSector’s past returns back to April 2001 were presented as the legitimate results of live management of client assets, and not back-tested results that were hypothetical.

6. The problem was that F-Squared lied about the AlphaSector’s track record – 1) it was actually back-tested and not the result of management of “live” customer assets; and 2) the back-testing was not performed accurately, so the results were grossly inflated.

7. From as early as October 2009, there were false statements in the sales and marketing materials for the AlphaSector Funds prepared by F-Squared. The Financial Industry Regulatory Authority (“FINRA”), which regulates the sales and distribution of mutual funds, refused to approve advertising materials submitted by F-Squared for the AlphaSector funds. Nevertheless, Virtus adopted the sales and marketing materials as its own, including the past

track record, and incorporated this information into registration statements for its AlphaSector funds.

8. Under the Investment Company Act of 1940 (“ICA”), Virtus had duties to ensure the truthfulness and accuracy of its sales materials and registration statement filings for its AlphaSector funds. Virtus also had due diligence duties under Securities and Exchange Commission (“SEC”) Rules to perform due diligence before entering into any sub-advisory agreements.

9. As a result, from the start of its sub-advisory relationship, Virtus made numerous requests of F-Squared about the past track record to fulfill its statutory and due diligence duties. Virtus received multiple contradictory or ambiguous responses from F-Squared, all of which were “red flags” that should have raised suspicions over the legitimacy of the past returns. Virtus further failed to verify F-Squared past track record or to obtain F-Squared’s “books and records” documenting its actual past performance (which it was required to keep under SEC Rules). But for Virtus’s willful blindness, it would have discovered that neither such verification nor such books and records actually existed.

10. Upon information and belief, Virtus aggressively pushed its salespeople to sell the AlphaSector funds through its distribution network of retail broker-dealers and financial advisors. Virtus held sales meetings and instructed its salespeople to tout the past track record of the AlphaSector strategy as evidence that high returns could be earned at low risk, and that the strategy greatly exceeded the S&P Index. Virtus offered substantial sales incentives to its salespeople to sell the AlphaSector Funds over other products.

11. By at least December 14, 2012, however, Virtus knew—or was reckless in not knowing—that the AlphaSector’s past track record was back-tested, and was not, in fact, the

results of live asset management. At a meeting held on this date, F-Squared's President gave a presentation to Virtus's salespeople in which he touted AlphaSector's past returns and track record. On information and belief, after he spoke, Virtus's Head of Product Management advised Virtus's sales personnel to ignore these comments about the past track record because the returns were back-tested and not "live" assets.

12. Later, on or about May 28, 2013, Virtus learned that the AlphaSector's past results were grossly overstated and inflated. On information and belief, at or about this time, Virtus learned from F-Squared's data provider that the AlphaSector past returns could not be replicated, and that they were not, therefore, legitimate.

13. However, despite now knowing that the AlphaSector's marketing of its past track record was false and over-stated, Virtus never disclosed this fact to the public or corrected the false and misleading statements in its sales and marketing materials, registration statements and prospectuses for the AlphaSector funds. Virtus ignored the truth because of the explosive growth in the AlphaSector funds—growth that had saved Virtus from the brink of collapse and was vital to its recent success.

14. Virtus's sales of funds with the AlphaSector strategy were enormously successful from 2010 through 2014, and drove increases in the Company's assets under management, its revenues, its earnings and its stock price. The most growth occurred during 2013. By the end of that year, Virtus had successfully launched five AlphaSector funds, which had grown to \$11.4 billion in assets under management from nothing. Overall, Virtus grew its assets under management to \$57 billion, with revenues of \$389 million. The AlphaSector funds carried the highest management fees of all of Virtus's funds and drove the growth of its revenues and profits.

15. To date, due primarily to success at Virtus, the AlphaSector strategy has become the largest ETF-managed strategy in the marketplace.

16. On May 28, 2013, at the start of Class Period, Virtus's stock was trading at \$235 per share. Virtus's stock price had more than doubled as its business grew over the previous few years. As of this date, Virtus knew for a fact—or was willfully blind to the fact—that its stock price was trading at artificially high prices, and that its growth was based on a fraud.

17. On September 5, 2014, however, Virtus investors began to realize the truth. The *Wall Street Journal* reported that F-Squared had received a *Wells Notice* from the SEC for alleged falsifications about its AlphaSector performance and track record in its sales and marketing materials and required regulatory filings.

18. As a result of this first revelation, over the next few days, Virtus's stock price fell by \$37 per share, or 16%, from \$223 per share to \$186 per share. Virtus was further hurt by huge outflows of investor funds from its funds due to a lack of confidence and concern. Virtus's name and reputation were further damaged. Virtus's stock price continued to decline over the next several months while the potential charges hung over F-Squared.

19. Then, on December 22, 2014, the SEC announced that it had formally charged F-Squared and its President, Howard Present, for fraud and various violations of the Investment Advisors Act of 1940 ("IAA"), and that it had reached a settlement with F-Squared regarding those charges. F-Squared consented to the entry of the order finding that it violated Sections 204, 206(1), 206(2), 206(4), and 207 of the IAA and Rules 204-2(a)(16), 206(4)-1(a)(5), 206(4)-7, and 206(4)-8. The order also found that F-Squared aided and abetted and caused certain mutual funds sub-advised by F-Squared to violate Section 34(b) of the Investment Company Act of 1940 ("ICA"). F-Squared acknowledged that its conduct violated federal securities laws, and

agreed to cease and desist from committing or causing violations of these provisions. F-Squared also agreed to cease and desist from its prior violations, retain an Independent Compliance Consultant, and pay disgorgement of \$30 million and a penalty of \$5 million. The SEC also charged Present with the same violations.

20. The SEC's announcement, although never mentioning Virtus by name, revealed further details and evidence of F-Squared's fraud which implicated Virtus, and Virtus's stock price dropped accordingly to **\$168** per share.

