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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Reorganized Debtor.

Chapter 11

Case No. 19-34054 (sgj)

**APPENDIX IN SUPPORT OF HIGHLAND CLO MANAGEMENT, LTD.
AND JAMES DONDERO'S RESPONSE TO HIGHLAND CAPITAL
MANAGEMENT, L.P.'S MOTION FOR (A) A BAD FAITH FINDING
AND (B) AN AWARD OF ATTORNEYS' FEES AGAINST HIGHLAND
CLO MANAGEMENT, LTD. AND JAMES DONDERO
IN CONNECTION WITH HCLOM CLAIMS 3.65 AND 3.66**

Highland CLO Management, Ltd. ("HCLOM") and James Dondero ("Dondero") file this Appendix in Support of their Response to Debtor Highland Capital Management, L.P.'s Motion for (A) a Bad Faith Finding and (B) an Award of Attorneys' Fees against Highland CLO Management, Ltd. and James Dondero in Connection with HCLOM Claims 3.65 and 3.66 of Highland CLO Management, Ltd.



Exhibit	Document	Appendix Page(s)
1	Official Form 206Sum, dated December 13, 2019, Dkt. 247 in Case No. 19-34054-sgj-11	1-83
2	Notice of Filing of Debtor's Amended Schedules, dated September 22, 2020, Dkt. 1082 in Case No. 19-34054-sgj-11	84-113
3	Promissory Note from Highland Capital Management, L.P. to Acis Capital Management, L.P. in the amount of \$12,666,446, dated October 2016, Dkt. 3695-3 in Case No. 19-34054-sgj-11	114-120
4	Agreement for Purchase and Sale of CLO Participation Interests by and between Acis Capital Management, L.P. and Highland Capital Management, L.P., dated October 7, 2016, Dkt. 3695-3 in Case No. 19-34054-sgj-11	121-135
5	Assignment and Transfer Agreement between Acis Capital Management, L.P. and Highland Capital Management, L.P., dated October 7, 2016, Dkt. 3695-3 in Case No. 19-34054-sgj-11	136-142
6	Transcript of October 20, 2021 Hearing on Motion to Compromise Controversy with Acis Capital Management, Case No. 19-34054-sgj-11	143-399
7	Acis CLO Notices of Optional Redemption, dated April 30, 2018, Dkt. 3695-2 in Case No. 19-34054-sgj-11	400-412
8	Ex Parte Temporary Restraining Order, dated June 21, 2018, Dkt. 310 in Case No. 18-30264-sgj-11	413-419
9	Agreed Extension of Temporary Restraining Order, dated June 29, 2018, Dkt. 354 in Case No. 18-30264-sgj-11	420-428
10	Bench Ruling and Memorandum of Law in Support of: (1) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan, dated January 31, 2019, Dkt.827 in Case No. 18-30264-sgj-11	429-476
11	Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified, dated January 31, 2019, Dkt.829 in Case No. 18-30264-sgj-11	477-706
12	Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim), dated June 20, 2019, Dkt. 157 in Case No. 18-03078-sgj	707-815
13	Highland Capital's Partial Motion to Dismiss the Second Amended Complaint and Brief in Support, dated July 22, 2019, Dkt. 171 in Case No. 18-03078-sgj	816-849
14	Acis Proof of Claim #23, dated December 31, 2019, in Case No. 18-30264-sgj-11	850-964

Exhibit	Document	Appendix Page(s)
15	Debtor Objection to Acis Claim, dated June 23, 2020, Dkt.771 in Case No. 19-34054-sgj-11	965-1030
16	Order Approving Debtor's Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP, LLC (Claim No. 23) (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156, and (C) Acis Capital management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith, dated October 28, 2020, Dkt.1302 in Case No. 19-34054-sgj-11	1031-1055
17	Acis Motion to Dismiss Less than All Defendants, dated November 3, 2010, Dkt. 215 in Case No. 18-03078-sgj	1056-1060
18	Order Dismissing Less than All Defendants, dated November 6, 2020, Dkt. 216 in Case No. 18-03078-sgj	1061-1063
19	Declaration of Frank Waterhouse in Support of First Day Motions, dated December 4, 2019, Dkt. 11 in Case No. 19-34054-sgj-11	1064-1108
20	Judgment from the Court of Appeal of the Cayman Islands, HEB Enterprises Ltd and another v. Bernice Richards (as Personal Representative of the Estate of Anthony Richards, Deceased, dated February 21, 2023	1109-1130

Dated: December 16, 2024

Respectfully submitted,
STINSON LLP

/s/ Deborah Deitsch-Perez

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*Counsel for Highland CLO Management, Ltd. And
James Dondero*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 13, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

Exhibit 1

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 206Sum
Summary of Assets and Liabilities for Non-Individuals

12/15

Part 1: Summary of Assets

1. **Schedule A/B: Assets-Real and Personal Property** (Official Form 206A/B)

1a. Real property: Copy line 88 from <i>Schedule A/B</i>	\$ <u>523,970.00</u>
1b. Total personal property: Copy line 91A from <i>Schedule A/B</i>	\$ <u>409,580,813.30</u>
1c. Total of all property: Copy line 92 from <i>Schedule A/B</i>	\$ <u>410,104,783.30</u>

Part 2: Summary of Liabilities

2. Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D) Copy the total dollar amount listed in Column A, <i>Amount of claim</i> , from line 3 of <i>Schedule D</i>	\$ <u>34,862,225.94</u>
3. Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)	
3a. Total claim amounts of priority unsecured claims: Copy the total claims from Part 1 from line 5a of <i>Schedule E/F</i>	\$ <u>Unknown</u>
3b. Total amount of claims of nonpriority amount of unsecured claims: Copy the total of the amount of claims from Part 2 from line 5b of <i>Schedule E/F</i>	+\$ <u>244,455,350.78</u>
4. Total liabilities Lines 2 + 3a + 3b	\$ <u>279,317,576.72</u>



Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 206A/B
Schedule A/B: Assets - Real and Personal Property

12/15

Disclose all property, real and personal, which the debtor owns or in which the debtor has any other legal, equitable, or future interest. Include all property in which the debtor holds rights and powers exercisable for the debtor's own benefit. Also include assets and properties which have no book value, such as fully depreciated assets or assets that were not capitalized. In Schedule A/B, list any executory contracts or unexpired leases. Also list them on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G).

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. At the top of any pages added, write the debtor's name and case number (if known). Also identify the form and line number to which the additional information applies. If an additional sheet is attached, include the amounts from the attachment in the total for the pertinent part.

For Part 1 through Part 11, list each asset under the appropriate category or attach separate supporting schedules, such as a fixed asset schedule or depreciation schedule, that gives the details for each asset in a particular category. List each asset only once. In valuing the debtor's interest, do not deduct the value of secured claims. See the instructions to understand the terms used in this form.

Part 1: Cash and cash equivalents

1. Does the debtor have any cash or cash equivalents?

- No. Go to Part 2.
- Yes Fill in the information below.

All cash or cash equivalents owned or controlled by the debtor **Current value of debtor's interest**

3.	Checking, savings, money market, or financial brokerage accounts (Identify all)	Type of account	Last 4 digits of account number	Current value of debtor's interest
3.1.	<u>NexBank</u>	<u>Checking Account</u>	<u>X735</u>	<u>\$1,453.40</u>
3.2.	<u>NexBank</u>	<u>Checking Account</u>	<u>X668</u>	<u>\$0.00</u>
3.3.	<u>NexBank</u>	<u>Checking Account</u>	<u>X513</u>	<u>\$291,309.27</u>
3.4.	<u>NexBank</u>	<u>Money Market Deposit Account</u>	<u>X130</u>	<u>\$190.82</u>
3.5.	<u>BBVA Compass</u>	<u>Checking Account</u>	<u>X342</u>	<u>\$2,125,975.28</u>
3.6.	<u>Jefferies</u>	<u>Brokerage Account</u>	<u>X932</u>	<u>\$0.00</u>
3.7.	<u>Maxim Group</u>	<u>Brokerage Account</u>	<u>X885</u>	<u>\$96.17</u>

Debtor Highland Capital Management, L.P. Case number (If known) 19-34054-SGJ
 Name

4. **Other cash equivalents** (Identify all)

5. **Total of Part 1.**

Add lines 2 through 4 (including amounts on any additional sheets). Copy the total to line 80.

\$2,419,024.94

Part 2: Deposits and Prepayments

6. **Does the debtor have any deposits or prepayments?**

- No. Go to Part 3.
 Yes Fill in the information below.

7. **Deposits, including security deposits and utility deposits**
 Description, including name of holder of deposit

7.1. Certificate of Deposit (NexBank) \$135,205.21

7.2. Security Deposit (200/300 Crescent Ct #700 Dallas, TX 75201) - Crescent TC Investors \$118,397.05

7.3. Deposit for Maple Avenue Holdings (Equity Method Investment) \$10,000.00

7.4. Deposit for expense reimbursement. \$1,474.60

8. **Prepayments, including prepayments on executory contracts, leases, insurance, taxes, and rent**
 Description, including name of holder of prepayment

8.1. Other Prepaid Expenses (Unreconciled Book Balance) \$830,899.73

8.2. Prepaid Retainer - Development Specialists, Inc. \$240,340.00

8.3. Prepaid Legal Retainer - Pachulski Stang Ziehl & Jones LLP (1) \$500,000.00

8.4. Prepaid Retainers - Kurtzman Carson Consultants LLC (1) \$50,000.00

8.5. Prepaid Rent (200/300 Crescent Ct #700 Dallas, TX 75201) - Crescent TC Investors \$96,294.05

(1) Pre-petition balance was not applied.

9. **Total of Part 2.**

Add lines 7 through 8. Copy the total to line 81.

\$1,982,610.64

Debtor Highland Capital Management, L.P. Case number (If known) 19-34054-SGJ
 Name

Part 3: Accounts receivable

10. Does the debtor have any accounts receivable?

- No. Go to Part 4.
 Yes Fill in the information below.

11. **Accounts receivable Exhibit A**

11a. 90 days old or less: 3,482,893.80 - 0.00 = \$3,482,893.80
 face amount doubtful or uncollectible accounts

11b. Over 90 days old: 32,304,511.36 - 22,380,459.81 = \$9,924,051.55
 face amount doubtful or uncollectible accounts

12. **Total of Part 3.**

Current value on lines 11a + 11b = line 12. Copy the total to line 82.

<u>\$13,406,945.35</u>

Part 4: Investments

13. Does the debtor own any investments?

- No. Go to Part 5.
 Yes Fill in the information below.

			Valuation method used for current value	Current value of debtor's interest
14. Mutual funds or publicly traded stocks not included in Part 1 Name of fund or stock:				
15. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture Name of entity:	% of ownership			
15.1. <u>Equity Method Investments (Exhibit B)</u>	<u>Multiple</u> %	<u>Book Value</u>		<u>\$167,226,227.63</u>
15.2. <u>Investments at Fair Value (Exhibit C)</u>	<u>Multiple</u> %	<u>Fair Value</u>		<u>\$224,267,777.21</u>
16. Government bonds, corporate bonds, and other negotiable and non-negotiable instruments not included in Part 1 Describe:				
16.1. <u>Debtor owns defaulted corporate bonds.</u>		<u>N/A</u>		<u>\$0.00</u>

17. **Total of Part 4.**

Add lines 14 through 16. Copy the total to line 83.

<u>\$391,494,004.84</u>

Part 5: Inventory, excluding agriculture assets

18. Does the debtor own any inventory (excluding agriculture assets)?

- No. Go to Part 6.
 Yes Fill in the information below.

Part 6: Farming and fishing-related assets (other than titled motor vehicles and land)

Debtor Highland Capital Management, L.P. Case number (If known) 19-34054-SGJ
 Name

27. Does the debtor own or lease any farming and fishing-related assets (other than titled motor vehicles and land)?

- No. Go to Part 7.
 Yes Fill in the information below.

Part 7: Office furniture, fixtures, and equipment; and collectibles

38. Does the debtor own or lease any office furniture, fixtures, equipment, or collectibles?

- No. Go to Part 8.
 Yes Fill in the information below.

	General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
39.	Office furniture <u>Desk, chairs and other office furniture.</u>	<u>\$118,428.73</u>	<u>N/A</u>	<u>Unknown</u>
40.	Office fixtures			
41.	Office equipment, including all computer equipment and communication systems equipment and software <u>Computers, Software and Office Equipment</u>	<u>\$382,803.25</u>	<u>N/A</u>	<u>Unknown</u>
42.	Collectibles <i>Examples: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; china and crystal; stamp, coin, or baseball card collections; other collections, memorabilia, or collectibles</i>			
42.1.	Artwork	<u>\$0.00</u>	<u>Original Cost</u>	<u>\$231,657.53</u>

43. **Total of Part 7.** Add lines 39 through 42. Copy the total to line 86. \$231,657.53

44. **Is a depreciation schedule available for any of the property listed in Part 7?**
 No
 Yes
45. **Has any of the property listed in Part 7 been appraised by a professional within the last year?**
 No
 Yes

Part 8: Machinery, equipment, and vehicles

46. Does the debtor own or lease any machinery, equipment, or vehicles?

- No. Go to Part 9.
 Yes Fill in the information below.

	General description Include year, make, model, and identification numbers (i.e., VIN, HIN, or N-number)	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
47.	Automobiles, vans, trucks, motorcycles, trailers, and titled farm vehicles			
47.1.	<u>2015 GMC Sierra 2500 HD</u>	<u>\$0.00</u>	<u>Replacement</u>	<u>\$46,570.00</u>

48. **Watercraft, trailers, motors, and related accessories** *Examples: Boats, trailers, motors, floating homes, personal watercraft, and fishing vessels*

Debtor Highland Capital Management, L.P. Case number (If known) 19-34054-SGJ
 Name

49. **Aircraft and accessories**

50. **Other machinery, fixtures, and equipment (excluding farm machinery and equipment)**

51. **Total of Part 8.** **\$46,570.00**
 Add lines 47 through 50. Copy the total to line 87.

52. **Is a depreciation schedule available for any of the property listed in Part 8?**
 No
 Yes

53. **Has any of the property listed in Part 8 been appraised by a professional within the last year?**
 No
 Yes

Part 9: Real property

54. **Does the debtor own or lease any real property?**

- No. Go to Part 10.
 Yes Fill in the information below.

55. **Any building, other improved real estate, or land which the debtor owns or in which the debtor has an interest**

Description and location of property Include street address or other description such as Assessor Parcel Number (APN), and type of property (for example, acreage, factory, warehouse, apartment or office building, if available.	Nature and extent of debtor's interest in property	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
55.1. 30.433 Acres of raw land located at 14102 FM 986 Terrell, Texas 75160	100% Ownership	\$398,450.00	Tax records	\$523,970.00
55.2. Leasehold Improvements (200/300 Crescent Ct #700 Dallas, TX 75201)	Tenant	\$1,550,281.49	N/A	Unknown

56. **Total of Part 9.** **\$523,970.00**
 Add the current value on lines 55.1 through 55.6 and entries from any additional sheets. Copy the total to line 88.

57. **Is a depreciation schedule available for any of the property listed in Part 9?**
 No
 Yes

58. **Has any of the property listed in Part 9 been appraised by a professional within the last year?**
 No
 Yes

Part 10: Intangibles and intellectual property

59. **Does the debtor have any interests in intangibles or intellectual property?**

- No. Go to Part 11.
 Yes Fill in the information below.

Debtor Highland Capital Management, L.P. Case number (If known) 19-34054-SGJ
 Name

General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
60. Patents, copyrights, trademarks, and trade secrets			
61. Internet domain names and websites <u>139 Domain Names</u>	<u>\$0.00</u>	<u>N/A</u>	<u>Unknown</u>
62. Licenses, franchises, and royalties <u>3rd Party Private Equity Management Company</u>	<u>\$0.00</u>	<u>N/A</u>	<u>Unknown</u>
63. Customer lists, mailing lists, or other compilations			
64. Other intangibles, or intellectual property			
65. Goodwill			
66. Total of Part 10. Add lines 60 through 65. Copy the total to line 89.			Unknown
67. Do your lists or records include personally identifiable information of customers (as defined in 11 U.S.C. §§ 101(41A) and 107? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes			
68. Is there an amortization or other similar schedule available for any of the property listed in Part 10? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
69. Has any of the property listed in Part 10 been appraised by a professional within the last year? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

Part 11: All other assets

70. Does the debtor own any other assets that have not yet been reported on this form?
 Include all interests in executory contracts and unexpired leases not previously reported on this form.

