State's Attorney General has the power to bring such claims resulting from the sale or negotiation of any securities or commodities, and that there is no private right of action. (Defs.' Mem. Of Law in Support of Mot. To Dismiss at 44-46.) The plaintiffs counter that New York's Martin Act does not apply to nor bar their claims. (Pls.' Mem. Of Law in Opp'n to Mot. To Dismiss at 48-49.)

The plaintiffs correctly assert that New York law does not govern their claims. In Count IV of the amended complaint, the plaintiffs allege that the defendants failed to disclose that they or their affiliates had a pecuniary interest in the AIG Investment "despite mismanagement" of the AIG fund. The plaintiffs contend that they relied on the information and advice given by defendants, and suffered a substantial pecuniary loss as a result. (Am. Compl.¶¶ 56-57.) In Count V, the plaintiffs accuse the defendants of breaching a fiduciary duty owed to them. *(Id.* ¶¶ 59-61.) Neither of these claims involves the "construction, validity and performance" of the Amended 1999 Note, and therefore, they are not governed by New York law.2

3. *THE AMENDED COMPLAINT'S NONDISCLOSURE ALLEGATIONS ARE FACTUAL ISSUES TO BE DETERMINED AT TRIAL*

Citibank and Citigroup claim that *every* count in the amended complaint is premised upon their alleged failure to disclose a conflict of interest. They aver, however, that SSB's relationship with AIG was disclosed to the plaintiffs both in the "pitch book" and in the Offering Circular used to market the AIG investment. Accordingly, therefore, the defendants assert that each count of the amended complaint should be dismissed to the extent that it is premised on the defendants' alleged failure to disclose the relationship between AIG and SSB. (Mem. Of Law in Support of Defs.' Mot. To Dismiss at 36-39.) The plaintiffs challenge the defendants' reliance on these documents and the propriety of considering them under Rule 12(b)(6). Alternatively, they claim that these documents *confirm* the defendants' failure to disclose the existence of a continuing investment banking relationship with AIG that would render the defendants unable to advise the plaintiffs in an impartial, objective manner. (Pis.' Mem. Of Law in Opp'n to Mot. To Dismiss at 32-36.)

Although generally, a district court may not consider matters extraneous to the pleadings, I may consider "a document *integral to or explicitly relied* upon in the complaint ... without converting the motion to dismiss into one for summary judgment." *U.S. Express Lines Ltd. v. Higgins,* 281 F.3d 383, 388 (3d Cir.2002) (emphasis added) (quoting *In re Burlington Coat Factory Litig.,* 114 F.3d 1410, 1426 (3d Cir. 1997)). Because the parties dispute whether the document in question is the actual "pitch book" referenced in the amended complaint, however, I find that whether the defendants disclosed SSB's relationship to AIG to the plaintiffs is a disputed fact that precludes a Rule 12(b)(6) dismissal.

4. *THE COMPLAINT ADEQUATELY ALLEGES THAT THE DEFENDANTS' WRONGFUL CONDUCT CAUSED THE PLAINTIFFS' LOSSES*

Citibank and Citigroup argue that the plaintiffs have failed to allege adequately that the defendants' actions caused the plaintiffs' losses under New York law. (Mem. Of Law in Supp. of Defs' Mot. to Dismiss at 40-44.) >As noted above, Virgin Islands law governs these claims. The plaintiffs maintain that they have adequately stated causation by alleging that the defendants did not disclose their relationship with AIG and did not promptly assist them in understanding how to remove AIG as fund manager—presumably because of a conflict of interest or loyalty owed to AIG. But for this delay, the plaintiffs complain that they could have obtained a new fund manager or reduced their losses in some other fashion. Accordingly, the amended complaint adequately alleges that the defendants' wrongful conduct caused their financial losses.

5. *PLAINTIFFS' CLAIMS OF BREACH OF FIDUCIARY DUTY AND NEGLIGENT MISREPRESENTATION NEED NOT BE DISMISSED*

Citibank and Citigroup argue that the claim of breach of fiduciary duty should be dismissed because the Subscription Agreement between AIG and the plaintiffs explicitly states that they did not owe the plaintiffs such a duty, Moreover, they assert that New York law does not recognize a fiduciary duty owed by a bank to its customer or by a broker to its customer. Finally, the defendants argue that the plaintiffs' negligent misrepresentation claim must also be dismissed because the defendants owed the plaintiffs no fiduciary duty. (Mem. Of Law in Supp. of Defs.' Mot. to Dismiss at 46-50.) The plaintiffs counter that, even under New York law, the issue whether a fiduciary duty exists requires a fact-specific analysis of the totality of the circumstances surrounding the relationship between the plaintiffs and the defendants. The plaintiffs contend, however, that under the controlling Virgin Islands law, they have stated claims for breach of fiduciary duty and negligent misrepresentation. They argue that the defendants owed them a fiduciary duty because they "cultivated a relationship of trust over a fifteen-year span as their private banker" and then used this trust to market new and inherently risky investment opportunities which became even more risky because of defendants' tortious conduct. (Pls.' Mem. Of Law in Opp'n to Mot. To Dismiss at 41-46.)

A. THE AMENDED COMPLAINT ADEQUATELY STATES A CLAIM FOR BREACH OF FIDUCIARY DUTY

In Count V of the amended complaint, the plaintiffs allege that the defendants cultivated a relationship of trust with the plaintiffs over fifteen-years as their private banker, and that the defendants breached their fiduciary duty owed to the