21. Virtus is liable to its shareholders because it knew that its business growth, revenue growth and profits were based upon a fraud. Virtus, through its wholly-owned subsidiaries, controlled the investment company and investment adviser for the AlphaSector funds it offered under its name. By at least May 28, 2013, Virtus had actual knowledge that there were materially false statements in the AlphaSector fund registration statements, prospectuses, sales and marketing materials about its strategy and its past track record, that they false statements had inflated its earnings and growth, and that the Company's stock price was artificially inflated.

22. Finally, even after Virtus knew the truth, it failed to so inform its investors and continued to disseminate false and misleading statements to sell the AlphaSectors funds. Virtus's stock price continues to decline to this day.

23. Plaintiff asserts securities fraud claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 on behalf of purchasers of Virtus's stock during the Class Period.

JURISDICTION AND VENUE

24. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a) and Rule 10b(5) promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

25. This Court has subject matter jurisdiction over this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331.

26. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and pursuant to 28 U.S.C. § 1391(a), (b), and (c) because Defendants transact business in this District.

PARTIES

27. Plaintiff Tom Cummins resides in Kentucky. He purchased shares of Virtus stock during the Class Period, as described in the certification attached to this Class Action Complaint, and suffered damages as a result of Defendants’ violations of the federal securities laws described herein.

28. Defendant Virtus is incorporated under the laws of the Delaware, and transacts business in this district, in part, through an office at 1540 Broadway, New York, New York. Virtus’s stock trades publicly on the NASDAQ stock exchange under the symbol “VRTS.” Virtus also solely owns and controls Virtus Investment Advisors Inc. (“VIA”), its subsidiary, which is an SEC-registered investment adviser with several of the same officers and directors. VIA is the investment adviser for Virtus Opportunities Trust (“VOT”), the SEC-registered investment company which issued registration statements and other public filings for the funds.

29. Defendant George R. Aylward is and at relevant times was the President, Chief Executive Officer and Director of Virtus. He was also the President, Chairman and Director and

a control person of VIA and the President and Trustee of VOT. Aylward certified Virtus's financial reports in SEC filings as well as in the funds' filings by VOT during the Class Period.

30. Defendant Michael A. Angerthal is and at relevant times was the Executive Vice President, Chief Financial Officer and Treasurer of Virtus. He was also the Vice President, Chief Financial Officer and Director and a control person of VIA. Angerthal certified Virtus's financial reports in SEC filings.

31. Defendant Francis G. Waltman is and at relevant times was the Executive Vice President and Head of Product Management of Virtus. He was also the Executive Vice President and Director and a control person of VIA.

32. Defendant Mark S. Flynn is and at relevant times was the Executive Vice President and General Counsel of Virtus. He was also the Executive Vice President, General Counsel and a control person of VIA.

33. Defendants Aylward, Angerthal, Waltman and Flynn shall be referred to as the "Individual Defendants."

FACTUAL ALLEGATIONS

Virtus's Business, Profits and Stock Price Explodes Due to Sales Growth of AlphaSector Funds

34. Virtus is a financial services company with an office in New York, New York which provides investment products and solutions, primarily through its subsidiary investment managers. Virtus offers a wide range of open- and closed-end mutual funds, managed accounts and variable insurance products to retail and institutional investors.

35. On December 31, 2008, Virtus was launched as an independent public company in a spin-off of its predecessor's asset management business.

36. During 2008, due to the Financial Crisis, Virtus's asset management business had suffered a loss of \$17.8 billion in assets under management and it reported an impairment charge of \$529 million, or \$91.75 per share, when its share price was trading at \$10 per share. Virtus desperately needed to turn around its fortunes.

37. In the fall of 2009, Virtus began offering its first funds with the "AlphaSector" strategy: the Virtus AlphaSector Allocation Fund; and the Virtus AlphaSector Rotation Fund. Together, the two funds raised approximately \$170 million in 2009, the first year. Virtus's sales of these funds grew substantially through 2014, and it came to offer five different AlphaSector funds.

38. Virtus's AlphaSector funds all used a management strategy purportedly based on an index created by its proprietary quantitative models. In a registration statement, the index for the Virtus AlphaSector Rotation Fund was described as follows:

The AlphaSectorSM Rotation Index (ASRX) is an active public index published by NASDAQ and designed to outperform the S&P 500® Index while also seeking to manage downside risk and lower overall volatility. It is an equal weighted index comprised of a limited number of sector-based exchange traded funds (ETFs) and a short-term Treasury bond ETF as a cash proxy. The ETFs are selected monthly based on the output of a proprietary analytical model that evaluates sector trends while adjusting for changing levels of volatility. The Index is constituted to focus on avoiding losses of its underlying ETFs, and has the ability to move defensively to large "cash" positions in periods of broader market weakness.

39. The various AlphaSector funds offered by Virtus all utilized a strategy which relied on or incorporated an "AlphaSector" index that was purportedly based on its proprietary quantitative, analytical models.

40. The AlphaSector funds were issued by VOT, an SEC-registered investment company and Trust. VOT operates from the same office as Virtus; its President and Trustee is

defendant Aylward and it is controlled by Virtus. Virtus's name also appears on registration statements for funds issued by VOT.

41. The investment adviser for the Virtus AlphaSector funds was VIA, a subsidiary that was 100%-owned by Virtus. Virtus and VIA shared the Individual Defendants, who were the senior officers of both companies. VIA is also controlled by Virtus.

42. The AlphaSector funds' registration statements and prospectuses identify VIA as the investment adviser, and also identify F-Squared as a sub-adviser to the funds. F-Squared was the apparent creator and manager of the AlphaSector strategy employed by the Virtus funds.