- No. Go to Part 12.
 Yes Fill in the information below.

			Current value of debtor's interest
71. Notes receivable Description (include name of obligor)			
<u>Notes Receivable (Exhibit D)</u>	<u>150,331,222.61</u> Total face amount	- <u>Unknown</u> doubtful or uncollectible amount	= <u>Unknown</u>
72. Tax refunds and unused net operating losses (NOLs) Description (for example, federal, state, local)			
73. Interests in insurance policies or annuities			
74. Causes of action against third parties (whether or not a lawsuit has been filed)			

Debtor Highland Capital Management, L.P.
 Name

Case number (If known) 19-34054-SGJ

Exhibit E **Unknown**
 Nature of claim _____
 Amount requested _____

75. **Other contingent and unliquidated claims or causes of action of every nature, including counterclaims of the debtor and rights to set off claims**

76. **Trusts, equitable or future interests in property**

77. **Other property of any kind not already listed** *Examples: Season tickets, country club membership*

Defined Benefit Plan (Overfunded 12/31/18 balance \$323 thousand) **Unknown**

Estimated Deferred Fee Account value plus residual deferred fee accounts at NAV \$13.0 million fully reserved due to uncertain collectibility **Unknown**

78. **Total of Part 11.**

Add lines 71 through 77. Copy the total to line 90.

Unknown

79. **Has any of the property listed in Part 11 been appraised by a professional within the last year?**

- No
 Yes

Debtor Highland Capital Management, L.P. Case number (If known) 19-34054-SGJ
 Name

Part 12: Summary

In Part 12 copy all of the totals from the earlier parts of the form

Type of property	Current value of personal property	Current value of real property
80. Cash, cash equivalents, and financial assets. <i>Copy line 5, Part 1</i>	<u>\$2,419,024.94</u>	
81. Deposits and prepayments. <i>Copy line 9, Part 2.</i>	<u>\$1,982,610.64</u>	
82. Accounts receivable. <i>Copy line 12, Part 3.</i>	<u>\$13,406,945.35</u>	
83. Investments. <i>Copy line 17, Part 4.</i>	<u>\$391,494,004.84</u>	
84. Inventory. <i>Copy line 23, Part 5.</i>	<u>\$0.00</u>	
85. Farming and fishing-related assets. <i>Copy line 33, Part 6.</i>	<u>\$0.00</u>	
86. Office furniture, fixtures, and equipment; and collectibles. <i>Copy line 43, Part 7.</i>	<u>\$231,657.53</u>	
87. Machinery, equipment, and vehicles. <i>Copy line 51, Part 8.</i>	<u>\$46,570.00</u>	
88. Real property. <i>Copy line 56, Part 9.....></i>		<u>\$523,970.00</u>
89. Intangibles and intellectual property. <i>Copy line 66, Part 10.</i>	<u>\$0.00</u>	
90. All other assets. <i>Copy line 78, Part 11.</i>	+ <u>Unknown</u>	
91. Total. Add lines 80 through 90 for each column	<u>\$409,580,813.30</u>	+ 91b. <u>\$523,970.00</u>
92. Total of all property on Schedule A/B. Add lines 91a+91b=92		<u>\$410,104,783.30</u>

Highland Capital Management LP
 Case # 19-34054-SGJ
 Exhibit A - Schedule 11

Accounts Receivable	Less than 90 Days [1]			Greater than 90 days		
	Face Amount	Doubtful or Uncollectible	Total	Face Amount	Doubtful or Uncollectible	Total
Reimbursable Fund Expense	\$ 777,108.00	\$ -	\$ 777,108.00	\$ 6,082,319.61	\$ (1,934,540.89)	\$ 4,147,778.72
Unpaid Crusader Distributions [3]	-	-	-	6,324,234.00	(2,034,161.00)	4,290,073.00
Management Fees Receivable [2][5]	2,435,434.04	-	2,435,434.04	197,173.42	-	197,173.42
Cash Interest Receivable [2]	-	-	-	1,243,304.26	-	1,243,304.26
Shared Services Fee Receivable [2]	270,351.76	-	270,351.76	-	-	-
Highland Capital Management Singapore Pte Ltd [2]	-	-	-	35,158.50	-	35,158.50
Miscellaneous Receivable [2]	-	-	-	10,563.65	-	10,563.65
Acis Capital Management, LP Subadvisory and Shared Services Fee Receivable	-	-	-	5,350,931.62	(5,350,931.62)	-
Highland Capital of New York, Inc.	-	-	-	5,023,073.12	(5,023,073.12)	-
HERA [4]	-	-	-	7,231,103.00	(7,231,103.00)	-
Reimbursements from multiple funds managed by Acis Capital Management, LP	-	-	-	806,650.18	(806,650.18)	-
Total	\$ 3,482,893.80	\$ -	\$ 3,482,893.80	\$ 32,304,511.36	\$ (22,380,459.81)	\$ 9,924,051.55

[1] For shaded area, no aging analysis has been performed so entire amount is included in the greater than 90 days section.

[2] Doubtful or Uncollectible accounts are evaluated at year end.

[3] Represents distributions from all Crusader entities, including Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., and Highland Crusader Fund, L.P. and includes unpaid distributions due to a wholly owned subsidiary (Eames Ltd) as well as unpaid distributions with respect to deferred fees, which are reserved against as potentially uncollectible.

[4] Debtor has recorded \$3.3mm of net receivable as of the Petition Date, representing 2019 activity. This balance is normally evaluated for collectability as of year-end.

However, the 2019 activity is likely not collectible and has therefore been fully reserved for purposes of this schedule.

[5] Amount greater than 90 days represents the entire receivable earned, but not yet payable per one of the Debtor's management agreements.

For the receivable under this agreement, the entire \$197k amount has been earned during 2019 and a portion has been earned within the last 90 days.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit B - Schedule 15

Equity Method Investments [1]	Total [2]
Highland Select Equity Fund, L.P.	\$ 130,213,244.86
Wright, Ltd [3]	22,303,199.33
Starck, Ltd [3]	6,960,671.89
Eames, Ltd [3]	3,704,338.16
Maple Avenue Holdings LLC	2,250,501.95
Highland Capital Management Korea Ltd.	1,011,300.61
Highland Capital Management Singapore Pte Ltd	457,809.57
Penant Management LP	302,358.21
Eagle Equity Advisors, LLC	22,803.05
Total	<u><u>\$ 167,226,227.63</u></u>

[1] Investments are based on the debtors pro rata net asset value.
[2] Values based on most recent available information as of the petition date.
[3] Owned indirectly through 100% owned subsidiaries.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit C - Schedule 15

Investments, at fair value [1]	Total [2][3]
Investment Securities - Cost	\$ 66,791,277.56
Investment Securities - Mark To Market	(7,702,195.68)
Public Security - A	49,648,257.65
Private Security - A	36,949,197.43
Private Security - B	20,244,908.67
Public Security - B	13,275,503.51
Third Party Private Equity Fund - A	12,065,754.32
Public Security - C	10,718,068.67
Public Security - D	5,427,536.32
Private Security - C	3,346,763.82
Public Security - E	2,752,533.87
Private Portfolio Company - A	2,525,873.00
Public Security - F	1,721,458.16
Public Security - G	1,573,054.32
Public Security - H	1,397,752.04
Third Party Private Equity Fund - B	1,254,168.41
Public Security - I	792,313.43
Public Security - J	533,357.32
Private Security - D	481,354.43
Private Security - E	261,889.71
Private Security - F	132,002.75
Public Security - K	67,639.33
Public Security - L	8,928.17
Third Party Private Equity Fund - C [4]	380.00
Total	<u><u>\$ 224,267,777.21</u></u>

[1] Listing includes both publicly traded and private investments. Public securities are denoted with the description "Public Security - []". Additionally, \$28,651,800 of the total balance of "Investment Securities - Cost" and "Investment Securities - Mark to Market" is comprised of public securities.

[2] Values based on most recent available information as of the petition date.

[3] For third party private equity funds and investments in managed private funds values are at estimated net asset value.

[4] For [Third party private equity fund - c] value presented equals cost basis.

Highland Capital Management LP
 Case # 19-34054-SGJ
 Exhibit D - Schedule 71A

Notes Receivable	Total Face Amount [1]
Hunter Mountain Investment Trust	\$ 56,873,209.22
Affiliate Note Receivable - A	24,534,644.03
The Dugaboy Investment Trust	18,286,268.16
Affiliate Note Receivable - B	10,413,539.53
Affiliate Note Receivable - C	10,394,680.47
James Dondero	9,334,012.00
Highland Capital Management Services, Inc.	7,482,480.88
Siepe	2,019,256.35
Highland Mult Strategy Credit Fund, LP	3,269,000.00
Highland Capital Management Korea Ltd. [2]	3,132,278.05
Private Portfolio Company - A	2,198,610.05
Mark Okada	1,336,287.84
Private Portfolio Company - B	1,056,956.03
Total	\$ 150,331,222.61

[1] Doubtful or Uncollectible accounts are evaluated at year end.
 [2] Includes \$72,278.05 of intercompany receivable.

Highland Capital Management LP
 Case # 19-34054-SGJ
 Exhibit E - Schedule 74

Case Style	Date Filed	Damages	Summary	Status
Highland Capital Management, L.P. and Highland CLO Funding, Ltd. v. Robin Phelan as Chapter 11 Trustee v. Highland HCF Advisor, Ltd., Highland CLO Management, Ltd., and Highland CLO Holdings, Ltd., Adversary No. 18-03078 in the United States Bankruptcy Court for the Northern District of Texas	5/30/2018	\$4-\$8 million	Highland entities sought to compel redemptions in the Acis CLOs; Trustee counterclaimed for alleged fraudulent transfers	Motion practice.
Highland Capital Management, L.P. v. Patrick Daugherty v. Sierra Verde, LLC, Highland Employee Retention Assets, LLC, James Dondero, Patrick Boyce, and William L. Britain, Cause No. 05-14-01215-CB pending in the Texas Fifth Court of Appeals, Dallas, Texas	4/11/2012	None	Highland has collected on its verdict for \$2.8 million against Daugherty. Daugherty obtained a judgment for \$2.6 million against HERA. Daugherty has not appealed any of his affirmative claims against Highland, though he has appealed other claims.	Enforcement of Injunction versus Mr. Daugherty
NexBank, SSB and Highland Capital Management, L.P. v. Winstead, P.C., in the District Court of Dallas County, 193rd Judicial District	3/16/15	\$3 million	Law firm committed malpractice by incorrectly handling foreclosure of Park West property	Appeal.

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 206D

Schedule D: Creditors Who Have Claims Secured by Property

12/15

Be as complete and accurate as possible.

1. Do any creditors have claims secured by debtor's property?

- No. Check this box and submit page 1 of this form to the court with debtor's other schedules. Debtor has nothing else to report on this form.
- Yes. Fill in all of the information below.

Part 1: List Creditors Who Have Secured Claims

2. List in alphabetical order all creditors who have secured claims. If a creditor has more than one secured claim, list the creditor separately for each claim.

		Column A	Column B
		Amount of claim	Value of collateral that supports this claim
		Do not deduct the value of collateral.	
<p>2.1 Frontier State Bank</p> <p>Creditor's Name 5100 South I-35 Service Road Oklahoma City, OK 73129</p> <p>Creditor's mailing address</p> <p>selliot@frontier-ok.com</p> <p>Creditor's email address, if known</p> <p>Date debt was incurred 08/17/2015</p> <p>Last 4 digits of account number 1100</p> <p>Do multiple creditors have an interest in the same property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Specify each creditor, including this creditor and its relative priority.</p>	<p>Describe debtor's property that is subject to a lien 171,724 shares of voting common stock of privately held security.</p> <hr/> <p>Describe the lien Held in lender's name</p> <p>Is the creditor an insider or related party? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Is anyone else liable on this claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Fill out <i>Schedule H: Codebtors</i> (Official Form 206H)</p> <p>As of the petition filing date, the claim is: Check all that apply <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p>	<p>\$5,209,102.31</p>	<p>\$10,103,038.09</p>

<p>2.2 Jefferies LLC</p> <p>Creditor's Name 520 Madison Avenue, 12th Floor New York, NY 10022</p> <p>Creditor's mailing address</p> <p>Cbianchi@jefferies.com</p> <p>Creditor's email address, if known</p> <p>Date debt was incurred 05/24/2013</p> <p>Last 4 digits of account number 0932</p> <p>Do multiple creditors have an interest in the same property? <input type="checkbox"/> No <input type="checkbox"/> Yes. Specify each creditor, including this creditor and its relative priority.</p>	<p>Describe debtor's property that is subject to a lien The assets held within the Jefferies Prime Brokerage Account</p> <hr/> <p>Describe the lien Security interest in all collateral</p> <p>Is the creditor an insider or related party? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Is anyone else liable on this claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Fill out <i>Schedule H: Codebtors</i> (Official Form 206H)</p> <p>As of the petition filing date, the claim is: Check all that apply</p>	<p>\$29,653,123.63</p>	<p>\$82,007,136.69</p>
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Debtor Highland Capital Management, L.P. Case number (if know) 19-34054-SGJ
Name

- No Contingent
 Yes. Specify each creditor, including this creditor and its relative priority. Unliquidated Disputed

3. Total of the dollar amounts from Part 1, Column A, including the amounts from the Additional Page, if any. \$34,862,225.
94

Part 2: List Others to Be Notified for a Debt Already Listed in Part 1

List in alphabetical order any others who must be notified for a debt already listed in Part 1. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for secured creditors.

If no others need to notified for the debts listed in Part 1, do not fill out or submit this page. If additional pages are needed, copy this page.

Name and address	On which line in Part 1 did you enter the related creditor?	Last 4 digits of account number for this entity
Director of Compliance Re: Prime Brokerage Services - Jefferies 520 Madison Ave New York, NY 10022	Line <u>2.2</u>	
Frontier State Bank Attn: Mr. Steve Elliot 5100 South I-35 Service Road Oklahoma City, OK 73129	Line <u>2.1</u>	
Office of General Counsel RE: Prime Brokerage Services - Jefferies 520 Madison Ave New York, NY 10022	Line <u>2.2</u>	
Prime Brokerage Services Attn: Jefferies LLC 520 Madison Ave New York, NY 10020	Line <u>2.2</u>	

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 206E/F Schedule E/F: Creditors Who Have Unsecured Claims

12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY unsecured claims and Part 2 for creditors with NONPRIORITY unsecured claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B) and on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G). Number the entries in Parts 1 and 2 in the boxes on the left. If more space is needed for Part 1 or Part 2, fill out and attach the Additional Page of that Part included in this form.

Part 1: List All Creditors with PRIORITY Unsecured Claims

1. Do any creditors have priority unsecured claims? (See 11 U.S.C. § 507).

No. Go to Part 2.

Yes. Go to line 2.

2. List in alphabetical order all creditors who have unsecured claims that are entitled to priority in whole or in part. If the debtor has more than 3 creditors with priority unsecured claims, fill out and attach the Additional Page of Part 1.

