plaintiffs by failing to disclose a conflict of interest and effectively "forced" the plaintiffs to keep their funds in a failing investment. The plaintiffs claim that the defendants "served as [their] financial investment advisor and broker, as well as providing other financial and banking services to [p]laintiffs, and thereby formed a fiduciary relationship with [p]laintiffs and other investors." (Am.Compl.¶¶ 10, 59-60.)

In typical lender-borrower relationships, there is a presumption that the parties operate at arms-length and in their own interest. *Jo-Ann's Launder Ctr., Inc. v. Chase Manhattan Bank, N.A.,* 854 F.Supp. 387, 392 (D.Vi.1994). A fiduciary relationship may arise, however, depending upon the particular circumstances of the financial relationship. This may occur, for example, when a lender has substantial control over the borrower's business affairs. *Id.* Here, the plaintiffs have alleged that their relationship with Citibank and Citigroup was not the "garden-variety" at arms-length banking relationship. They claim that they and the defendants have a fifteen-year relationship and that the defendants acted as their financial advisor. I find that, for purposes of surviving a Rule 12(b)(6) motion, the amended complaint adequately states a claim for breach of fiduciary duty.

In addition, I find that the defendants' argument that the Subscription Agreement between AIG and the plaintiffs bars these claims against them is without merit. A fair reading of the Subscription Agreement compels the conclusion that its main purpose is to protect AIG's interests in its dealing with Epstein and FTC. The agreement discusses at length the process by which AIG, through its agent, Citibank, will deliver income notes to Epstein, the purchaser. The Subscription Agreement contains a clause stating that neither AIG, SSB, nor Citibank

> is acting as a fiduciary or financial or investment adviser for the Purchaser and the Purchaser is not relying on any written or oral advice, counsel or representations of the Company, the Investment Manager, the Placement Agent [SSB], the Agent or any of their respective affiliates .. . [and that] [t]he Purchaser has consulted with its own legal, regulatory, tax, business investment financial, and accounting advisers to the extent it has deemed necessary, and has made its own investment decisions based upon its own judgments and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Company, the Investment Manager, the Placement Agent, the Agent or any of their respective affiliates.

(Mem. In Supp. of Defs.' Mot. To Dismiss, Ex. C. at 10-11, ¶ i.) Although this document alludes to Citibank's role in this one transaction, the agreement does not speak to the fifteen-year relationship between the defendants and the plaintiffs that is the gravamen of the amended complaint. Moreover, Citibank is not a party to nor did it sign the Subscription Agreement. I find, therefore, that the Subscription Agreement does not dispose of the plaintiffs' breach of fiduciary duty claim as a matter of law.

B. THE AMENDED COMPLAINT ADEQUATELY STATES A CLAIM OF NEGLIGENT MISREPRESENTATION

In the Virgin Islands, the elements of negligent misrepresentation are:

> [o]ne who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

RESTATEMENT (SECOND) OF TORTS § 552 (1977). Count IV of the amended complaint alleges that the defendants, negligently failed to disclose that they or their affiliates had a pecuniary interest in the AIG investment and that the plaintiffs relied upon the information and advice provided by the defendants to their detriment. (Am.Compl.¶¶ 55-56.) I find that Count IV thus adequately states a claim of negligent misrepresentation.

6. *THE RESCISSION AND PUNITIVE DAMAGES COUNTS ARE NOT CAUSES OF ACTION*

The defendants contend that this Court should dismiss Counts VI and VII—for rescission of the note and for punitive damages—because each claim seeks specific relief without asserting any claim for relief. (Mem. Of Law in Supp. of Defs.' Mot. to Dismiss at 51-52.) Whereas the plaintiffs, in their amended complaint, have set out their request for rescission of the Amended 1999 Note and punitive damages in the form of additional causes of action, I will require them to reframe them as part of the *ad damnum* clause.

D. COUNTS I, II, III, AND VI OF THE PLAINTIFFS' AMENDED COMPLAINT FAIL TO MEET FEDERAL RULE OF CIVIL PROCEDURE 9(B)'S HEIGHTENED PLEADING STANDARD FOR CLAIMS OF FRAUD

Finally, the defendants argue that Counts I, II, III, and VI should be dismissed due to the plaintiffs' failure to plead fraud with the requisite particularity as required under Federal Rule of Civil Procedure 9(b). They aver that the amended complaint is "rife with sweeping conclusory allegations but fatally short on detail" and that the fraud claims fail to explicitly reference Citigroup, do not state any dates on which the alleged conduct occurred, and do net name any specific employees of the defendants. The defendants contend that the complaint simply does not put them on notice of what exactly each is accused. (Mem. of Law in Supp. of Mot. to Dismiss at 32-35.) The plaintiffs counter that, although the