43. In October 2008, F-Squared launched its first AlphaSector index. Today, F-Squared sub-licenses its approximately 75 AlphaSector indexes to unaffiliated third parties who manage assets pursuant to these indexes. As of June 30, 2014, there were approximately \$28.5 billion invested pursuant to AlphaSector indexes, including \$13 billion in mutual fund assets sub-advised by F-Squared. The vast majority of this \$13 billion of F-Squared's mutual fund assets is comprised of the Virtus AlphaSector funds.

44. Since its initial launch, Virtus's sales of funds with the AlphaSector strategy were enormously successful through 2014, and drove increases in its assets under management, its revenues, its earnings and its stock price.

45. By the end of 2013, Virtus had successfully launched five AlphaSector funds which had grown to \$11.4 billion in assets under management from nothing. Overall, Virtus grew its assets under management to \$57 billion, with revenues of \$389 million.

46. The AlphaSector funds carried the highest management fees of all of Virtus's funds and drove the growth of its revenues and profits.

47. For example, the following chart shows the significant contribution the AlphaSector funds had on the growth of Virtus’s reported assets under management (“AUM”) which disclosed in its annual reports filed on SEC Form 10-K:

<u>Year</u>	<u>Total AUM (\$B)</u>	<u>AUM MFs (\$B)</u>	<u>AUM AlphaSector Fund (\$B)</u>
2008	\$22.6	\$11.4	0
2009	\$25.4	\$12.8	\$.171
2010	\$29.5	\$14.7	\$.927
2011	\$34.6	\$16.9	\$3.89
2012	\$45.5	\$25.8	\$5.0
2013	\$57.7	\$37.9	\$11.46

48. The growth of the AlphaSector Funds also contributed to its growth of revenues and profits disclosed in its annual reports filed on SEC Form 10-K:

<u>Year</u>	<u>Revenues (\$ mil.)</u>	<u>Net Income (\$mil)</u>
2009	\$117	(\$6.5)
2010	\$144	\$5.2
2011	\$204	\$104
2012	\$280	\$37
2013	\$389	\$75

49. By the end of 2013, Virtus had successfully launched five AlphaSector funds which had grown to \$11.4 billion in assets under management from nothing. Overall, Virtus grew its assets under management to \$57 billion, with revenues of \$389 million.

50. The AlphaSector funds carried the highest management fees of all of Virtus's funds and drove the growth of its revenues and profits during 2010 through 2013.

51. On July 1, 2010, Virtus launched its Premium AlphaSector Fund. This fund would quickly surpass \$1 billion in assets, and became Virtus's largest equity fund with approximately \$7 billion in assets under management by the end of 2013.

52. To date, due primarily to success at Virtus, the AlphaSector strategy has become largest ETF managed strategy in the market-place.

53. Virtus's stock price rapidly increased from 2010 through 2014 as its business grew, and its stock price hit a high of over **\$235 per share**.

Virtus's Growth Resulted From Its Aggressive Sales Efforts Touting the AlphaSector Track Record

54. Virtus's explosive growth in stock price was the result of the enormous growth and success with the Virtus's AlphaSector funds, its highest fee products.

55. According to its Form 10-Ks, Virtus's principal marketing strategy is to distribute its funds through financial intermediaries. Virtus has a team of regional sales professionals who marketed and sold the AlphaSector funds through broker-dealers and financial advisors.

56. Upon information and belief, starting in late 2009, Virtus began to aggressively "push" its sales professionals to sell the AlphaSector funds. This "push" continued over the next several years. Virtus launched its new Premiere AlphaSector fund because there was so much demand and money flowing into these products.

57. Virtus provided its sales professionals with prospectuses and sales and marketing materials for the AlphaSector funds. The prospectuses and sales and marketing materials all contained substantial information and charts about the AlphaSector funds' past track record and historical returns, which were later revealed to be false and fraudulent.

58. Virtus instructed and trained its sales professionals to tout and emphasize the AlphaSector funds' past track record and historic returns. Virtus's sales professionals were instructed and trained to stress as a selling point that the AlphaSector funds could provide investors with high returns capturing the upside of the stock market, while avoiding losses from the stock market's down-turns. They were further instructed and trained to stress and emphasize the low risk nature of the AlphaSector funds, and their ability to predict and stay ahead of the stock market. The past track record of the AlphaSector funds was critical evidence that they could perform as expected, in both rising and falling stock markets.

59. On information and belief, Virtus had and utilized analyst reports called "Zephyr" reports to sell the AlphaSector funds. The "Zephyr" compared the AlphaSector funds past returns to other comparable mutual funds, demonstrating their outperformance against the S&P Index, particularly during the downturn in 2008. These "Zephyr" were highly effective sales tools, and they contained false and misleading statements later revealed to be fraudulent. But for Virtus's emphasis on the past track record, it never would have achieved the level of growth, assets under management and earnings that it did.

60. Virtus offered substantial sales incentives to its sales persons to sell its high-fee AlphaSector Funds, over other lower fee products. Most of Virtus's sales professionals focused on selling the AlphaSector Funds, which began a large part of their compensation base during the Class Period. Virtus's sales professionals relied on the Company to have vetted and performed a

due diligence and full review of the AlphaSector funds as products before permitting them to be sold and offered to the retail market.

**Virtus's Stock Price Declines As The Truth Behind
The SEC Investigation Slowly Emerges**

61. On September 5, 2014, the *Wall Street Journal*, in an article entitled “F-Squared Investment Receives Wells Notice From SEC, and Brokers Back Away,” first reported that F-Squared had received a *Wells Notice* from the SEC for alleged falsifications about its performance and track record in its sales and marketing materials and required regulatory filings. The *Wall Street Journal* also reported that two brokerage firms, RBC Wealth Management and Raymond James, had set limits on how much new business its advisers can conduct with F-Squared, and that Wells Fargo Advisors had put the firm on “watch,” essentially a caution to advisers about its products. This news report did not directly mention Virtus, or link F-Squared’s fraud to Virtus’s financial performance, so, at best, partial truth emerged

62. With this news, some Virtus investors became concerned and must have made the inferential leap—that the incredible growth in its business and earnings was largely artificial, and the result of fraud. Because, over the next few days, Virtus’s stock price fell by \$37 per share, or 16%, from \$223 per share to \$186 per share, and the *Wall Street Journal* stated in a follow-up article that this decline was due to the news about F-Squared.