		Total claim	Priority amount
		Unknown	Unknown
2.1	Priority creditor's name and mailing address All Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201		
	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed		
	Date or dates debt was incurred 2019		
	Basis for the claim: Employee Wages & Bonuses		
	Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)		
	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. List in alphabetical order all of the creditors with nonpriority unsecured claims. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

		Amount of claim
		Unknown
3.1	Nonpriority creditor's name and mailing address 45 Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201	
	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	
	Date(s) debt was incurred 2017, 2018 & 2019	
	Basis for the claim: Deferred Awards	
	Last 4 digits of account number _	
	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
3.2	Nonpriority creditor's name and mailing address 46 Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201	\$5,758,166.67
	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	
	Date(s) debt was incurred 2018	
	Basis for the claim: Prior year employee bonuses	
	Last 4 digits of account number _	
	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

Name

3.3	Nonpriority creditor's name and mailing address Abrams & Bayliss 20 Montchanin Road, Suite 200 Wilmington, DE 19807 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$108,399.83
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3.4	Nonpriority creditor's name and mailing address ACA Compliance Group 8403 Colesville Road Suite 870 Silver Spring, MD 20910 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$26,324.25
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3.5	Nonpriority creditor's name and mailing address Acis Capital Management c/o Brian P. Shaw Rogge Dunn Group PC 500 N. Akard Street Ste 1900 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
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3.6	Nonpriority creditor's name and mailing address Acis Capital Management, L.P. c/o Brian P. Shaw Rogge Dunn Group, PC 500 N. Akard Street Ste 1900 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
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3.7	Nonpriority creditor's name and mailing address Action Shred of Texas 1420 S. Barry Ave Dallas, TX 75223 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3,825.00
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3.8	Nonpriority creditor's name and mailing address Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue Suite 4100 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$113,947.86
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3.9	Nonpriority creditor's name and mailing address All Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Employee Bonuses</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
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Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ
 Name

3.10 Nonpriority creditor's name and mailing address **Allen ISD** As of the petition filing date, the claim is: *Check all that apply.* \$1,522.33
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
 Date(s) debt was incurred 2019
 Last 4 digits of account number 2301
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Ad Valorem Taxes
 Is the claim subject to offset? No Yes

3.11 Nonpriority creditor's name and mailing address **Allen ISD** As of the petition filing date, the claim is: *Check all that apply.* \$2,188.30
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
 Date(s) debt was incurred 2019
 Last 4 digits of account number 9351
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Ad Valorem Taxes
 Is the claim subject to offset? No Yes

3.12 Nonpriority creditor's name and mailing address **Alston & Bird LLP** As of the petition filing date, the claim is: *Check all that apply.* \$2,234.00
1201 W. Peachtree Street
Atlanta, GA 30309-3424
 Date(s) debt was incurred
 Last 4 digits of account number
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.13 Nonpriority creditor's name and mailing address **American Arbitration Association** As of the petition filing date, the claim is: *Check all that apply.* \$55,511.80
120 Broadway, 21st Floor
New York, NY 10271
 Date(s) debt was incurred
 Last 4 digits of account number
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.14 Nonpriority creditor's name and mailing address **American Solutions for Business** As of the petition filing date, the claim is: *Check all that apply.* \$7,470.04
NW#7794
PO Box 1450
Minneapolis, MN 55485-7794
 Date(s) debt was incurred
 Last 4 digits of account number
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.15 Nonpriority creditor's name and mailing address **Andrews Kurth** As of the petition filing date, the claim is: *Check all that apply.* \$137,637.81
111 Congress Ave
Suite 1700
Attn: Scott Brister
Austin, TX 78701
 Date(s) debt was incurred
 Last 4 digits of account number
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.16 Nonpriority creditor's name and mailing address **Arkadin, Inc.** As of the petition filing date, the claim is: *Check all that apply.* \$647.59
Lockbox #32726
Collection Center Dr
Chicago, IL 60693-0726
 Date(s) debt was incurred
 Last 4 digits of account number
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

3.17	Nonpriority creditor's name and mailing address ASW Law Limited Crawford House 50 Cedar Avenue Hamilton HM11 Bermuda Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$77,044.60
3.18	Nonpriority creditor's name and mailing address AT&T PO BOX 5001 Carol Stream, IL 60197-5001 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$927.16
3.19	Nonpriority creditor's name and mailing address AT&T Mobilty PO Box 6444 Carol Stream, IL 60197-6444 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$6,728.59
3.20	Nonpriority creditor's name and mailing address Bates White, LLC 2001 K Street, NW North Building, Suite 500 Washington, DC 20006 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$90,855.79
3.21	Nonpriority creditor's name and mailing address Bell Nunnally & Martin LLP 3232 MCKINNEY AVE STE 1400 DALLAS, TX 75204 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$6,934.79
3.22	Nonpriority creditor's name and mailing address Bloomberg Finance LP 731 Lexington Ave. New York, NY 10022 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$25,384.89
3.23	Nonpriority creditor's name and mailing address Boies, Schiller & Flexner LLP 5301 Wisconsin Ave NW Washington, DC 20015-2015 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$115,714.80
3.24	Nonpriority creditor's name and mailing address Brandywine Process Servers, Ltd. PO Box 1360 Wilmington, DE 19899 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$69.00

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

3.25	Nonpriority creditor's name and mailing address Caledonian Directors Limited PO Box 1043 George Town Grand Cayman KY1-1002 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$325.00 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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3.26	Nonpriority creditor's name and mailing address Canteen Vending Services PO Box 417632 Boston, MA 02241-7632 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$4,233.60 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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3.27	Nonpriority creditor's name and mailing address Carey International, Inc. 7445 New Technology Way Frederick, MD 21703 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$2,059,337.01 <input checked="" type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Uncompleted Transaction Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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3.28	Nonpriority creditor's name and mailing address Carey Olsen PO Box 10008 Willow House, Cricket Square Grand Cayman KY1-1001 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$38,930.00 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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3.29	Nonpriority creditor's name and mailing address Case Anywhere LLC 21860 Burbank Blvd. Ste 125 Woodland Hills, CA 91367 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$417.20 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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3.30	Nonpriority creditor's name and mailing address CBIZ Valuation Group, LLC ATTN: ACCOUNTS RECEIVABLE PO BOX 849846 DALLAS, TX 75284-9846 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$545.77 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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3.31	Nonpriority creditor's name and mailing address CDW Direct PO Box 75723 Chicago, IL 60675-5723 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$4,998.70 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

Name

3.32	<p>Nonpriority creditor's name and mailing address Centroid 1050 Wilshire Dr. Ste #170 Troy, MI 48084</p> <p>Date(s) debt was incurred _ Last 4 digits of account number _</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: <u>Trade Payable</u></p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	<u>\$1,155.00</u>
3.33	<p>Nonpriority creditor's name and mailing address Chase Couriers, Inc 1220 Champion Circle #114 Carrollton, TX 75006</p> <p>Date(s) debt was incurred _ Last 4 digits of account number _</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: <u>Trade Payable</u></p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	<u>\$155.81</u>
3.34	<p>Nonpriority creditor's name and mailing address CLO Holdco, Ltd. c/o Grant Scott, Esq Myers Bigel Sibley & Sajovec, P.A. 4140 Park Lake Ave, Ste 600 Raleigh, NC 27612</p> <p>Date(s) debt was incurred _ Last 4 digits of account number _</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: <u>Contractual Obligation</u></p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	<u>\$11,340,751.26</u>
3.35	<p>Nonpriority creditor's name and mailing address Cole Schotz Court Plaza North 25 Main Street P.O. Box 800 Hackensack, NJ 07602-0800</p> <p>Date(s) debt was incurred _ Last 4 digits of account number _</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: <u>See Exhibit A</u></p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	<u>\$198,760.29</u>
3.36	<p>Nonpriority creditor's name and mailing address Coleman Research Group, Inc. 120 West 45th St 25th Floor New York, NY 10036</p> <p>Date(s) debt was incurred _ Last 4 digits of account number _</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: <u>Trade Payable</u></p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	<u>\$52,500.00</u>
3.37	<p>Nonpriority creditor's name and mailing address Concur Technologies, Inc. 18400 NE Union Hill Road Redmond, WA 98052</p> <p>Date(s) debt was incurred _ Last 4 digits of account number _</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: <u>Trade Payable</u></p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	<u>\$4,090.46</u>
3.38	<p>Nonpriority creditor's name and mailing address Connolly Gallagher LLP 1201 North Market Street 20th Floor Wilmington, DE 19801</p> <p>Date(s) debt was incurred _ Last 4 digits of account number _</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: <u>See Exhibit A</u></p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	<u>\$118,831.25</u>

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3.39 Nonpriority creditor's name and mailing address **Crescent Research**
PO Box 64-3622
Vero Beach, FL 32964
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$1,200.00**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.40 Nonpriority creditor's name and mailing address **CSI Global Deposition Services**
Accounting Dept-972-719-5000
4950 N. O'Connor Rd, 1 st Fl
Irving, TX 75062-2778
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$826.01**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.41 Nonpriority creditor's name and mailing address **CT Corp**
PO Box 4349
Carol Stream, IL 60197-4349
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$515.25**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.42 Nonpriority creditor's name and mailing address **CVE Technologies Group Inc.**
1414 S. Gustin Rd.
Salt Lake City, UT 84104
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$1,500.00**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.43 Nonpriority creditor's name and mailing address **Dallas County**
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
 Date(s) debt was incurred 2019
 Last 4 digits of account number 3150

As of the petition filing date, the claim is: *Check all that apply.* **\$47,809.87**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Ad Valorem Taxes
 Is the claim subject to offset? No Yes

3.44 Nonpriority creditor's name and mailing address **Daniel Sheehan & Associates, PLLC**
8150 N. Central Expressway
Suite 100
Dallas, TX 75206
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$21,226.25**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.45 Nonpriority creditor's name and mailing address **Debevoise & Plimpton LLP**
c/o Accounting Dept. 28th Floor
909 Third Ave
New York, NY 10022
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$20,658.79**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

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3.46	Nonpriority creditor's name and mailing address Denton County PO Box 90223 Denton, TX 76202 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0DEN</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$553.46
3.47	Nonpriority creditor's name and mailing address Denton County PO Box 90223 Denton, TX 76202 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>5DEN</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3.68
3.48	Nonpriority creditor's name and mailing address DLA Piper LLP (US) 1900 N Pearl St, Suite 2200 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,318,730.36
3.49	Nonpriority creditor's name and mailing address Dow Jones & Company, Inc. 1211 Avenue of the Americas New York, NY 10036 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,038.26
3.50	Nonpriority creditor's name and mailing address DTCC ITP LLC PO Box 27590 New York, NY 10087-7590 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3.30
3.51	Nonpriority creditor's name and mailing address Duff & Phelps, LLC c/o David Landman Benesch, Friedlander, Coplan & Aronoff 200 Public Sq. Suite 2300 Cleveland, OH 44114-4000 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$350,000.00
3.52	Nonpriority creditor's name and mailing address Elite Document Technology 403 North Stemmons Freeway Suite 100 Dallas, TX 75207 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,837.30
3.53	Nonpriority creditor's name and mailing address Epiq eDiscovery Solutions Dept 2651 PO Box 122651 Dallas, TX 75312-2651 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$9,972.65

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3.54 Nonpriority creditor's name and mailing address **Eric Girard**
312 Polo Trl
Colleyville, TX 76034
Date(s) debt was incurred 10/14/2019
Last 4 digits of account number
As of the petition filing date, the claim is: *Check all that apply.* \$11,430.14
 Contingent
 Unliquidated
 Disputed
Basis for the claim: Consulting fee
Is the claim subject to offset? No Yes

3.55 Nonpriority creditor's name and mailing address **Felicity Toube QC**
3-4 South Square
Gray's Inn
London, WC1R 5HP
Date(s) debt was incurred
Last 4 digits of account number
As of the petition filing date, the claim is: *Check all that apply.* \$1,546.65
 Contingent
 Unliquidated
 Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? No Yes

3.56 Nonpriority creditor's name and mailing address **Foley Gardere**
2021 McKinney Ave
Suite 1600
Dallas, TX 75201
Date(s) debt was incurred
Last 4 digits of account number
As of the petition filing date, the claim is: *Check all that apply.* \$1,446,136.66
 Contingent
 Unliquidated
 Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? No Yes

3.57 Nonpriority creditor's name and mailing address **Four Seasons Landscaping, LLC**
139 Turtle Creek Blvd.
Dallas, TX 75207-6807
Date(s) debt was incurred
Last 4 digits of account number
As of the petition filing date, the claim is: *Check all that apply.* \$108.95
 Contingent
 Unliquidated
 Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? No Yes

3.58 Nonpriority creditor's name and mailing address **Gardner Haas PLLC**
2501 N. Harwood Street
Suite 1250
Dallas, TX 75201
Date(s) debt was incurred
Last 4 digits of account number
As of the petition filing date, the claim is: *Check all that apply.* \$522.72
 Contingent
 Unliquidated
 Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? No Yes

3.59 Nonpriority creditor's name and mailing address **Gold's Gym International**
Attn: Corporate Billing
125 E John Carpenter Frwy
Suite 1300
Irving, TX 75062
Date(s) debt was incurred
Last 4 digits of account number
As of the petition filing date, the claim is: *Check all that apply.* \$561.75
 Contingent
 Unliquidated
 Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? No Yes

3.60 Nonpriority creditor's name and mailing address **Greenwood Office Outfitters**
2951 Suffolk Drive
Suite 640
Fort Worth, TX 76133-1149
Date(s) debt was incurred
Last 4 digits of account number
As of the petition filing date, the claim is: *Check all that apply.* \$2,371.07
 Contingent
 Unliquidated
 Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? No Yes

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Name

3.61	Nonpriority creditor's name and mailing address Greyline Solutions PO Box 733976 Dallas, TX 75373-3976 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$11,250.00
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3.62	Nonpriority creditor's name and mailing address Harder LLP 132 S. RODEO DRIVE FOURTH FLOOR BEVERLY HILLS, CA 90212 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,464.13
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3.63	Nonpriority creditor's name and mailing address Highland Capital Management (Singapore) 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred Prior to 12/31/2018 Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: The balance shown is updated annually for service fees and has not been updated since 12/31/2018 Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$248,745.28
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3.64	Nonpriority creditor's name and mailing address Highland CLO Holdco 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Interest payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$599,187.26
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3.65	Nonpriority creditor's name and mailing address Highland CLO Holdco 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Notes Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$9,541,446.00
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3.66	Nonpriority creditor's name and mailing address Highland RCP Offshore, LP 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Unearned Revenue Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,447,870.00
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3.67	Nonpriority creditor's name and mailing address Highland RCP, LP 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Unearned Revenue Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,945,067.00
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3.68	<p>Nonpriority creditor's name and mailing address Hunton Andrews Kurth LLP 1445 Ross Avenue Suite 3700 Dallas, TX 75202-2799</p> <p>Date(s) debt was incurred _____ Last 4 digits of account number _____</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: See Exhibit A</p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	\$107,221.92
3.69	<p>Nonpriority creditor's name and mailing address ICE Data Pricing & Reference Data, LLC PO Box 98616 Chicago, IL 60693</p> <p>Date(s) debt was incurred _____ Last 4 digits of account number _____</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: Trade Payable</p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	\$1,565.23
3.70	<p>Nonpriority creditor's name and mailing address Intralinks P.O. Box 10259 New York, NY 10259</p> <p>Date(s) debt was incurred _____ Last 4 digits of account number _____</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: Trade Payable</p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	\$7,995.00
3.71	<p>Nonpriority creditor's name and mailing address JAMS, Inc PO Box 512850 Los Angeles, CA 90051-0850</p> <p>Date(s) debt was incurred _____ Last 4 digits of account number _____</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: See Exhibit A</p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	\$1,352.27
3.72	<p>Nonpriority creditor's name and mailing address Joshua & Jennifer Terry c/o Brian P. Shaw, Esq. Rogge Dunn Group, PC 500 N. Akard Street, Suite 1900 Dallas, TX 75201</p> <p>Date(s) debt was incurred _____ Last 4 digits of account number _____</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed</p> <p>Basis for the claim: Litigation Claim</p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	\$425,000.00
3.73	<p>Nonpriority creditor's name and mailing address Katten Muchin Rosenman LLP 525 W Monroe St Chicago, IL 60661-3693</p> <p>Date(s) debt was incurred _____ Last 4 digits of account number _____</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: See Exhibit A</p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	\$16,695.00
3.74	<p>Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207</p> <p>Date(s) debt was incurred 2019 Last 4 digits of account number 0606</p>	<p>As of the petition filing date, the claim is: <i>Check all that apply.</i></p> <p><input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed</p> <p>Basis for the claim: Ad Valorem Taxes</p> <p>Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p>	\$585.09

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3.75 Nonpriority creditor's name and mailing address **Kaufman County** As of the petition filing date, the claim is: *Check all that apply.* **\$3,090.25**
Attn: Elizabeth Weller
2777 N. Stemmons Freeway Contingent
Suite 1000 Unliquidated
Dallas, TX 75207 Disputed
 Date(s) debt was incurred 2019 **Basis for the claim: Ad Valorem Taxes**
 Last 4 digits of account number 0600 Is the claim subject to offset? No Yes

3.76 Nonpriority creditor's name and mailing address **Kaufman County** As of the petition filing date, the claim is: *Check all that apply.* **\$125.05**
Attn: Elizabeth Weller
2777 N. Stemmons Freeway Contingent
Suite 1000 Unliquidated
Dallas, TX 75207 Disputed
 Date(s) debt was incurred 2019 **Basis for the claim: Ad Valorem Taxes**
 Last 4 digits of account number 0600 Is the claim subject to offset? No Yes

3.77 Nonpriority creditor's name and mailing address **Kaufman County** As of the petition filing date, the claim is: *Check all that apply.* **\$5,732.15**
Attn: Elizabeth Weller
2777 N. Stemmons Freeway Contingent
Suite 1000 Unliquidated
Dallas, TX 75207 Disputed
 Date(s) debt was incurred 2019 **Basis for the claim: Ad Valorem Taxes**
 Last 4 digits of account number 0600 Is the claim subject to offset? No Yes

3.78 Nonpriority creditor's name and mailing address **Legalpeople LLC** As of the petition filing date, the claim is: *Check all that apply.* **\$34,425.72**
134 N LaSalle Street Contingent
Suite 800 Unliquidated
Chicago, IL 60602 Disputed
 Date(s) debt was incurred **Basis for the claim: See Exhibit A**
 Last 4 digits of account number Is the claim subject to offset? No Yes

3.79 Nonpriority creditor's name and mailing address **Levinger PC** As of the petition filing date, the claim is: *Check all that apply.* **\$3,778.01**
1445 Ross Avenue Contingent
Suite 2500 Unliquidated
Dallas, TX 75202 Disputed
 Date(s) debt was incurred **Basis for the claim: See Exhibit A**
 Last 4 digits of account number Is the claim subject to offset? No Yes

3.80 Nonpriority creditor's name and mailing address **Lexitas** As of the petition filing date, the claim is: *Check all that apply.* **\$2,583.66**
PO Box 734298 Contingent
Dept. 2012 Unliquidated
Dallas, TX 75373-4298 Disputed
 Date(s) debt was incurred **Basis for the claim: See Exhibit A**
 Last 4 digits of account number Is the claim subject to offset? No Yes

3.81 Nonpriority creditor's name and mailing address **Loews Coronado Bay Resort** As of the petition filing date, the claim is: *Check all that apply.* **\$57,628.65**
4000 Coronado Bay Road Contingent
Coronado, CA 92118 Unliquidated
 Disputed
 Date(s) debt was incurred **Basis for the claim: Trade Payable**
 Last 4 digits of account number Is the claim subject to offset? No Yes

Debtor Name	Case number (if known)	
Highland Capital Management, L.P.	19-34054-SGJ	
3.82 Nonpriority creditor's name and mailing address Lynn Pinker Cox & Hurst, LLP 2100 Ross Ave Suite 2700 Dallas, TX 75201 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$436,538.06
3.83 Nonpriority creditor's name and mailing address Maples and Calder UGLAND HOUSE PO BOX 309GT; S CHURCH ST George Town Grand Cayman Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$25,800.11
3.84 Nonpriority creditor's name and mailing address MarkitWSO Corporation Three Lincoln Centre 5430 LBJ Frwy; Ste 800 Dallas, TX 75240 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$12,015.91
3.85 Nonpriority creditor's name and mailing address McKool Smith 300 Crescent Court Suite 1500 Dallas, TX 75201 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,163,976.00
3.86 Nonpriority creditor's name and mailing address Meta-e Discovery LLC Six Landmark Square Fourth Floor Stamford, CT 06901 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$780,645.36
3.87 Nonpriority creditor's name and mailing address Nick Meserve 11835 Brandywine Ln Houston, TX 77024 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$300.00
3.88 Nonpriority creditor's name and mailing address NWCC, LLC c/o of Michael A. Battle Barnes & Thornburg, LLP 1717 Pennsylvania Ave N.W. Ste 500 Washington, DC 20006 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Litigation Claim Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$375,000.00

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

Name

3.89	Nonpriority creditor's name and mailing address Opus 2 International, Inc. 100 Pine Street Suite 560 San Francisco, CA 94111 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$15,669.86
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3.90	Nonpriority creditor's name and mailing address PACER Service Center P.O. Box 5208 Portland, OR 97208-5208 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$435.30
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3.91	Nonpriority creditor's name and mailing address Patrick Daugherty c/o Thomas A. Uebler McCollom D'Emilio Smith 2751 Centerville Rd #401 Wilmington, DE 19808 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$11,700,000.00
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3.92	Nonpriority creditor's name and mailing address Pitney Bowes- Purchase Power PO Box 371874 Pittsburgh, PA 15250-2648 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,611.00
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3.93	Nonpriority creditor's name and mailing address ProStar Services, Inc PO Box 110209 Carrollton, TX 75011 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,064.58
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3.94	Nonpriority creditor's name and mailing address Quintairos, Prieto Wood & Boyer 865 S. Figueroa St 10th FL Los Angeles, CA 90017 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$8,608.17
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3.95	Nonpriority creditor's name and mailing address Redeemer Committee - Highland Crusader Attn: Eric Felton 731 Pleasant Ave. Glen Ellyn, IL 60137 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	\$189,314,946.00
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Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

Name

3.96	Nonpriority creditor's name and mailing address Reid Collins & Tsai 810 Seventh Ave Ste 410 New York, NY 10019 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$258,526.25
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3.97	Nonpriority creditor's name and mailing address Scott Douglass & McConnico LLP 303 Colorado St Ste 2400 Austin, TX 78701 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,478.59
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3.98	Nonpriority creditor's name and mailing address Secured Access Systems, LLC 1913 Walden Court Flower Mound, TX 75022 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$24.37
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3.99	Nonpriority creditor's name and mailing address Siepe Services, LLC 5440 Harvest Hill Road Suite 100 Dallas, TX 75230 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$80,183.88
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3.100	Nonpriority creditor's name and mailing address Southland Property Tax Consultants, Inc 421 W. 3rd Street Ste 920 Fort Worth, TX 76102 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$309.11
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3.101	Nonpriority creditor's name and mailing address Squire Patton Boggs (US) LLP PO Box 643051 Cincinnati, OH 45264 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,208.40
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3.102	Nonpriority creditor's name and mailing address Stanton Advisors LLC 300 Coles Street Apt. 802 Jersey City, NJ 07310 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$10,000.00
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Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

3.103 Nonpriority creditor's name and mailing address **Stanton LLP** As of the petition filing date, the claim is: *Check all that apply.* **\$90,712.65**
9400 N Central Expwy
Ste 1304
Dallas, TX 75231
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **See Exhibit A**
 Is the claim subject to offset? No Yes

3.104 Nonpriority creditor's name and mailing address **State Street Global Exchange** As of the petition filing date, the claim is: *Check all that apply.* **\$2,500.00**
Elkins/McSherry, LLC
One Lincoln Street
Boston, MA 02111
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **See Exhibit A**
 Is the claim subject to offset? No Yes

3.105 Nonpriority creditor's name and mailing address **Stinson Leonard Street LLP** As of the petition filing date, the claim is: *Check all that apply.* **\$246,802.54**
PO Box 843052
Kansas City, MO 64184
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **See Exhibit A**
 Is the claim subject to offset? No Yes

3.106 Nonpriority creditor's name and mailing address **Thomson West** As of the petition filing date, the claim is: *Check all that apply.* **\$1,158.52**
PO Box 64833
St. Paul, MN 55164-0833
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Trade Payable**
 Is the claim subject to offset? No Yes

3.107 Nonpriority creditor's name and mailing address **UBS AG, London Branch** As of the petition filing date, the claim is: *Check all that apply.* **Unknown**
c/o Andrew Clubock, Esq.
Latham & Watkins LLP
555 11th Street NW #1000
Washington, DC 20004
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Litigation Claim**
 Is the claim subject to offset? No Yes

3.108 Nonpriority creditor's name and mailing address **UBS Securities LLC** As of the petition filing date, the claim is: *Check all that apply.* **Unknown**
c/o Andrew Clubock
Latham & Watkins LLP
555 11th Street NW #1000
Washington, DC 20004
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Litigation Claim**
 Is the claim subject to offset? No Yes

3.109 Nonpriority creditor's name and mailing address **UPS Supply Chain Solutions** As of the petition filing date, the claim is: *Check all that apply.* **\$90.45**
28013 Network Place
Chicago, IL 60673-1280
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Trade Payable**
 Is the claim subject to offset? No Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 Name

3.110	Nonpriority creditor's name and mailing address Wakefield Quin Victoria Place 31 Victoria St Hamilton, HM10 Bermuda	As of the petition filing date, the claim is: <i>Check all that apply.</i>	\$2,334.80
		<input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	
	Date(s) debt was incurred _ Last 4 digits of account number _	Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	

3.111	Nonpriority creditor's name and mailing address Wilks, Lukoff & Bracegirdle, LLC 4250 Lancaster Pike #200 Wilmington, DE 19805	As of the petition filing date, the claim is: <i>Check all that apply.</i>	\$3,411.87
		<input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	
	Date(s) debt was incurred _ Last 4 digits of account number _	Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	

3.112	Nonpriority creditor's name and mailing address Xerox Corporation PO Box 650361 Dallas, TX 75265	As of the petition filing date, the claim is: <i>Check all that apply.</i>	\$2,348.31
		<input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	
	Date(s) debt was incurred _ Last 4 digits of account number _	Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	

Part 3: List Others to Be Notified About Unsecured Claims

4. List in alphabetical order any others who must be notified for claims listed in Parts 1 and 2. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for unsecured creditors.

If no others need to be notified for the debts listed in Parts 1 and 2, do not fill out or submit this page. If additional pages are needed, copy the next page.

Name and mailing address	On which line in Part1 or Part 2 is the related creditor (if any) listed?	Last 4 digits of account number, if any

Part 4: Total Amounts of the Priority and Nonpriority Unsecured Claims

5. Add the amounts of priority and nonpriority unsecured claims.

	Total of claim amounts
5a. Total claims from Part 1	5a. \$ <u>Unknown</u>
5b. Total claims from Part 2	5b. + \$ 244,617,627.33
5c. Total of Parts 1 and 2 Lines 5a + 5b = 5c.	5c. \$ 244,617,627.33

Highland Capital Management LP
Case # 19-34054-SGJ
Schedule F - Exhibit A

Law Firm	Gross Balance [1]	HCMLP Balance [2]	Other Balance [3]
McKool Smith	2,163,976.00	2,163,976.00	-
Foley Gardere	1,601,136.66	1,446,136.66	155,000.00
DLA Piper LLP (US)	1,318,730.36	1,318,730.36	-
Meta-e Discovery LLC	1,378,061.34	780,645.36	597,415.98
Lynn Pinker Cox & Hurst, LLP	529,303.56	436,538.06	92,765.50
Duff & Phelps, LLC	350,000.00	350,000.00	-
Reid Collins & Tsai	1,087,474.36	258,526.25	828,948.11
Stinson Leonard Street LLP	246,802.54	246,802.54	-
Cole Schotz	243,667.06	198,760.29	44,906.77
Andrews Kurth	771,467.89	137,637.81	633,830.08
Connolly Gallagher LLP	118,831.25	118,831.25	-
Boies, Schiller & Flexner LLP	115,714.80	115,714.80	-
Akin Gump Strauss Hauer & Feld LLP	1,739,149.45	113,947.86	1,625,201.59
Abrams & Bayliss	108,399.83	108,399.83	-
Hunton Andrews Kurth LLP	205,378.20	107,221.92	98,156.28
Bates White, LLC	90,855.79	90,855.79	-
Stanton LLP	90,712.65	90,712.65	-
ASW Law Limited	77,044.60	77,044.60	-
American Arbitration Association	55,511.80	55,511.80	-
Carey Olsen	38,930.00	38,930.00	-
Legalpeople LLC	34,425.72	34,425.72	-
ACA Compliance Group	48,526.43	26,324.25	22,202.18
Maples and Calder	200,758.82	25,800.11	174,958.71
Daniel Sheehan & Associates, PLLC	21,226.25	21,226.25	-
Debevoise & Plimpton LLP	48,300.79	20,658.79	27,642.00
Katten Muchin Rosenman LLP	16,695.00	16,695.00	-
Opus 2 International, Inc.	39,214.03	15,669.86	23,544.17
MarkitWSO Corporation	154,632.25	12,015.91	142,616.34
Greyline Solutions	11,250.00	11,250.00	-
Stanton Advisors LLC	10,000.00	10,000.00	-
Epiq eDiscovery Solutions	21,889.05	9,972.65	11,916.40
Quintairos, Prieto Wood & Boyer	12,897.42	8,608.17	4,289.25
Bell Nunnally & Martin LLP	6,934.79	6,934.79	-
Elite Document Technology	49,300.00	5,837.30	43,462.70
Harder LLP	5,464.13	5,464.13	-
Squire Patton Boggs (US) LLP	50,000.00	5,208.40	44,791.60
Levinger PC	12,884.21	3,778.01	9,106.20
Lexitas	2,583.66	2,583.66	-
State Street Global Exchange	2,500.00	2,500.00	-
Wakefield Quin	4,760.60	2,334.80	2,425.80
Alston & Bird LLP	2,234.00	2,234.00	-
Felicity Toubé QC	6,208.22	1,546.65	4,661.57
Scott Douglass & McConnico LLP	4,983.50	1,478.59	3,504.91
JAMS, Inc	24,097.28	1,352.27	22,745.01
CSI Global Deposition Services	826.01	826.01	-
CBIZ Valuation Group, LLC	8,269.26	545.77	7,723.49
Gardner Haas PLLC	7,920.00	522.72	7,397.28
Case Anywhere LLC	417.20	417.20	-
Caledonian Directors Limited	325.00	325.00	-
Winston & Strawn LLP	1,770,877.30	-	1,770,877.30
K&L Gates LLP	160,228.40	-	160,228.40
Davis Polk & Wardwell LLP	105,140.83	-	105,140.83

Highland Capital Management LP
Case # 19-34054-SGJ
Schedule F - Exhibit A

Law Firm	Gross Balance [1]	HCMLP Balance [2]	Other Balance [3]
Baker & McKenzie LLP	131,938.68	-	131,938.68
Zuckerman Spaeder LLP	127,295.18	-	127,295.18
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP	100,476.30	-	100,476.30
Berkeley Research Group, LLC	60,976.22	-	60,976.22
Day Pitney LLP	55,793.69	-	55,793.69
Milbank, Tweed, Hadley	52,993.21	-	52,993.21
Garman Turner Gordon	42,222.06	-	42,222.06
Wick Phillips Gould & Martin, LLP - Operating Account	27,749.45	-	27,749.45
Pope, Hardwicke, Christie, Schell, Kelly & Taplett LLP	27,102.33	-	27,102.33
Ober Kaler Grimes & Shriver	24,939.27	-	24,939.27
ValueScope	22,357.65	-	22,357.65
Brian Lauten, PC	16,650.00	-	16,650.00
Hutchison & Steffen, PLLC	15,156.95	-	15,156.95
Counsel Press LLC	14,926.01	-	14,926.01
Integra FEC LLC	13,409.52	-	13,409.52
Rowlett Hill Collins LLP	12,562.50	-	12,562.50
Willkie Farr & Gallagher LLP	9,640.00	-	9,640.00
Flemming Zulack Williamson Zauderer	8,356.25	-	8,356.25
TSG Reporting, Inc	6,589.70	-	6,589.70
Todd Travers	4,987.50	-	4,987.50
Brownstein Hyatt Farber Schreck, LLP	4,777.21	-	4,777.21
Morris James LLP - Invoices	4,313.10	-	4,313.10
Wachtell, Lipton, Rosen & Katz	3,752.48	-	3,752.48
Lenz & Staehelin	3,568.15	-	3,568.15
Quinn Emanuel Trial Lawyers	3,180.65	-	3,180.65
Ogier	2,794.97	-	2,794.97
Lowenstein Sandler	2,778.72	-	2,778.72
J. Sagar Associates	2,391.20	-	2,391.20
Bifferato Gentilotti LLC	1,931.41	-	1,931.41
Bass, Berry & Sims PLC	1,888.00	-	1,888.00
TransPerfect Translations International Inc.	1,646.59	-	1,646.59
Kim & Chang	1,487.11	-	1,487.11
WilmerHale	1,056.00	-	1,056.00
Bailey Kennedy, LLP	900.00	-	900.00
CT Corporation	899.00	-	899.00
Cooke, Young & Keidan LLP	804.40	-	804.40
Elite Deposition Technologies	783.61	-	783.61
Gibson, Dunn & Crutcher LLP	651.60	-	651.60
US Legal Support	507.06	-	507.06
Esquire Deposition Solutions	253.42	-	253.42
Kim Leslie Shafer	225.00	-	225.00
Akerman LLP	69.93	-	69.93
Total	15,993,700.38	8,511,459.84	7,482,240.53

[1] Represents gross amount of invoices received where the Debtor is counterparty to the engagement letter.