63. Subsequently, on November 14, 2014, Howard Present, F-Squared’s President resigned.

64. On December 22, 2014, the SEC announced that it had formally settled charges against F-Squared for fraud and various violations of the IAA, and the ICA of 1940, and had charged its President, Howard Present. F-Squared acknowledged multiple violations, agreed to \$35 million in fines and penalties and the imposition of a compliance monitor.

65. The SEC's also released its Order settling the administrative proceeding against F-Squared and its complaint against Present. Although was not mentioned by name, these documents provided details about F-Squared's conduct which link it to Virtus.

66. Upon this emergence of the truth about F-Squared's fraudulent conduct, Virtus's stock price dropped again to \$168 per share. However, Virtus has still not publicly commented on F-Squared's fraud, either in a Form 8-K or its Form 10-Q reports to investors. Virtus has not itself disclosed the truth yet about its oversight of F-Squared, the impact to its financial position or its ostensible knowledge of the fraudulent conduct.

67. Nevertheless, Virtus continues to suffer damage in the fallout. Virtus has been hurt by huge outflows of investor funds from its funds due to a lack of confidence and concern; Virtus's name and reputation were further damaged; and Virtus's stock price has continued to decline to below \$145 per share since the SEC announced the charges against F-Squared.

The SEC's Fraud Action Against F-Squared Over Its Marketing of AlphaSector Funds

68. In the December 22, 2014 settlement, the SEC found that the AlphaSector was licensed by F-Squared and marketed based on a false, materially inflated performance track record. In reality, the AlphaSector's rotation strategy's track record from 2001 to 2008 was not based on the actual performance of funds managed under the strategy, but was hypothetical and back-tested.

69. In addition, the SEC found that F-Squared's past returns were grossly overstated. According to the SEC, F-Squared incorrectly applied ETF trend data – which were detecting price momentum – that dictated whether an ETF was in or out of the AlphaSector portfolio (the “in/out signals”). In creating its back-tested track record, F-Squared systematically applied the in/out signals one week before the ETF price changes that caused changes in signals (*i.e.*, a

change from invested in the ETF to out of the ETF or vice-versa). As a result, the advertised historical performance of the AlphaSector strategy from April 2001 to September 2008 was based on implementing signals to sell before price drops and to buy before price increases that had occurred a week earlier. F-Squared compiled the historical data to implement a hypothetical trade (that F-Squared advertised as an actual trade) one week before the trade could have occurred.

70. As a result, the SEC found that AlphaSector strategy's track record was materially over-stated and inflated. If an investor made a hypothetical investment of \$100,000 on April 1, 2001 (assuming a reinvestment of dividends and no further contributions or withdrawals), the investment would have been worth approximately \$128,000 on August 24, 2008 if invested in the S&P 500 Index. With accurately timed (but still hypothetical and back-tested) signal implementation, the same investment in F-Squared's hypothetical ETF sector rotation strategy would have been worth \$138,000. However, by implementing the hypothetical and back-tested signals one week early, F-Squared advertised the investment as worth \$235,000 – an increase of approximately 350% more than if F-Squared had applied the signals accurately.

71. Since the AlphaSector's inception in October 2008, through September 2013, F-Squared sold and marketed its funds based on its two materially false claims: i) the in/out ETF signals that formed the basis of the AlphaSector index returns had been used to manage live client assets from April 2001 to September 2008; and ii) the in/out ETF signals resulted in a track record that significantly outperformed the S&P 500 Index from April 2001 to September 2008.

72. According to the SEC, F-Squared and Present knew that these statements about the AlphaSector strategy were false and materially misleading. Present knew that the track

record had been back-tested, and was not derived from actual live asset management. Present also knew that the F-Squared's track record was based on changes in 41-week and 61-week simple moving averages, and not "algorithmic-based models" which are referenced in the AlphaSector's marketing materials and prospectuses. There were also numerous other distinctions in the management which resulted in the past track records for 2001 to 2008, which made any attribution to the AlphaSector's marketed strategy misleading.

73. A former F-Squared employee who constructed the AlphaSector track record realized the error by late September 2008, shortly after F-Squared started advertising the strategy, and alerted Present. Nevertheless, F-Squared and Present continued to advertise the inflated track record until September 2013, knowing that it was false and misleading.

74. In June 2012, F-Squared retained an outside attorney to perform a mock audit. One of the recommendations from the mock audit was that F-Squared "should ensure that it has books and records to support its performance disclosed for years prior to the year 2006." The outside attorney advised obtaining records from the original data provider. However, this was impossible because there were no records to document the past actual performance of the AlphaSector strategy.

75. In September 2013, F-Squared removed all performance track records and advertising materials for the time period April 2001 to September 2008 from its website.

76. Based upon this conduct, the SEC found that F-Squared and Present had willfully violated Sections 206(1) and 206(2) which prohibit any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

77. The SEC also found that F-Squared and Present willfully violated Section 206(4) of the IAA and Rule 206(4)-1(a)(5) which makes it a fraudulent, deceptive, or manipulative act, practice, or course of business to, among other things, directly or indirectly publish, circulate, or distribute an advertisement which contains any untrue statement of material fact, or which is otherwise false or misleading, and Rule 206(4)-7 which, among other things, makes it a fraudulent, deceptive, or manipulative act, practice, or course of business to fail to adopt and implement such written policies or procedures reasonably designed to prevent violation of the Advisers Act and rules.