[2] Represents allocated amount of invoices owing by Debtor.

[3] Represents allocated amount of invoices owing by non-Debtor party. Amount are not final amounts and may be subject to dispute.

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 206G
Schedule G: Executory Contracts and Unexpired Leases

12/15

Be as complete and accurate as possible. If more space is needed, copy and attach the additional page, number the entries consecutively.

1. **Does the debtor have any executory contracts or unexpired leases?**
 No. Check this box and file this form with the debtor's other schedules. There is nothing else to report on this form.
 Yes. Fill in all of the information below even if the contacts of leases are listed on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B).

2. List all contracts and unexpired leases **State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.1. State what the contract or lease is for and the nature of the debtor's interest **Subscription To 13D Global Strategy And Research Services**

State the term remaining **121 Days**

List the contract number of any government contract _____

13D Global Strategy and Research
 491 N Main Street
 Ketchum, ID 83340

2.2. State what the contract or lease is for and the nature of the debtor's interest **Subscription Agreement**

State the term remaining **76 Days**

List the contract number of any government contract _____

4Cast Inc.
 420 Lexington Avenue
 Suite 2147
 New York, NY 10170

2.3. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**

State the term remaining **Termination Contingent**

List the contract number of any government contract _____

Aberdeen Loan Funding, Ltd.
 190 Elgin Avenue
 George Town, Grand Cayman
 KY1-9005, Cayman Islands

2.4. State what the contract or lease is for and the nature of the debtor's interest **Janitorial Service**

State the term remaining **198 Days**

List the contract number of any government contract _____

ABM Texas General Services, Inc.
 2020 Westridge Drive
 Irving, TX 75038

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.5. State what the contract or lease is for and the nature of the debtor's interest **Compliance Services**
 State the term remaining **0 Days** **ACA Compliance Group**
8403 Colesville Road
Ste 870
Silver Spring, MD 20910
 List the contract number of any government contract _____

2.6. State what the contract or lease is for and the nature of the debtor's interest **Tamale Software**
 State the term remaining **351 Days** **Advent Software, Inc.**
600 Townsend Street
Ste 500
San Francisco, CA 94103
 List the contract number of any government contract _____

2.7. State what the contract or lease is for and the nature of the debtor's interest **Geneva Software**
 State the term remaining **207 Days** **Advent Software, Inc.**
Three Lincoln Centre
5430 LBJ Freeway Ste 800
Dallas, TX 75240
 List the contract number of any government contract _____

2.8. State what the contract or lease is for and the nature of the debtor's interest **Software License Global Strategy And China**
 State the term remaining **167 Days** **Alpine Macro**
1130 Sherbrooke St West PH1
Montreal, Quebec
Canada, H3A2M8
 List the contract number of any government contract _____

2.9. State what the contract or lease is for and the nature of the debtor's interest **Travel Account Purchase And Usage**
 State the term remaining **254 Days** **American Airlines, Inc.**
PO Box 619616 MD4106
Ft Worth, TX 76155
 List the contract number of any government contract _____

2.10. State what the contract or lease is for and the nature of the debtor's interest **Actuarial Services**
 State the term remaining **76 Days** **Aon Consulting, Inc.**
445 Hutchinson Ave
Ste 900
Columbus, OH 43235
 List the contract number of any government contract _____

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
First Name Middle Name Last Name



Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

government contract _____

2.11. State what the contract or lease is for and the nature of the debtor's interest **Enterprise Technology Research**
State the term remaining **746 Days** **Aptiviti, Inc.**
List the contract number of any government contract **129 West 29th Street**
3rd Floor
New York, NY 10001

2.12. State what the contract or lease is for and the nature of the debtor's interest **Employment Practices Insurance**
State the term remaining **147 Days** **Argonaut Insurance Company**
List the contract number of any government contract **225 W Washington Street**
24th floor
Chicago, IL 60606

2.13. State what the contract or lease is for and the nature of the debtor's interest **Internet**
State the term remaining **3 Years** **AT&T**
List the contract number of any government contract **208 South Akard Street**
Dallas, TX 75201

2.14. State what the contract or lease is for and the nature of the debtor's interest **Cell Phones**
State the term remaining **Monthly** **AT&T Mobility**
List the contract number of any government contract **208 South Akard Street**
Dallas, TX 75202

2.15. State what the contract or lease is for and the nature of the debtor's interest **Dev Server Hosting**
State the term remaining **Monthly** **AWS**
List the contract number of any government contract **410 Terry Avenue North**
Seattle, WA 98109

2.16. State what the contract or lease is for and the nature of the debtor's interest **Investment Research** **BCA Research Inc.**
1002 Sherbrooke Street West
Suite 1600
Montreal, Quebec, CA 3L6

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **76 Days**

List the contract number of any government contract _____

2.17. State what the contract or lease is for and the nature of the debtor's interest **Bloomberg**

State the term remaining **60 day termination; two year autorenewal; after initial term of 07/15/201**

List the contract number of any government contract _____

**Bloomberg Finance, L.P.
731 Lexington Ave
New York, NY 10022**

2.18. State what the contract or lease is for and the nature of the debtor's interest **Erisa Group Health Plan**

State the term remaining **41 Days**

List the contract number of any government contract _____

**Blue Cross Blue Shield of Texas
1001 E. Lookout Dr.
Richardson, TX 75082**

2.19. State what the contract or lease is for and the nature of the debtor's interest **Stop Loss Coverage**

State the term remaining **41 Days**

List the contract number of any government contract _____

**Blue Cross Blue Shield of Texas
1001 E. Lookout Dr.
Richardson, TX 75082**

2.20. State what the contract or lease is for and the nature of the debtor's interest **Electronic Access**

State the term remaining **Perpetuity**

List the contract number of any government contract _____

**BNY Mellon
525 Penn Place
Pittsburgh, PA 15219**

2.21. State what the contract or lease is for and the nature of the debtor's interest **Cloud Doc Hosting**

State the term remaining **Monthly**

List the contract number of any government contract _____

**BOX.com
900 Jefferson Ave
Redwood City, CA 94063**

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.22. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Brentwood CLO, Ltd.
Maples Finance Limited, PO Box 1093GT
Queensgate House, South Church Street
George Town, Grand Cayman, Cayman Island

2.23. State what the contract or lease is for and the nature of the debtor's interest **E-Ballot And Meeting Information Services**
 State the term remaining **162 Days**
 List the contract number of any government contract _____
Broadridge Investor Communication Solutions
One Park Ave
New York, NY 10016

2.24. State what the contract or lease is for and the nature of the debtor's interest **Advisory Services Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Carey International, Inc.
4530 Wisconsin Ave NW
Washington, DC 20016

2.25. State what the contract or lease is for and the nature of the debtor's interest **Advisory Services Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
CCS Medical, Inc.
14255 49th Street North
Suite 301
Clearwater, FL 33762

2.26. State what the contract or lease is for and the nature of the debtor's interest **Wan Line And Telephones**
 State the term remaining **Monthly**
 List the contract number of any government contract _____
CenturyLink
100 CenturyLink Drive
Monroe, LA 71203

2.27. State what the contract or lease is for and the nature of the debtor's interest **Second Amended And Restated Investment Advisory Agreement**
 State the term remaining **90 Day Termination Provision; Annual Autoextend Following**
Charitable DAF Fund, L.P. / Charitable DAF GP , LLC
Attention: Grant Scott
4140 Park Lake Avenue
Suite 600
Raleigh, NC 27612

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

Initial Term Ending
12/31/2017
 List the contract number of any government contract _____

2.28. State what the contract or lease is for and the nature of the debtor's interest **Second Amended And Restated Service Agreement**
 State the term remaining **60 Day Termination Provision; Annual Autoextend Following Initial Term 12/31/2017**
 List the contract number of any government contract _____ **Charitable DAF Fund, L.P. / Charitable DAF GP , LLC
 Attention: Grant Scott
 4140 Park Lake Avenue
 Suite 600
 Raleigh, NC 27612**

2.29. State what the contract or lease is for and the nature of the debtor's interest **Workers Comp**
 State the term remaining **254 Days**
 List the contract number of any government contract _____ **Chubb
 2001 Bryan St.
 Ste. 3600
 Dallas, TX 75201**

2.30. State what the contract or lease is for and the nature of the debtor's interest **Cisco Hardware Support**
 State the term remaining **2 Years**
 List the contract number of any government contract _____ **Cisco
 170 West Tasman Dr
 San Jose, CA 95134**

2.31. State what the contract or lease is for and the nature of the debtor's interest **Conference Services**
 State the term remaining **Monthly**
 List the contract number of any government contract _____ **Cisco Webex
 170 West Tasman Dr
 San Jose, CA 95134**

2.32. State what the contract or lease is for and the nature of the debtor's interest **Webex Seminars**
 State the term remaining **Annual**
 List the contract number of any government contract _____ **Cisco Webex Events
 170 West Tasman Dr
 San Jose, CA 95134**

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.33. State what the contract or lease is for and the nature of the debtor's interest **Pr Services**
 State the term remaining **121 Days** **Cision US Inc.**
1 Prudential Plaza, 7th floor
 List the contract number of any government contract **130 E Randolph Street**
Chicago, IL 60601

2.34. State what the contract or lease is for and the nature of the debtor's interest **Reference Portfolio Management Agreement**
 State the term remaining **Termination Contingent** **Citibank, N.A.**
Attention: Doug Warren
390 Greenwich Street
 List the contract number of any government contract **Fourth Floor**
New York, NY 10013

2.35. State what the contract or lease is for and the nature of the debtor's interest **Saas Solutions**
 State the term remaining **295 Days** **Clearwater Analytics LLC**
777 W Main St
 List the contract number of any government contract **Ste 900**
Boise, ID 83702

2.36. State what the contract or lease is for and the nature of the debtor's interest **Research**
 State the term remaining **77 Days** **Coleman Research**
575 5th Ave 21st Floor
 List the contract number of any government contract **New York, NY 10017**

2.37. State what the contract or lease is for and the nature of the debtor's interest **Research Service Credits**
 State the term remaining **76 Days** **Coleman Research Group, Inc.**
575 5th Avenue
 List the contract number of any government contract **21st Floor**
New York, NY 10017

2.38. State what the contract or lease is for and the nature of the debtor's interest **San Backup**
 State the term remaining **Annual** **Commvault Backup**
1 Commvault Way
Tinton Falls, NJ 07724

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract _____

2.39. State what the contract or lease is for and the nature of the debtor's interest **Avaya Maintenance**
 State the term remaining **Annual**
 List the contract number of any government contract _____
Converge One
10900 Nesbitt Avenue South
Bloomington, MN 55437

2.40. State what the contract or lease is for and the nature of the debtor's interest **Amended And Restated Advisory Services Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Cornerstone Healthcare Group Holding, Inc
2200 Ross Ave
Ste. 5400
Dallas, TX 75201

2.41. State what the contract or lease is for and the nature of the debtor's interest **Office Lease**
 State the term remaining **927 Days**
 List the contract number of any government contract _____
Crescent TC Investors, L.P.
200 Crescent Court
Ste 250
Dallas, TX 75201

2.42. State what the contract or lease is for and the nature of the debtor's interest **Filing/Formation/Registered Agent**
 State the term remaining **N/A - As Needed**
 List the contract number of any government contract _____
CT Corporation
1999 Bryan Street
Ste 900
Dallas, TX 75201

2.43. State what the contract or lease is for and the nature of the debtor's interest **Emergency Backup It Support**
 State the term remaining **Monthly**
 List the contract number of any government contract _____
CVE technology
3000 E Plano Pkwy
Plano, TX 75074

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.44. State what the contract or lease is for and the nature of the debtor's interest **Anti Virus Software**
 State the term remaining **Annual** **Cylance**
400 Spectrum Center Dr.
 List the contract number of any government contract **Suite 900**
Irvine, CA 92618

2.45. State what the contract or lease is for and the nature of the debtor's interest **Compliance Information Service**
 State the term remaining **30 Day Termination** **Debt Domain**
295 Madison Ave
 List the contract number of any government contract **Ste 24**
New York, NY 10017

2.46. State what the contract or lease is for and the nature of the debtor's interest **Cable News**
 State the term remaining **Monthly** **DirectTV**
208 South Akard Street
 List the contract number of any government contract **Dallas, TX 75202**

2.47. State what the contract or lease is for and the nature of the debtor's interest **Cobra Admin**
 State the term remaining **443 Days** **Discovery Benefits Inc**
4321 20th Ave. S.
 List the contract number of any government contract **Fargo, ND 58103**

2.48. State what the contract or lease is for and the nature of the debtor's interest **2 Factor Authentication**
 State the term remaining **Monthly** **DUO Security**
170 West Tasman Dr
 List the contract number of any government contract **San Jose, CA 95134**

2.49. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
 State the term remaining **Termination Contingent** **Eastland CLO Ltd.**
190 Elgin Avenue
 List the contract number of any government contract **George Town, Grand Cayman**
KY1-9005, Cayman Islands

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

government contract _____

2.50. State what the contract or lease is for and the nature of the debtor's interest **Trading Cost Analytic Services**
 State the term remaining **30 Day Termination** **Elkins McSherry**
 List the contract number of any government contract **225 Liberty St**
24th floor
New York, NY 10281

2.51. State what the contract or lease is for and the nature of the debtor's interest **Disaster Recovery Site**
 State the term remaining **3 Years** **Evoque Data Center**
 List the contract number of any government contract **250 Vesey Street 15th Floor**
New York, NY 10281

2.52. State what the contract or lease is for and the nature of the debtor's interest **Load Balancers**
 State the term remaining **Annual** **F5**
 List the contract number of any government contract **801 5th Ave**
Seattle, WA 98104

2.53. State what the contract or lease is for and the nature of the debtor's interest **Amended And Restated Shared Services Agreement**
 State the term remaining **Termination Contingent** **Falcon E&P Opportunities GP, LLC**
 List the contract number of any government contract **c/o PetroCap, LLC, Attention: Marc Manzo**
2602 McKinney Avenue
Suite 400
Dallas, TX 75204

2.54. State what the contract or lease is for and the nature of the debtor's interest **Software**
 State the term remaining **169 Days** **Financial Tracking**
 List the contract number of any government contract **1111 East Putnam Ave**
Ste 304
Riverside, CT 06878

2.55. State what the contract or lease is for and the nature of the debtor's interest **Pr Services** **First Page Management LLC dba StatusLabs**
151 South 1st
Ste 100
Austin, TX 78704

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **16 Days**
 List the contract number of any government contract _____

2.56. State what the contract or lease is for and the nature of the debtor's interest **Primary Data Center**
 State the term remaining **Monthly** **Flexential**
11900 East Cornell Avenue
Building B, 3rd Floor
Aurora, CO 80014
 List the contract number of any government contract _____

2.57. State what the contract or lease is for and the nature of the debtor's interest **Plant Maintenance**
 State the term remaining **166 Days** **Four Seasons Landscaping, LLC**
PO Box 793429
Dallas, TX 75379
 List the contract number of any government contract _____