78. The SEC also found that F-Squared and Present willfully violated Section 206(4) of the IAA and Rule 206(4)-8, which makes it a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser to a pooled vehicle to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, or to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

79. The SEC further found “books and records” violations. It found that F-Squared violated Section 204 of the IAA and Rule 204-2(a)(16), which require investment advisers to make and keep current various books and records relating to their investment advisory business, including all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular,

advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons.

80. Finally, based on the conduct described above, the SEC found that Present willfully aided and abetted and caused certain mutual funds [including the Virtus AlphaSector funds] sub-advised by F-Squared to violate Section 34(b) of the ICA which, among other things, makes it unlawful for any person to make any untrue or misleading statement of material fact in any registration statement, application, report, account, record, or other document filed with the Commission under the ICA.

81. As a result, F-Squared agreed to cease and desist from its prior violations, retain an Independent Compliance Consultant and pay disgorgement of \$30 million and a penalty of \$5 million.

**Virtus's Legal Obligations to Verify the AlphaSector's Past Returns
And F-Squared's Inadequate and Suspicious Responses**

82. Virtus's subsidiaries, VOT and VIA, were the investment company and investment adviser for the Virtus's AlphaSector funds. As a result, they had specific compliance and due diligence duties under SEC Rules to verify the truthfulness of advertising and sales materials, to certify the registration statements and other public filings by the AlphaSector funds, and to perform due diligence and monitoring over any sub-advisors such as F-Squared. In performing these duties, Virtus became aware of the false and misleading statements about the AlphaSector funds' past track record.

83. For instance, VOT was the investment company which issued registration statements for the AlphaSector funds, with the assistance of VIA, the investment advisor. Various public filings by VOT state that "VIA has the ultimate responsibility to oversee sub-

advisers and recommend their hiring, termination, and replacement to the Trust's Board of Trustees."

84. Virtus also had duties to implement specific compliance procedures and practices at its subsidiaries and the AlphaSector Funds. SEC Rule 270.38a-1 requires that the AlphaSector funds adopt written procedures "reasonably designed to prevent violation of the Federal Securities laws by the funds, including policies and procedures that provide for oversight of compliance by each investment adviser, principal, underwriters, administrator and transfer agent of the fund." Subsection (a)(3) requires that the AlphaSector funds annually review the compliance policies and practices for "effectiveness of their implementation."

85. According to the SEC Settlement, at various times, Virtus sought and obtained information from F-Squared as part of its due diligence obligations under Section 15(c) of the ICA which, in part, states:

It shall be the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company.

86. SEC Rule 270.34b-1 imposes strict requirements for the presentation of any investment performance or comparison to indexes in advertising and sales materials, or the advertising is "deemed misleading." Fund advertising materials must comply with the specific manner of calculation described in the SEC Rules at Rules 270.34b-1 and 230.482.34(b)-1 to prevent violation of the federal securities laws.

87. Additionally, SEC Rules 275.205-1 also provide specific definitions for how "investment performance" and an "investment record" are to be calculated for an investment company. Therefore, to assess any past track record against these requirements in SEC Rules

for presentation of past returns and track record, and comparisons against any index, Virtus needed to analyze and understand the source of the AlphaSector strategy's returns back to the beginning. Otherwise, Virtus knowingly lacked the information needed to comply with SEC Rules.

88. During early 2009, through the fall of 2009, Virtus reached an agreement with F-Squared to launch the first AlphaSector fund, with F-Squared as a co-advisor. While performing its required due diligence over F-Squared, Virtus received information from F-Squared about the AlphaSector strategy and its past returns on multiple occasions. Repeatedly, Virtus requested specific information from F-Squared that was necessary for Virtus to comply with its due diligence obligations.

89. But despite its attempts to do so, Virtus never actually verified the AlphaSector's past track record itself, nor did it successfully seek records substantiating the results. If it had done so, Virtus would have realized that F-Squared itself did not have any substantiating records. However, Virtus failed to make this simple request.

90. From as early as October 2009, Virtus had reason to suspect that there were false statements in the sales and marketing materials for the AlphaSector funds prepared by F-Squared. FINRA, which regulates the sales and distribution of mutual funds, refused to approve advertising materials submitted by F-Squared for the AlphaSector funds.

91. Nonetheless, Virtus adopted these unapproved sales and marketing materials as its own, including the AlphaSector strategy's past track record, and incorporated this information in fund registration statements. Virtus knew that the AlphaSector's model and past track record was highly attractive to lure investors, so it failed to look too closely at the origin and source of the past returns.

92. Additionally, Virtus received information from F-Squared on multiple occasions which should have raised its suspicions about the AlphaSector's strategy and the representations made to it.

93. On March 2, 2009, F-Squared sent update advertising materials which stated that the AlphaSector's strategy "is a quantitatively driven index that mirrors an investment strategy that dates back to 2001." Previously, the advertising materials did not reference any difference. This updated disclosure acknowledges that the index was separate from the strategy and should have raised questions or suspicions over to what extent they were not identical.

94. On May 5, 2009, F-Squared sent additional advertising materials which stated that the strategy was based upon "a proprietary quantitative model developed over an 8 year period." This statement suggests that there may have been changes in the "model" as it was developed over the years. It therefore should have raised questions or suspicions for Virtus as to what extent the model had changed—and the possible impact such change might have on returns.

95. On May 5, 2009, F-Squared also provide information in response to a request by Fund trustees which stated that the "the Index is modified on a monthly basis based on an existing analytical program, or its precursor versions, which have been in use since 2001." This statement acknowledges "precursor versions" existed. It therefore should have raised questions or suspicions over to what extent the "precursor versions" had changed—and the possible impact such change might have on returns.

96. On October 1, 2009, at or about the time that the first AlphaSector fund was offered to the public, FINRA refused to approve advertising materials submitted by F-Squared for the AlphaSector funds. Virtus knew that FINRA had rejected the proposed advertising materials for the AlphaSector funds.