2.58. State what the contract or lease is for and the nature of the debtor's interest **Data Accessed Via Bloomberg Terminals**
 State the term remaining **290 Days** **FT Interactive Data Corporation**
22 Crosby Drive
Bedford, MA 01730
 List the contract number of any government contract _____

2.59. State what the contract or lease is for and the nature of the debtor's interest **Expert Services**
 State the term remaining **N/A** **FTI Consulting, Inc.**
Three Times Square
10th floor
New York, NY 10036
 List the contract number of any government contract _____

2.60. State what the contract or lease is for and the nature of the debtor's interest **Portfolio Management Agreement**
 State the term remaining **Termination Contingent** **Gleneagles CLO, Ltd.**
PO Box 1093 GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands
 List the contract number of any government contract _____

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.61. State what the contract or lease is for and the nature of the debtor's interest **Domain Registrations**
 State the term remaining **1 Year** **GoDaddy**
 List the contract number of any government contract **14455 N. Hayden Rd.**
Ste. 219
Scottsdale, AZ 85260

2.62. State what the contract or lease is for and the nature of the debtor's interest **Corporate Wellness**
 State the term remaining **197 Days** **Gold's Texas Holdings Group, Inc**
 List the contract number of any government contract **4001 Maples Avenue**
Ste 200
Dallas, TX 75219

2.63. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**
 State the term remaining **60 Day Termination Provision; Annual Autoextend Following Initial Term 12/31/2008** **Governance Re Ltd.**
 List the contract number of any government contract **Wellesley House North**
2nd Floor, 90 Pitts Bay Road
Pembroke HM 08, Bermuda

2.64. State what the contract or lease is for and the nature of the debtor's interest **D&O policy**
 State the term remaining **75 days (to 12/31/2019)** **Governance Re Ltd.**
 List the contract number of any government contract **Wellesley House North, 2nd Floor**
90 Pitts Bay Road, Pembroke HM 08
Bermuda

2.65. State what the contract or lease is for and the nature of the debtor's interest **Amendment No. 1 To Servicing Agreement**
 State the term remaining **N/A** **Grayson CLO Corp., et al**
 List the contract number of any government contract **190 Elgin Avenue**
George Town, Grand Cayman
KY1-9005, Cayman Islands

2.66. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement** **Grayson CLO Ltd.**
 State the term remaining **Termination Contingent** **190 Elgin Avenue**
George Town, Grand Cayman
KY1-9005, Cayman Islands

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract _____

2.67. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
State the term remaining **Termination Contingent**
List the contract number of any government contract _____
Greenbriar CLO, Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.68. State what the contract or lease is for and the nature of the debtor's interest **Compliance Testing**
State the term remaining **95 Days**
List the contract number of any government contract _____
Greyline Solutions LLC
One Sansome Street
Suite 1895
San Francisco, CA 94104

2.69. State what the contract or lease is for and the nature of the debtor's interest **Food Ordering**
State the term remaining **191 Days**
List the contract number of any government contract _____
GrubHub Holdings Inc.
111 W. Washington Street
Ste 2100
Chicago, IL 60602

2.70. State what the contract or lease is for and the nature of the debtor's interest **Gips Services**
State the term remaining **43982**
List the contract number of any government contract _____
Guardian Performance Solutions, LLC
836 57th Street
Suite 408
Sacramento, CA 95819

2.71. State what the contract or lease is for and the nature of the debtor's interest **Data Sharing Platform**
State the term remaining **306 Days**
List the contract number of any government contract _____
Harvest Exchange Corp
1200 Smith Street
Ste. 672
Houston, TX 77002

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.72. State what the contract or lease is for and the nature of the debtor's interest **Online Research Portal**

State the term remaining **5 business day termination; 3 month autorenewal after initial term of 03/31/2016**

List the contract number of any government contract _____

Hedgeye Risk Management, LLC
 1 High Ridge Park
 3rd Floor
 Stamford, CT 06905

2.73. State what the contract or lease is for and the nature of the debtor's interest **Sub-Advisory Agreement**

State the term remaining **30 Days With Additional Contingencies**

List the contract number of any government contract _____

Highland Capital Insurance Solutions, L.P.
 Attention: General Counsel
 300 Crescent Court
 Suite 700
 Dallas, TX 75201

2.74. State what the contract or lease is for and the nature of the debtor's interest **Shared Services Agreement**

State the term remaining **30 Day Termination Provision**

List the contract number of any government contract _____

Highland Capital Insurance Solutions, L.P.
 Attention: General Counsel
 300 Crescent Court
 Suite 700
 Dallas, TX 75201

2.75. State what the contract or lease is for and the nature of the debtor's interest **Second Amended And Restated Shared Service Agreement**

State the term remaining **60 Day Termination Provision; Annual Autoextend Following Initial Term 2/8/2014**

List the contract number of any government contract _____

Highland Capital Management Fund Advisor LP
 Attention: General Counsel
 300 Crescent Court
 Suite 700
 Dallas, TX 75201

2.76. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**

State the term remaining **60 Day Termination Provision; Annual Autoextend Following Initial Term 7/31/2007**

List the contract number of any government contract _____

Highland Capital Multi-Strategy Fund, L.P.
 PO Box 309 Ugland House
 Grand Cayman
 KY1-1104, Cayman Islands

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.77. State what the contract or lease is for and the nature of the debtor's interest **Collateral Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Highland Credit Opportunities CDO Ltd.
190 Elgin Avenue
George Town, Grand Cayman
KY1-9005, Cayman Islands

2.78. State what the contract or lease is for and the nature of the debtor's interest **Management Agreement**
 State the term remaining **90 Days With Additional Contingencies**
 List the contract number of any government contract _____
Highland Credit Opportunities Japanese Feeder Sub-Trust
190 Elgin Avenue
George Town Grand Cayman
KY1-9005, Cayman Islands

2.79. State what the contract or lease is for and the nature of the debtor's interest **Service Agreement**
 State the term remaining **30 day termination notice**
 List the contract number of any government contract _____
Paxstone Capital LLP
Attn: Kasper Kemp Hansen
483 Green Lane
London N13 4BS
UK

2.80. State what the contract or lease is for and the nature of the debtor's interest **Sub-Advisory Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Highland HCF Advisor, Ltd.
Attention: General Counsel
300 Crescent Court
Suite 700
Dallas, TX 75201

2.81. State what the contract or lease is for and the nature of the debtor's interest **Shared Services Agreement**
 State the term remaining **30 Days**
 List the contract number of any government contract _____
Highland HCF Advisor, Ltd.
Attention: General Counsel
300 Crescent Court
Suite 700
Dallas, TX 75201

2.82. State what the contract or lease is for and the nature of the debtor's interest **Collateral Management Agreement**
 State the term remaining **Termination Contingent**
Highland Legacy Limited
c/o Maples and Calder, PO Box 309
Ugland House, South Church Street, Georg
Grand Cayman, Cayman Islands

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract _____

2.83. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Highland Loan Fund, Ltd., et al
PO Box 309 Ugland House
Grand Cayman
KY1-1104, Cayman Islands

2.84. State what the contract or lease is for and the nature of the debtor's interest **Collateral Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Highland Loan Funding V Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.85. State what the contract or lease is for and the nature of the debtor's interest **Third Amended And Restated Investment Management Agreement**
 State the term remaining **75 Day Termination; Annual Auto Renewal Following Initial Term 12/31/2014**
 List the contract number of any government contract _____
Highland Multi Strategy Credit Fund, Ltd
PO Box 309 Ugland House
Grand Cayman
KY1-1104, Cayman Islands

2.86. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**
 State the term remaining **60 Day Termination; Annual Auto Renewal Following Initial Term 7/31/2007**
 List the contract number of any government contract _____
Highland Multi Strategy Credit Fund, Ltd
PO Box 309 Ugland House
Grand Cayman
KY1-1104, Cayman Islands

2.87. State what the contract or lease is for and the nature of the debtor's interest **Collateral Servicing Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Highland Park CDO I, Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.88. State what the contract or lease is for and the nature of the debtor's interest **Amended And Restated Investment Management Agreement**
 State the term remaining **90 Days With Additional Contingencies**
 List the contract number of any government contract _____
Highland Prometheus Master Fund, L.P.
c/o Maples and Calder, PO Box 309
Ugland House, South Church Street, Georg
Grand Cayman, Cayman Islands

2.89. State what the contract or lease is for and the nature of the debtor's interest **Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Highland Restoration Capital Partners Offshore, L.P.
PO Box 309 Ugland House
Grand Cayman
KY1-1104, Cayman Islands

2.90. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**
 State the term remaining **75 Days With Additional Contingencies**
 List the contract number of any government contract _____
Highland Select Equity Master Fund, L.P.
31 Victoria Street Victoria House
Hamilton
HM10, Bermuda

2.91. State what the contract or lease is for and the nature of the debtor's interest **Oms Software**
 State the term remaining **Annual**
 List the contract number of any government contract _____
IBM Websphere
1 New Orchard Road
Armonk, NY 10504

2.92. State what the contract or lease is for and the nature of the debtor's interest **Discovery Assistant**
 State the term remaining **111 Days**
 List the contract number of any government contract _____
ImageMAKER Development Inc
Ste 102,416 - 6th Street
New Westminster, BC, Canada
V3L3B2

2.93. State what the contract or lease is for and the nature of the debtor's interest **Software License Xto Zephyr**
Informa Investment Solutions
4 Westchester Park Drive
White Plain, NY 10604

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **288 Days**

List the contract number of any government contract _____

2.94. State what the contract or lease is for and the nature of the debtor's interest **Style Advisor Software**

State the term remaining **76 Days**

List the contract number of any government contract _____

**Informa Investment Solutions
 4 Westchester Park Drive
 White Plain, NY 10604**

2.95. State what the contract or lease is for and the nature of the debtor's interest **Research Vendor**

State the term remaining **228 Days**

List the contract number of any government contract _____

**InsiderScore, LLC
 100 Thanet Circle
 Suite 300
 Princeton, NJ 08540**

2.96. State what the contract or lease is for and the nature of the debtor's interest **Data Warehouse Services**

State the term remaining **Variable based on schedule**

List the contract number of any government contract _____

**Interactive Data Pricing and Reference D
 32 Crosby Drive
 Bedford, MA 01730**

2.97. State what the contract or lease is for and the nature of the debtor's interest **License Deal Model Libraries**

State the term remaining **350 Days**

List the contract number of any government contract _____

**Intex Solutions, Inc.
 110 A Street
 Needham, MA 02494**

2.98. State what the contract or lease is for and the nature of the debtor's interest **Data Site**

State the term remaining **Variable based on schedule**

List the contract number of any government contract _____

**Intralinks Inc.
 150 East 42nd St
 8th floor
 New York, NY 10017**

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.99. State what the contract or lease is for and the nature of the debtor's interest **Desktop Usb Monitoring**
 State the term remaining **Annual**
 List the contract number of any government contract _____
Ivanti Security
698 West 10000 South
Jordan, UT 84095

2.100. State what the contract or lease is for and the nature of the debtor's interest **Amended And Restated Portfolio Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Jasper CLO Ltd.
190 Elgin Avenue
George Town, Grand Cayman
KY1-9005, Cayman Islands

2.101. State what the contract or lease is for and the nature of the debtor's interest **Portfolio Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Liberty CLO Ltd.
190 Elgin Avenue
George Town, Grand Cayman
KY1-9005, Cayman Islands

2.102. State what the contract or lease is for and the nature of the debtor's interest **Group Life Insurance**
 State the term remaining **406 Days**
 List the contract number of any government contract _____
Liberty Life Assurance Company of Boston
100 Liberty Way
Dover, NH 03821

2.103. State what the contract or lease is for and the nature of the debtor's interest **Financial Institution Bond**
 State the term remaining **199 Days**
 List the contract number of any government contract _____
Liberty Mutual Insurance Company
175 Berkley St
Boston, MA 02116

2.104. State what the contract or lease is for and the nature of the debtor's interest **Linkedin - Recruiting/Job Posting**
 State the term remaining **269 Days**
 List the contract number of any government contract _____
LinkedIn Corporation
1000 West Maude Avenue
Sunnyvale, CA 94085

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

government contract _____

2.105. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____ **Longhorn Credit Funding, LLC**
874 Walker Rd, Ste C
Dover, DE 19904

2.106. State what the contract or lease is for and the nature of the debtor's interest **Amendment No. 1 To Investment Management Agreement**
 State the term remaining **N/A**
 List the contract number of any government contract _____ **Longhorn Credit Funding, LLC**
874 Walker Rd, Ste C
Dover, DE 19904

2.107. State what the contract or lease is for and the nature of the debtor's interest **Macroeconomic Research Services**
 State the term remaining **15 Days**
 List the contract number of any government contract _____ **MacroMavens**
180 W 20th Street
Suite 1700
New York, NY 10011

2.108. State what the contract or lease is for and the nature of the debtor's interest **Compliance Services**
 State the term remaining **One month termination**
 List the contract number of any government contract _____ **Maples Compliance Services (Cayman) Limit**
PO Box 1093, Queensgate House
Grand Cayman, Cayman Islands
KY1-1102

2.109. State what the contract or lease is for and the nature of the debtor's interest **Nav Calc And Distribution**
 State the term remaining **223 Days**
 List the contract number of any government contract _____ **Markit Equities Limited**
c.o Market Group Limited, Level 4
Ropemaker Place, 25 Ropemaker Street
London EC2Y9LY

2.110. State what the contract or lease is for and the nature of the debtor's interest **Data Services**
Markit Group Limited / Markit North America
2 More London Riverside
London SE12AP

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **60 day termination after initial term of 11/01/2021; variable based on schedules**
 List the contract number of any government contract _____

2.111. State what the contract or lease is for and the nature of the debtor's interest **Software License**
 State the term remaining **746 Days** **MarkitWSO Corporation
 Three Lincoln Centre
 5430 LBJ Freeway
 Ste 800
 Dallas, TX 75240**
 List the contract number of any government contract _____

2.112. State what the contract or lease is for and the nature of the debtor's interest **Wso Software**
 State the term remaining **746 Days** **MarkitWSO Corporation
 Three Lincoln Centre
 5430 LBJ Freeway Ste 800
 Dallas, TX 75240**
 List the contract number of any government contract _____

2.113. State what the contract or lease is for and the nature of the debtor's interest **401K Plan Admin**
 State the term remaining **47 Days** **MBM Advisors, Inc.
 440 Louisiana St
 Suite 2500
 Houston, TX 77002**
 List the contract number of any government contract _____

2.114. State what the contract or lease is for and the nature of the debtor's interest **Comp Survey**
 State the term remaining **30 day termination** **McLagan Partners Inc (Aon McLagan)
 1600 Summer Street
 Ste 601
 Stamford, CT 06905**
 List the contract number of any government contract _____

2.115. State what the contract or lease is for and the nature of the debtor's interest **Subscription To Creditflux News & Clo I-Data Services**
 State the term remaining **350 Days** **Mergermarket (US) Limited
 1501 Broadway
 8th Floor
 New York, NY 10036**
 List the contract number of any government contract _____

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.116. State what the contract or lease is for and the nature of the debtor's interest **Subscription To Xtract Research**
 State the term remaining **45 Days** **Mergermarket (US) Limited**
1501 Broadway
 List the contract number of any government contract **Suite 801**
New York, NY 10036

2.117. State what the contract or lease is for and the nature of the debtor's interest **Term Life Insurance**
 State the term remaining **188 Days** **Metlife Investors USA Insurance Company**
PO Box 13863
 List the contract number of any government contract **Philadelphia, PA 19101**

2.118. State what the contract or lease is for and the nature of the debtor's interest **Ms Software Assurance**
 State the term remaining **3 Years** **Microsoft**
One Microsoft Way
 List the contract number of any government contract **Redmond, WA 98052**

2.119. State what the contract or lease is for and the nature of the debtor's interest **Creditview Corporate - Leveraged Finance (12 Users)**
 State the term remaining **74 Days** **Moody's Analytics, Inc.**
7 World Trade Center
 List the contract number of any government contract **New York, NY 10007**