97. FINRA’s rejection should have been highly suspicious to Virtus, and spurred it to verify F-Squared’s assertions. In its response to Virtus about FINRA’s rejection, F-Squared states that it “maintains the historical output” as well as the “historical signals.” This was not true. Had Virtus simply attempted to verify F-Squared’s statements about past returns by obtaining the records it supposedly maintained, it would have realized and known that they were falsified and misleading.

98. On November 13, 2010 and January 21, 2011, F-Squared again provided information in response to a request by Fund trustees which acknowledging that “precursor versions” existed. This should have raised questions or suspicions over to what extent the “precursor versions” had changed, and the impact on returns.

99. Notwithstanding these concerns, Virtus repeatedly accepted and adopted F-Squared’s statements about the AlphaSector’s strategy and past performance on its face, without demanding verification through substantiating documents or independently testing the results.

After May 28, 2013, Virtus Had Actual Knowledge of the False and Misleading Statements

100. By mid-December 2012, Virtus learned that the AlphaSector’s past returns were back-tested, and not actual returns—a falsification that certainly should have raised alarms at Virtus.

101. For example, on December 14, 2012, Virtus held a national sales conference for its wholesalers at the Boca Raton (Fla.) Beach Resort and Club. On the first day of meetings, Howard Present, then chief executive and president of F-Squared, spoke to Virtus’s sales force and touted the past returns. On information and belief, Present’s hour-long talk that day included the language, “[t]he AlphaSector Premium Index is based on an active strategy with an inception

date of April 1, 2001. Inception date is defined as the date as of which investor assets began tracking the strategy.”

102. On information and belief, Present spoke for all of his allotted time, and by the time he left the room the conference was running slightly behind schedule. Peter Batchelar, head of product management at Virtus, then stood up to give the customary recap of the presentation. On information and belief, Batchelar told the wholesalers not to heed the portion of Present’s remarks relating to F-Squared’s allegedly “live” track record. F-Squared’s incredible returns were, he said, based not on actual client assets but on the backtesting of hypothetical assets. On information and belief, Virtus’s senior management including John McCormick, National Sales Manager, were stone-faced at the announcement, staring straight ahead, as everyone else looked around the room in shocked surprise.

103. But then it was on to the next sub-advisor’s presentation. Batchelar’s comments were never brought up again or acknowledged by the company or its management. Business at Virtus continued as usual. Virtus’s salespeople continued using the past track record as a material selling point, and continued relying on the same false sales and marketing materials about the AlphaSector funds.

104. Still, even giving Virtus every benefit of the doubt, there could be no avoiding the fact of F-Squared’s fraud after May 28, 2013. Previously, Virtus entered into an agreement with F-Squared’s data provider, through which the AlphaSector strategy was licensed, to sub-advise on funds with the same essential strategy.

105. On or about this date, Virtus learned from this data provider that the AlphaSector past returns *could not be replicated*, and that they were not, therefore, legitimate. Virtus now

also knew that not only were the AlphaSector's past results back-tested, but that they were also grossly over-stated and false.

106. Virtus also now had reason to know that its stock price, which by then had grown to **\$235 per share**, was trading at artificially inflated prices, as the Company's substantial growth in assets under management, revenues and income was driven sales of the AlphaSectors procured through false and misleading sales materials. But Virtus did not inform its investors of its knowledge, or update its sales and advertising materials about the AlphaSector funds or its registration statements.

107. Thus, once Virtus had actual knowledge of the extent of F-Squared's fraud, and Virtus failed to disclose that knowledge or correct its sales and advertising materials, prospectuses, or registration statements accordingly, Virtus was committing securities fraud.

108. In fact, it was not until late October 2013—five months *after* it had definitive confirmation that the AlphaSector past returns was fraudulent—that Virtus ceased using the AlphaSector's past returns from 2001 through 2008 in its sales and marketing materials.

109. At or about this time, F-Squared sent out a letter to its separately managed account indicating that the AlphaSector strategy's past returns were back-tested. This letter was not sent to Virtus's investors in its AlphaSector funds.

110. Despite its knowledge, Virtus failed to “come clean” to AlphaSector funds investors with the truth about the falsity and misleading nature of its previous sales and marketing materials. Virtus's shareholders knew nothing about the change until news of the SEC investigation and subsequent charging of F-Squared.

Virtus Knowingly Adopted F-Squared's False AlphaSector Track Record as Its Own

111. Since 2009, Virtus has issued at least five AlphaSector funds with F-Squared as a co-advisor.

112. To sell the AlphaSector funds, Virtus adopted F-Squared's sales and advertising materials as its own. Virtus relied on F-Squared to educate and train its salespeople on the AlphaSector strategy. Virtus's sales personnel were all instructed to use the past track record as a selling point, and to represent that the AlphaSector's past returns were based on live client assets and were not back-tested.

113. Under SEC Rules, Virtus had duties to ensure that its sales and marketing materials were not false and misleading. By adopting F-Squared's false statements, Virtus made the false statements its own.

114. Virtus also provided its sales personnel with the AlphaSector's registration statements and SEC filings to be used as sales materials. Virtus had a legal duty to verify that statements made in their public registration statement and prospectus filings for the AlphaSector funds about the strategy's past track record were truthful, accurate and complete. Virtus did not do so, and incorporated F-Squared's false statements in its registration filings for the AlphaSector funds.

115. For most of the Class Period, as well as earlier, Virtus included information and charts with the AlphaSector funds' false and misleading track record in registration statements and prospectuses. For example, in its January 27, 2011 Form N-1A Registration Statement filed by VOT with the SEC, the following charts were included:

The tables below show performance of the AlphaSector Rotation Index as compared with the performance of the S&P 500 Index. The AlphaSector Rotation Index and the S&P 500 Index are not available for direct investment and their performance does not reflect

the fees, expenses or taxes associated with the active management of an actual portfolio. Both indexes are calculated on a total return basis with dividends reinvested.

	AlphaSector Rotation Index	S&P 500 Index
Annual Returns (calendar year)		
2002	-8.18%	-22.10%
2003	9.38%	28.68%
2004	13.89%	10.88%
2005	5.65%	4.91%
2006	14.40%	15.79%
2007	14.18%	5.49%
2008	-8.54%	-37.00%
2009	25.37%	26.46%
2010	15.50%	15.06%

	1 Year	5 Years	Since Inception of AlphaSector Rotation Index (4/1/01)(1)
Average Annual Total Return (for the periods ended 12/31/10)			
AlphaSector Rotation Index	15.50%	11.58%	7.94%
S&P 500® Index	15.06%	2.29%	2.77%

(1) The Index inception date is April 1, 2001; it commenced daily calculation and dissemination by NASDAQ OMX with a base value 1,000.00 on October 13, 2008.

The tables below show performance of the AlphaSector Premium Index as compared with the performance of the S&P 500 Index. The AlphaSector Premium Index and the S&P 500 Index are not available for direct investment and their performance does not reflect the fees, expenses or taxes associated with the active management of an actual portfolio. Both indexes are calculated on a total return basis with dividends reinvested.

	AlphaSector Premium Index	S&P 500 Index
Annual Returns (calendar year)		
2002	5.04%	-22.10%
2003	24.07%	28.68%
2004	14.90%	10.88%
2005	6.83%	4.91%
2006	16.81%	15.79%
2007	14.86%	5.49%
2008	-1.13%	-37.00%
2009	32.22%	26.46%
2010	17.66%	15.06%
		Since Inception of AlphaSector Premium Index (4/1/01)(1)
Average Annual Total Return (for the periods ended 12/31/10)	1 Year	5 Years
AlphaSector Premium Index	17.66%	15.59%
		13.72%

S&P 500® Index	15.06%	2.29%	2.77%
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(1) The Index inception date is April 1, 2001; it commenced daily calculation and dissemination by NASDAQ OMX with a base value 100.00 on January 3, 2011.

116. In its Settlement with F-Squared, the SEC found that these above statements were false and misleading.

117. During most of the Class Period, Virtus also included the statement in its prospectuses that “[t]he AlphaSectorSM Rotation Index (ASRX) is an active public index published by Nasdaq and designed to outperform the S&P 500® Index while also seeking to manage downside risk and lower overall volatility.” This exact language about outperforming the S&P 500 index was removed on or about Oct. 4, 2013.

118. In short, since the launch of its AlphaSector funds, Virtus has issued false and misleading registration statements and advertising materials to investors and its sales persons. Virtus may have relied on F-Squared for the statements about the AlphaSector’s past track record, but when it adopted these statements as its own, it had duties to verify the statements, and it utterly failed to comply with those duties.

Virtus’s Misrepresentations to Its Shareholders in Its Public Earnings Statements and SEC Filings

119. During the Class Period, Virtus had duties to know and disclose that its financial results, the growth in AUM, the growth in revenues and profits were the result of a massive sales and advertising fraud associated with its AlphaSector funds. Virtus misled its shareholders who did not know that what appeared to be an attractive growth stock was really a fraud.

120. Virtus’s shareholders trusted that the financial results reported by Virtus in its annual Form 10-K reports, its quarterly Form 10-Q reports and its Form 8-K press releases were truthful, accurate and complete. The Company’s growth in assets under management, revenues

and profits were astonishing and corresponded to the AlphaSector funds, its highest fee products, which contributed to the results.

121. These results drove Virtus's stock price from \$18 per share to over \$235 per share, appreciation of more than 12 times. Virtus's stock price became artificially inflated by the fraudulent advertising and sales of its highest fee-generating, and fastest-growing, product – the AlphaSector funds.

122. Defendants Aylward and Angerthal certified Virtus's financial results during the Class Period and that it had sufficient internal controls

123. No shareholder knew, or could possibly have inferred, that Virtus's business growth, revenues and profits were based on a lie; the reality of the AlphaSector track record was certainly not public knowledge. This material omission did not become known to Virtus's shareholders until news of the *Wells Notice* and then the SEC Settlement against F-Squared and Present became public.

124. In fact, during the Class Period, Virtus represented to its shareholders in each of its Form 10-Ks that it was monitoring its funds and managers. The Form 10-Ks state:

Our investment management services are provided by investment managers who are registered investment advisers under the Investment Advisers Act of 1940, as amended (the "Investment Advisers Act"). The investment managers are responsible for portfolio management activities for our retail and institutional products operating under advisory or subadvisory agreements. We provide our affiliated managers with distribution, operational and administrative support, thereby allowing each affiliated manager to focus on investment management....**We monitor the quality of our managers' services by assessing their performance, style, consistency and the discipline with which they apply their investment process.**

125. Virtus's representation to shareholders that it monitored the "quality" and performance of its managers is false and misleading. Had Virtus properly monitored F-Squared, it would known and disclosed that the AlphaSector funds' track record from 2001 through 2008

was false and misleading. Virtus also would have detected that F-Squared lacked records or documentation to verify its past results. Virtus further would have detected that F-Squared's sales and marketing materials about the AlphaSector strategy were false and misleading to investors. Virtus would also have realized that Present, F-Squared's CEO, was additionally guilty of making numerous false statements to the public.

126. Virtus employed the sales professionals who sold and distributed the AlphaSector funds through broker-dealers and financial advisors. Virtus's sales professionals and distribution channels are referred to in its SEC filings. Virtus was responsible for the regulatory compliance and oversight of its sales staff which sold and distributed the AlphaSector funds, as well as the false advertising materials and registration statements which it adopted as its own.

127. Based on the foregoing, Virtus knew that its financial results, the growth in AUM, the growth in revenues and profits were the result of a massive sales and advertising fraud associated with its AlphaSector funds. Virtus further knew that its stock price was artificially inflated by the growth from its sales of AlphaSector funds.