2.120. State what the contract or lease is for and the nature of the debtor's interest **Software License**
 State the term remaining **259 Days** **Morningstar Inc.**
22 W Washington St
 List the contract number of any government contract **Chicago, IL 60602**

2.121. State what the contract or lease is for and the nature of the debtor's interest **Data License**
 State the term remaining **50 Days** **MSCI Inc.**
7 World Trade Center
250 Greenwich St, 49th floor
New York, NY 10007

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract _____

2.122. State what the contract or lease is for and the nature of the debtor's interest **Mailflow Monitoring**
 State the term remaining **Monthly** **Mxtoolbox**
12710 Research Blvd
Ste 225
Austin, TX 00225
 List the contract number of any government contract _____

2.123. State what the contract or lease is for and the nature of the debtor's interest **San Maintenance**
 State the term remaining **3 Years** **Netapp**
1395 Crossman Ave
Sunnyvale, CA 94089
 List the contract number of any government contract _____

2.124. State what the contract or lease is for and the nature of the debtor's interest **Third Amended And Restated Investment Advisory Agreement**
 State the term remaining **30 Day Termination; One Year Autoextend After Initial Term Of 8/31/2018** **NexBank SSB**
2515 McKinney Avenue
Suite 1100
Dallas, TX 75201
 List the contract number of any government contract _____

2.125. State what the contract or lease is for and the nature of the debtor's interest **Sub-Servicing Agreement; Shared National Credit Program**
 State the term remaining **30 day termination; one year autorenwal after initial term of 1/1/2015, additional termination contingencies** **NexBank, SSB**
2515 McKinney Avenue
Suite 1100
Dallas, TX 75201
 List the contract number of any government contract _____

2.126. State what the contract or lease is for and the nature of the debtor's interest **Sub-Advisory Agreement**
 State the term remaining **30 Days With Additional Contingencies** **NexPoint Advisors, LP**
200 Crescent Court
Ste. 700
Dallas, TX 75201
 List the contract number of any government contract _____

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

government contract _____

2.127. State what the contract or lease is for and the nature of the debtor's interest **Amended And Restated Shared Services Agreement**
 State the term remaining **30 Days** **NexPoint Advisors, LP**
200 Crescent Court
Ste. 700
Dallas, TX 75201
 List the contract number of any government contract _____

2.128. State what the contract or lease is for and the nature of the debtor's interest **Cloud Single Sign On**
 State the term remaining **Monthly** **Onelogin**
848 Battery Street
San Francisco, CA 94111
 List the contract number of any government contract _____

2.129. State what the contract or lease is for and the nature of the debtor's interest **Rightfax Maintenance**
 State the term remaining **Annual** **Opentext**
275 Frank Tompa Drive
Waterloo, ON N2L 0A1
Canada
 List the contract number of any government contract _____

2.130. State what the contract or lease is for and the nature of the debtor's interest **Oracle Owns Taleo Our Ats**
 State the term remaining **80 Days** **Oracle America, Inc.**
500 Oracle Parkway
Redwood Shores, CA 94065
 List the contract number of any government contract _____

2.131. State what the contract or lease is for and the nature of the debtor's interest **Network Monitoring**
 State the term remaining **Annual** **Paessler**
Thurn-und-Taxis-Str. 14
90411 Nuremberg
Germany
 List the contract number of any government contract _____

2.132. State what the contract or lease is for and the nature of the debtor's interest **Collateral Management Agreement** **PAM Capital Funding, LP / Ranger Asset Management LP**
c/o Maples and Calder, PO Box 309
Ugland House, South Church Street, Georg
Grand Cayman, Cayman Islands

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **Termination Contingent**
 List the contract number of any government contract _____

2.133. State what the contract or lease is for and the nature of the debtor's interest **Collateral Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
PamCo Cayman Ltd. / Ranger Asset Management LP
c/o Maples and Calder, PO Box 309
Ugland House, South Church Street, Georg
Grand Cayman, Cayman Islands

2.134. State what the contract or lease is for and the nature of the debtor's interest **Payroll Services**
 State the term remaining **N/A**
 List the contract number of any government contract _____
Paylocity Corporation
3850 N. Wilke Rd.
Arlington Heights, IL 60004

2.135. State what the contract or lease is for and the nature of the debtor's interest **401Kplan Auditor Erisa Cpa**
 State the term remaining **Perpetuity**
 List the contract number of any government contract _____
Payne & Smith, LLC
5952 Royal Lane
Ste 158
Dallas, TX 75230

2.136. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**
 State the term remaining **75 Days With Additional Contingencies**
 List the contract number of any government contract _____
PCMG Trading Partners XXIII, L.P.
1209 Orange Street
Wilmington, DE 19801

2.137. State what the contract or lease is for and the nature of the debtor's interest **Investment Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
PensionDanmark Pensionsforsikringsakties
Langelinie Alle 43
2100 Copenhagen
Attention: Head of Legal
Denmark

Debtor 1 **Highland Capital Management, L.P.**
 First Name Middle Name Last Name

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.138. State what the contract or lease is for and the nature of the debtor's interest **Amendment No. 1 To Investment Management Agreement**
 State the term remaining **N/A**
 List the contract number of any government contract _____
**PensionDanmark Pensionsforsikringsakties
 Langelinie Alle 43
 2100 Copenhagen
 Attention: Head of Legal
 Denmark**

2.139. State what the contract or lease is for and the nature of the debtor's interest **Amended And Restated Administrative Services Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
**PetroCap Partners II GP, LLC
 Attention: William L. Britain
 2602 McKinney Avenue
 Suite 400
 Dallas, TX 75204**

2.140. State what the contract or lease is for and the nature of the debtor's interest **Mail Meter**
 State the term remaining **60 day termination; one year autorenewal after initial term of 09/09/14**
 List the contract number of any government contract _____
**Pitney Bowes Global Financial Services
 PO Box 371874
 Pittsburgh, PA 15250**

2.141. State what the contract or lease is for and the nature of the debtor's interest **Media Services**
 State the term remaining **106 Days**
 List the contract number of any government contract _____
**PR Newswire Association, LLC
 602 Plaza
 Three Harborside Financial Center
 Jersey City, NJ 07311**

2.142. State what the contract or lease is for and the nature of the debtor's interest **Actuarial Valuation Retirement Plan**
 State the term remaining **Project Based**
 List the contract number of any government contract _____
**PricewaterhouseCoopers LLP
 One North Wacker
 Chicago, IL 60606**

2.143. State what the contract or lease is for and the nature of the debtor's interest **Second Amended And Restated Back Office Shared Services And Administration Agreement**
 State the term remaining **30 Day Termination;**
**Rand Advisors, LLC / Atlas IDF LP, et al
 Attn John Honis
 87 Railroad Place
 Ste 403
 Saratoga Springs, NY 12866**

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract _____
One Year Autorenewal After Initial Term Of 12/24/2016, Additional Termination Contingencies

2.144. State what the contract or lease is for and the nature of the debtor's interest **Linux Maintenance**
 State the term remaining **Annual**
 List the contract number of any government contract _____
Red Hat
100 East Davie Street
Raleigh, NC 27601

2.145. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Red River CLO Ltd.
190 Elgin Avenue
George Town Grand Cayman
KY1-9005, Cayman Islands

2.146. State what the contract or lease is for and the nature of the debtor's interest **Amendment No. 1 To Servicing Agreement**
 State the term remaining **N/A**
 List the contract number of any government contract _____
Red River CLO Ltd., et al
190 Elgin Avenue
George Town, Grand Cayman
KY1-9005, Cayman Islands

2.147. State what the contract or lease is for and the nature of the debtor's interest **Subscription Services, Reorg Americas**
 State the term remaining **289 Days**
 List the contract number of any government contract _____
Reorg Research, Inc.
11 East 26th Street
12th Floor
New York, NY 10010

2.148. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Rockwall CDO II Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

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 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.149. State what the contract or lease is for and the nature of the debtor's interest **Interim Collateral Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Rockwall CDO Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.150. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Rockwall CDO Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.151. State what the contract or lease is for and the nature of the debtor's interest **Amendment No. 1 To Servicing Agreement**
 State the term remaining **N/A**
 List the contract number of any government contract _____
Rockwall CDO Ltd., et al
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.152. State what the contract or lease is for and the nature of the debtor's interest **Advisory Services Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Romacorp, Inc.
1700 Alma Drive
Ste. 400
Plano, TX 75075

2.153. State what the contract or lease is for and the nature of the debtor's interest **Research Services**
 State the term remaining **442 Days**
 List the contract number of any government contract _____
S&P Global Market Intelligence LLC
55 Water Street
New York, NY 10041

2.154. State what the contract or lease is for and the nature of the debtor's interest **Subadvisor Agreement**
 State the term remaining **Termination Contingent**
SALI Fund Management, LLC
6836 Austin Center Blvd
Ste. 320
Austin, TX 78731

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract _____

2.155. State what the contract or lease is for and the nature of the debtor's interest **It Services**
 State the term remaining **717 Days**
 List the contract number of any government contract _____
Siepe Services, LLC
2200 Ross Ave, Ste 4700E
Dallas, TX 75201

2.156. State what the contract or lease is for and the nature of the debtor's interest **Ftp Server Maintenance**
 State the term remaining **Annual**
 List the contract number of any government contract _____
Solarwinds
7171 Southwest Parkway
Bldg 400
Austin, TX 78735

2.157. State what the contract or lease is for and the nature of the debtor's interest **Portfolio Management Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Southfork CLO Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.158. State what the contract or lease is for and the nature of the debtor's interest **Research Services**
 State the term remaining **320 Days**
 List the contract number of any government contract _____
Spin-off Advisors, LLC
1327 W. Washington Blvd
Suite 4-G
Chicago, IL 60607

2.159. State what the contract or lease is for and the nature of the debtor's interest **Finders Fee For Acquisitions/Investments**
 State the term remaining **Perpetuity**
 List the contract number of any government contract _____
Springboard Network LLC
9900 Spectrum Drive
Austin, TX 78717

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.160. State what the contract or lease is for and the nature of the debtor's interest **Fourth Admended And Restated Agreement Of Limited Partnership Of Highland Capital Management, L.P.**
 State the term remaining **Perpetuity**
 List the contract number of any government contract _____ **Strand Advisors Inc.
 1209 Orange Street
 Wilmington, DE 19801**

2.161. State what the contract or lease is for and the nature of the debtor's interest **Research Service**
 State the term remaining **442 Days**
 List the contract number of any government contract _____ **Strategas Securities, LLC
 52 Vanderbilt Ave
 8th Floor
 New York, NY 10017**

2.162. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____ **Stratford CLO Ltd.
 P.O. Box 1093GT, Queensgate House
 South Church Street, George Town
 Grand Cayman, Cayman Islands**

2.163. State what the contract or lease is for and the nature of the debtor's interest **Management Services Agreement**
 State the term remaining **Contingent**
 List the contract number of any government contract _____ **Structural and Steel Products, Inc
 3001 W Pafford Street
 Fort Worth, TX 76110**

2.164. State what the contract or lease is for and the nature of the debtor's interest **Electronic Trading Services**
 State the term remaining **30 day termination**
 List the contract number of any government contract _____ **SunTrust Robinson Humphrey Inc.
 SunTrust Robinson Humphrey
 Attn: Documentation
 711 5th Avenue 14th Fl.
 New York, NY 10022**

2.165. State what the contract or lease is for and the nature of the debtor's interest **Symphony License**
 State the term remaining **205 Days**
 _____ **Symphony Communication Services LLC
 1117 S California Ave
 Palo Alto, CA 94304**

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract _____

2.166. State what the contract or lease is for and the nature of the debtor's interest **Electronic Access**
State the term remaining **Perpetuity**
List the contract number of any government contract _____
The Bank of New York Mellon Trust Company
601 Travis, 16th floor
Houston, TX 77002

2.167. State what the contract or lease is for and the nature of the debtor's interest **Tax Research Software**
State the term remaining **139 Days**
List the contract number of any government contract _____
The Bureau of National Affairs, Inc
1801 South Bell Street
Arlington, VA 22202

2.168. State what the contract or lease is for and the nature of the debtor's interest **Disability Income Insurance**
State the term remaining **258 Days**
List the contract number of any government contract _____
The Standard
1100 SW Sixth Ave
Portland, OR 97204

2.169. State what the contract or lease is for and the nature of the debtor's interest **Westlaw Services**
State the term remaining **60 day termination and one year autorenewal; after initial term of 11/29/2021**
List the contract number of any government contract _____
Thompson Reuters
610 Opperman Drive
PO Box 64833
Eagan, MN 55123

2.170. State what the contract or lease is for and the nature of the debtor's interest **Tax Research Software**
State the term remaining **224 Days**
List the contract number of any government contract _____
Thomson Reuters
PO Box 71687
Chicago, IL 60694

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.171. State what the contract or lease is for and the nature of the debtor's interest **Dns Server Backup**
 State the term remaining **Monthly** **Total Uptime Tech**
 List the contract number of any government contract _____ **Post Office Box 2228**
Skyland, NC 28776

2.172. State what the contract or lease is for and the nature of the debtor's interest **Amended And Restated Advisory Services Agreement**
 State the term remaining **Termination Contingent** **Trussway Holdings, Inc.**
 List the contract number of any government contract _____ **9411 Alcorn**
Houston, TX 77093

2.173. State what the contract or lease is for and the nature of the debtor's interest **Mail Gateway**
 State the term remaining **Annual** **Trustwave**
 List the contract number of any government contract _____ **70 W Madison St**
Ste. 1050
Chicago, IL 01050

2.174. State what the contract or lease is for and the nature of the debtor's interest **Mailing**
 State the term remaining **1007 Days** **United Parcel Service, Inc**
 List the contract number of any government contract _____ **55 Glenlake Parkway**
Atlanta, GA 30328

2.175. State what the contract or lease is for and the nature of the debtor's interest **Reference Portfolio Management Agreement**
 State the term remaining **Termination Contingent** **Valhalla CLO, Ltd.**
 List the contract number of any government contract _____ **c/o Intertrust SPV Cayman Limited**
190 Elgin Ave, George Town Grand Cayman
Cayman Islands

2.176. State what the contract or lease is for and the nature of the debtor's interest **Server Backups, Tape**
 State the term remaining **Annual** **Veritas Backup Exec**
 List the contract number of any government contract _____ **2625 Augustine Drive**
Santa Clara, CA 95054

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

government contract _____

2.177. State what the contract or lease is for and the nature of the debtor's interest **Mail Archive Software**
 State the term remaining **Annual**
 List the contract number of any government contract _____
Veritas Enterprise Vault
2625 Augustine Drive
Santa Clara, CA 95054

2.178. State what the contract or lease is for and the nature of the debtor's interest **Print Services**
 State the term remaining **Monthly**
 List the contract number of any government contract _____
Verity Group
885 E Collins Blvd
Ste. 102
Richardson, TX 75081

2.179. State what the contract or lease is for and the nature of the debtor's interest **Servicing Agreement**
 State the term remaining **Termination Contingent**
 List the contract number of any government contract _____
Westchester CLO Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.180. State what the contract or lease is for and the nature of the debtor's interest **Tax Return Software; File Document Storage Software**
 State the term remaining **37 Days**
 List the contract number of any government contract _____
Wolters Kluwer
1999 Bryan Street
Ste 900
Dallas, TX 75201

2.181. State what the contract or lease is for and the nature of the debtor's interest **Public Website Hosting**
 State the term remaining **Monthly**
 List the contract number of any government contract _____
WP Engine
504 Lavaca Street
Suite 1000
Austin, TX 78701

2.182. State what the contract or lease is for and the nature of the debtor's interest **Print Services**
Xerox
45 Glover Ave
Norwalk, CT 06856

Debtor 1 **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **Monthly**

List the contract number of any government contract _____

2.183. State what the contract or lease is for and the nature of the debtor's interest **Wan Line**

State the term remaining **2 Years**

**Zayo Group
1821 30th Street
Unit A
Boulder, CO 80301**

List the contract number of any government contract _____

2.184. State what the contract or lease is for and the nature of the debtor's interest **Helpdesk Platform**

State the term remaining **Monthly**

**Zendesk
1019 Market St
San Francisco, CA 94103**

List the contract number of any government contract _____

2.185. State what the contract or lease is for and the nature of the debtor's interest **Web Proxy**

State the term remaining **Annual**

**Zscaler
110 Rose Orchard Way
San Jose, CA 95134**

List the contract number of any government contract _____

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

**Official Form 206H
Schedule H: Your Codebtors**

12/15

Be as complete and accurate as possible. If more space is needed, copy the Additional Page, numbering the entries consecutively. Attach the Additional Page to this page.