128. Virtus has also deceived its investors and failed to provide any disclosure to about its liability for the AlphaSector fraud. In the Company's latest Form 10-Q, filed on November 7, 2014, there was no disclosure of the SEC's investigation of its subadviser F-Squared, or of any investigation against Virtus. The Company further stated that the "outcomes of its legal or regulatory matters are not likely, either individually or in the aggregate, to have a material adverse effect on its consolidated financial condition."

129. In view of the impact which the AlphaSector funds have on Virtus's financial condition, this is a false and material representation if Virtus has, in fact, been notified by the SEC that it is under investigation. According to news reports, Virtus spokesman Joe Fazzino

has declined to comment on whether or not his firm has received a Wells notice from the SEC, and stated that there is no reason to update its previous Form 10-Q statement.

130. On January 29, 2015 Virtus chief executive George Aylward told analysts on the company's fourth-quarter conference call that "we're not going to answer any questions related to the subadvisor or any regulatory matter."

131. In sum, Virtus's has misled its investors about its potential liability and regulatory exposure to the SEC due to its knowledge of, involvement in and failure to prevent F-Squared's fraud. Virtus has concealed its potential liability from its investors, and misled them about the impact the revelation of F-Squared's fraud and SEC investigation had and will have on its earnings, assets under management and financial condition.

CLASS ACTION ALLEGATIONS

132. This is a class action pursuant to Rules 23(a) and (b)(3) of the federal Rules of Civil Procedure on behalf of a Class of all persons and entities who purchased or otherwise acquired Virtus's stock publicly traded on the NASDAQ stock market during the Class Period, and were damaged thereby. Excluded from the Class are (1) Virtus, and its officers, directors, employees, affiliates, legal representatives, predecessors, successors and assigns, and any entity in which any of them have a controlling interest or are a parent; and (b) all Defendants, their immediate families, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any entity in which any of them has a controlling interest.

133. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Virtus's shares traded on the NASDAQ under the ticker symbol "VRTS." While the exact number of Class members is unknown to Plaintiff at this time and can only be obtained through appropriate discovery, Plaintiff believes that there are

thousands of Class members located throughout the United States. Record owners and other members of the Class may be identified from records maintained by Virtus and/or its transfer agents and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions.

134. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. The questions of law and fact common to the Class include (1) whether Defendants violated the federal securities laws, including the Exchange Act; (2) whether Defendants omitted and/or misrepresented material facts about the source of its business, revenues and profits from AlphaSector funds that was known and material; (3) whether Defendants knew or recklessly disregarded that their statements were false or misleading; (4) whether the market price of Virtus was artificially inflated during the Class Period due to the material misrepresentations and failures to correct the material misrepresentations complained of herein; and (5) the extent to which members of the Class have sustained damages and the proper measure of any such damages.

135. Plaintiff's claims are typical of the claims of other Class members, as all members of the Class were similarly affected by Defendants' wrongful conduct in violation of federal law as complained of herein.

136. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel that is competent and experienced in class and securities litigation. Plaintiff has no interest that is in conflict with, or otherwise antagonistic to the interests of the other Class members.

137. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in management of this action as a class action.

PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET

138. At all relevant times, the market for Virtus's stock was an efficient market for the following reasons, among others: (1) its shares were listed and actively traded on the NASDAQ, a highly efficient market; (2) as an issuer of shares of publicly traded stock, Virtus filed periodic public reports on Forms 8-K, 10-Q and 10-K with the SEC; (3) Virtus also regularly issued press releases that were carried by the national news wires, were publicly available and entered the public marketplace.

139. As a result, the market for Virtus's stock promptly digested current information regarding Virtus from all publicly available sources and reflected such information in Virtus's stock price.

140. Under these circumstances, all purchasers of the Virtus's stock during the Class Period suffered similar injury through their purchases of stock at artificially inflated prices and a presumption of reliance applies.

COUNT I

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against Defendants

141. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

142. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Virtus's stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

143. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Virtus's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

144. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Virtus's ostensible growth in business, assets under management, revenues and profits from the AlphaSector funds, their prior track record and regulatory compliance, as specified herein.

145. These Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Virtus's ostensible growth in business, assets under management, revenues and profits from the AlphaSector funds, their prior track record and regulatory compliance, which included the making of, or the participation

in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Virtus and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

146. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at Virtus, VIA and VOA during the Class Period and members of these entities' management team or had control thereof; (ii) each of these Defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Virtus, VIA and VOT was privy to and participated in the creation, development and reporting of the Virtus and its subsidiaries' periodic disclosures to investors; (iii) each of these Defendants had access to information which would have revealed the fraud behind the AlphaSector funds, and the duty to discover the fraud; and (iv) each of these Defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

147. Defendants had actual knowledge of misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing from the investing public the true illegal source of its growth in AlphaSector fund sales, and supporting the artificially inflated price of its

securities. As demonstrated by the allegations above, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

148. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of the Virtus's stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Virtus's stock during the Class Period at artificially high prices and were damaged thereby.

149. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding Virtus, which was not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired Virtus's stock, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

150. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

151. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of Virtus's stock during the Class Period.

COUNT II

Violation of Section 20(a) of the Exchange Act Against the Individual Defendants

152. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

153. The Individual Defendants acted as controlling persons of Virtus within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions at Virtus, VIA and VOT, and their participation in and/or awareness of these entities' operations and/or intimate knowledge of the false statements filed by these entities' with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiff contends are and were false and misleading. These Defendants were provided with or had unlimited access to copies of Virtus's and its subsidiaries' reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

154. In addition, each of these Defendants had direct and supervisory involvement in the day-to-day operations of Virtus, VIA and VOT and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

155. As set forth above, the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Virtus's stock during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- A. Determining that this action is a proper class action and certifying Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Awarding such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: New York, New York
February 20, 2015

ZAMANSKY, LLC



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