1. Do you have any codebtors?

- No. Check this box and submit this form to the court with the debtor's other schedules. Nothing else needs to be reported on this form.
- Yes

2. In Column 1, list as codebtors all of the people or entities who are also liable for any debts listed by the debtor in the schedules of creditors, Schedules D-G. Include all guarantors and co-obligors. In Column 2, identify the creditor to whom the debt is owed and each schedule on which the creditor is listed. If the codebtor is liable on a debt to more than one creditor, list each creditor separately in Column 2.

Column 1: Codebtor		Column 2: Creditor	
Name	Mailing Address	Name	Check all schedules that apply:
2.1 Acis CLO 2014-3 Ltd.	P.O. Box 1093, Boundary Hall, Cricket Sq George Town, Grand Cayman KY1-1102 Cayman Islands	Lynn Pinker Cox & Hurst, LLP	<input type="checkbox"/> D _____ <input checked="" type="checkbox"/> E/F <u>3.82</u> <input type="checkbox"/> G _____
2.2 Acis CLO 2014-3 Ltd.	P.O. Box 1093, Boundary Hall, Cricket Sq George Town, Grand Cayman KY1-1102 Cayman Islands	Foley Gardere	<input type="checkbox"/> D _____ <input checked="" type="checkbox"/> E/F <u>3.56</u> <input type="checkbox"/> G _____
2.3 Highland CLO 2014-3R LLC	300 Crescent Ct Suite 700 Dallas, TX 75201	Cole Schotz	<input type="checkbox"/> D _____ <input checked="" type="checkbox"/> E/F <u>3.35</u> <input type="checkbox"/> G _____
2.4 Highland CLO 2014-3R Ltd.	300 Crescent Ct. Suite 700 Dallas, TX 75201	Cole Schotz	<input type="checkbox"/> D _____ <input checked="" type="checkbox"/> E/F <u>3.35</u> <input type="checkbox"/> G _____

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

Additional Page to List More Codebtors

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.
 Column 1: Codebtor Column 2: Creditor

2.5 **Highland CLO Funding, Ltd.** First Floor, Dorey Court, Admiral Park St. Peter Port, Guernsey GY1 6HJ Channel Islands **Foley Gardere** D _____ E/F 3.56 G _____

2.6 **Highland CLO Holding, Ltd.** PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island **Foley Gardere** D _____ E/F 3.56 G _____

2.7 **Highland CLO Holding, Ltd.** PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island **Lynn Pinker Cox & Hurst, LLP** D _____ E/F 3.82 G _____

2.8 **Highland CLO Management GP, LLC** 1209 Orange St Wilmington, DE 19801 **Cole Schotz** D _____ E/F 3.35 G _____

2.9 **Highland CLO Management Holdings, L.P.** PO Box 309 Ugland House Grand Cayman KY1-1104 Cayman Islands **Cole Schotz** D _____ E/F 3.35 G _____

2.10 **Highland CLO Management, LLC** 1209 Orange St. Wilmington, DE 19801 **Cole Schotz** D _____ E/F 3.35 G _____

2.11 **Highland CLO Management, Ltd.** PO Box 309 Ugland House, S. Church St. George Town, Grand Cayman KY1-1004 Cayman Islands **Foley Gardere** D _____ E/F 3.56 G _____

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

Additional Page to List More Codebtors

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.
 Column 1: Codebtor Column 2: Creditor

2.12 **Highland CLO Management, Ltd.** PO Box 309 Ugland House, S. Church St. George Town, Grand Cayman KY1-1004 Cayman Islands **Lynn Pinker Cox & Hurst, LLP** D _____ E/F 3.82 G _____

2.13 **Highland CLO Trust** PO Box 309 Ugland House George Town, Grand Cayman KY1-1104 Cayman Islands **Cole Schotz** D _____ E/F 3.35 G _____

2.14 **Highland Credit Opportunities CDO, LP** 1209 Orange St Wilmington, DE 19801 **Reid Collins & Tsai** D _____ E/F 3.96 G _____

2.15 **Highland Credit Strategies Master FundLP** 31 Victoria St Hamilton HM10 **Reid Collins & Tsai** D _____ E/F 3.96 G _____

2.16 **Highland Crusader Offshore Partners, L.P** Magnolia House Building, 1st Floor 119 Front Street Hamilton HM 12 **Reid Collins & Tsai** D _____ E/F 3.96 G _____

2.17 **Highland Employee Retention Assets, LLC** 1209 Orange St Wilmington, DE 19801 **DLA Piper LLP (US)** D _____ E/F 3.48 G _____

2.18 **Highland ERA Management, LLC** 1209 Orange St. Wilmington, DE 19801 **DLA Piper LLP (US)** D _____ E/F 3.48 G _____

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

Additional Page to List More Codebtors

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.
Column 1: Codebtor Column 2: Creditor

2.19 **Highland HCF Advisor, Ltd.** PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island **Cole Schotz** D _____ E/F 3.35 G _____

2.20 **Highland HCF Advisor, Ltd.** PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island **Foley Gardere** D _____ E/F 3.56 G _____

2.21 **Highland HCF Advisor, Ltd.** PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island **Lynn Pinker Cox & Hurst, LLP** D _____ E/F 3.82 G _____

2.22 **James Dondero** 300 Crescent Ct. Suite 700 Dallas, TX 75201 **DLA Piper LLP (US)** D _____ E/F 3.48 G _____

2.23 **NexBank, SSB** 2515 McKinney Ave #1100 Dallas, TX 75201 **Stinson Leonard Street LLP** D _____ E/F 3.105 G _____

2.24 **Strand Advisors, Inc.** 1209 Orange St. Wilmington, DE 19801 **Reid Collins & Tsai** D _____ E/F 3.96 G _____

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.
United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS
Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- Schedule H: Codebtors* (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- Amended Schedule _____
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 13, 2019

X



Signature of individual signing on behalf of debtor

Bradley Sharp

Printed name

Chief Restructuring Officer

Position or relationship to debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

**GLOBAL NOTES AND STATEMENT OF LIMITATIONS, METHODS, AND
DISCLAIMER REGARDING DEBTOR’S SCHEDULES OF ASSETS AND
LIABILITIES AND STATEMENT OF FINANCIAL AFFAIRS**

Highland Capital Management, L.P. (the “Debtor”) submits its Schedules of Assets and Liabilities (the “Schedules”) and Statement of Financial Affairs (the “SoFA”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”). The Debtor, with the assistance of its advisors and management, prepared the Schedules and SoFA in accordance with section 521 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

These Global Notes and Statement of Limitations, Methods, and Disclaimer Regarding the Debtor’s Schedules and SoFA (collectively, the “Global Notes”) pertain to, are incorporated by reference in, and comprise an integral part of the Schedules and SoFA. These Global Notes should be referred to, and reviewed in connection with any review of the Schedules and SoFA.²

The Schedules and SoFA have been prepared by the Debtor with the assistance and under the direction of the Debtor’s proposed Chief Restructuring Officer and additional personnel at Development Specialists, Inc. (collectively, the “CRO”) and are unaudited and subject to further review and potential adjustment and amendment. In preparing the Schedules and SoFA, the CRO relied on financial data derived from the Debtor’s books and records that was available at the time of preparation. The CRO has made reasonable efforts to ensure the accuracy and completeness of such financial information, however, subsequent information or discovery of other relevant facts may result in material changes to the Schedules and SoFA and inadvertent errors, omissions, or inaccuracies may exist. The Debtor reserves all rights to amend or supplement its Schedules and SoFA.

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² These Global Notes are in addition to any specific notes contained in the Debtor’s Schedules or SoFA. The fact that the Debtor has prepared a “general note” with respect to any of the Schedules and SoFA and not to others should not be interpreted as a decision by the Debtor to exclude the applicability of such general note to any of the Debtor’s remaining Schedules and SoFA, as appropriate.

Reservation of Rights. The Debtor reserves all rights to amend the SoFA and Schedules in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.” Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other applicable non-bankruptcy laws.

Description of the Case and “As Is” Information Date. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”) under Chapter 11 of the Bankruptcy Code. The Debtor is managing its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On December 4, 2019, the Delaware Bankruptcy Court entered an Order transferring this case to the Bankruptcy Court [Docket No. 1].

Asset information in the Schedules reflects the Debtor’s best estimate of asset values as of the Petition Date, unless otherwise noted. No independent valuation has been obtained.

Basis of Presentation. The Schedules and SoFA do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles (“GAAP”), nor are they intended to fully reconcile to any financial statements otherwise prepared and/or distributed by the Debtor.

Although these Schedules and SoFA may, at times, incorporate information prepared in accordance with GAAP, the Schedules and SoFA neither purport to represent nor reconcile to financial statements prepared and/or distributed by the Debtor in accordance with GAAP or otherwise. Moreover, given, among other things, the valuation and nature of certain liabilities, to the extent that the Debtor shows more assets than liabilities, this is not a conclusion that the Debtor was solvent at the Petition Date. Likewise, to the extent that the Debtor shows more liabilities than assets, this is not a conclusion that the Debtor was insolvent at the Petition Date or any time prior to the Petition Date.

Estimates. To timely close the books and records of the Debtor, the CRO must make certain estimates and assumptions that affect the reported amounts of assets and liabilities and reported revenue and expenses. The Debtor reserves all rights to amend the reported amounts of assets, liabilities, revenue, and expenses to reflect changes in those estimates and assumptions.

Confidentiality. There may be instances within the Schedules and SoFA where names, addresses, or amounts have been left blank. Due to the nature of an agreement between the Debtor and the third party, concerns of confidentiality, or concerns for the privacy of an individual, the Debtor may have deemed it appropriate and necessary to avoid listing such names, addresses, and amounts.

Intercompany Claims. Any receivables and payables between the Debtor and affiliated or related entities in this case (each an “Intercompany Receivable” or “Intercompany Payable” and, collectively, the “Intercompany Claims”) are reported as assets on Schedule B or liabilities on Schedule E and Schedule F. These Intercompany Claims include the following components, among others: 1) loans to affiliates or related entities, 2) accounts payable and payroll disbursements made out of an affiliate’s or related entity’s bank accounts on behalf of the Debtor, 3) centrally billed expenses, 4) corporate expense allocations, and 5) accounting for trade and other intercompany transactions. These Intercompany Claims may or may not result in allowed or enforceable claims by or against the Debtor, and by listing these claims the Debtor is not indicating a conclusion that the Intercompany Claims are enforceable. Intercompany Claims may also be subject to set off, recoupment, and netting not reflected in the Schedules. In situations where there is not an enforceable claim, the assets and/or liabilities of the Debtor may be greater or lesser than the amounts stated herein. All rights to amend intercompany Claims in the Schedules and SoFA are reserved.

The Debtor has listed the intercompany payables as unsecured claims on Schedule F. The Debtor reserves its rights to later change the characterization, classification, categorization, or designation of such items.

Insiders. For purposes of the Schedules and SoFA, the Debtor defines “insider” pursuant to section 101(31) of the Bankruptcy Code. Payments to insiders are set forth on Question 3.c. of the SoFA.

Persons listed as “insiders” have been included for informational purposes only. The Debtor did not take any position with respect to whether such individual could successfully argue that he or she is not an “insider” under applicable law, including without limitation, the federal securities laws, or with respect to any theories of liability or for any other purpose. Inclusion of any party in the Schedules and SoFA as an insider does not constitute an admission that such party is an insider or a waiver of such party’s right to dispute insider status.

Excluded Accruals and GAAP Entries. The Debtor’s balance sheet reflects liabilities recognized in accordance with GAAP; however, not all such liabilities would result in a claim against the Debtor. Certain liabilities (including but not limited to certain reserves, deferred charges, and future contractual obligations) have not been included in the Debtor’s Schedules. Other immaterial assets and liabilities may also have been excluded.

Classification and Claim Descriptions. Any failure to designate a claim on the Schedules as “disputed,” “contingent” or “unliquidated” does not constitute an admission by the Debtor that such amount is not “disputed,” “contingent” or “unliquidated.” The Debtor reserves the right to dispute, or to assert offsets or defenses to, any claim reflected on its Schedules as to amount, liability or classification or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.”

Listing a claim (i) in Schedule D as “secured,” (ii) in Schedule E as “priority” or (iii) in Schedule F as “unsecured nonpriority,” or listing a contract in Schedule G as “executory” or “unexpired,” does not constitute an admission by the Debtor of the legal rights of the claimant or a waiver of the Debtor’s right to recharacterize or reclassify such claim or contract.

Moreover, the Debtor reserves all rights to amend the SoFA and Schedules, in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.” Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other relevant non-bankruptcy laws.

Credits and Adjustments. The claims of individual creditors for, among other things, goods, products, services or taxes are listed as the amounts entered on the Debtor’s books and records and may not reflect credits, allowances or other adjustments due from such creditors to the Debtor. The Debtor reserves all of its rights respecting such credits, allowances or other adjustments.

Setoffs. The Debtor may incur setoffs from third parties in its business. Setoffs in the ordinary course can result from various routine transactions, including intercompany transactions, pricing discrepancies, warranty claims and other disputes between the Debtor and third parties. Certain of these constitute normal setoffs consistent with the ordinary course of business in the Debtor’s industry. In such instances, such ordinary course setoffs are excluded from the Debtor’s responses to Question 13 of the SoFA. The Debtor reserves all rights to enforce or challenge, as the case may be, any setoffs that have been or may be asserted.

Specific Notes. These general notes are in addition to the specific notes set forth below or in the related Statement and Schedules hereinafter.

General Disclaimer

The Debtor has prepared the Schedules and the SoFA based on the information reflected in the Debtor’s books and records. However, inasmuch as the Debtor’s books and records have not been audited or formally closed and evaluated for proper cut-off on the Petition Date, the Debtor cannot warrant the absolute accuracy of these documents. The Debtor has made a diligent effort to complete these documents accurately and completely. To the extent additional information becomes available, the Debtor will amend and supplement the Schedules and SoFA.

Specific Schedules Disclosures

- a. **Schedule A/B, Part 4 - Investments; Non-Publicly Traded Stock and Interests in Incorporated and Unincorporated Businesses, including any Interest in an LLC, Partnership, or Joint Venture.** Certain ownership interests in subsidiaries have been listed in Schedule A/B, Part 4, at their book value on account of the fact that the fair market value of such ownership is dependent on numerous variables and factors. Fair value of such interests may differ significantly from their net book value. Further, for investments listed at fair value, many of the Debtor’s assets are not exchange traded and are fair valued utilizing unobservable

inputs, historical information, and significant and/or subjective estimates. As a result the liquidity and ultimately realized value of such investments may differ materially from the fair value listed on the schedule.

- b. **Schedule A/B, Part 7 - Office Furniture, Fixtures, and Equipment; and Collectibles.** Dollar amounts are presented net of accumulated depreciation and other adjustments.
- c. **Schedule A/B, Part 11 - All Other Assets.** Dollar amounts are presented net of impairments and other adjustments. Debtor has reflected “unknown” for value of its interests in various other assets. While the face value of the notes receivable is included, the current value of these as well as the other assets has not been determined and may differ materially.

Additionally, the Debtor may receive refunds, income tax refunds or other sales tax refunds at various times throughout its fiscal year. As of the Petition Date, however, certain of these amounts are unknown to the Debtor, and accordingly, may not be listed in Schedule A/B.

Other Contingent and Unliquidated Claims or Causes of Action of Every Nature, including Counterclaims of the Debtor and Rights to Setoff Claims. In the ordinary course of its business, the Debtor may have accrued, or may subsequently accrue, certain rights to counter-claims, cross-claims, setoffs, or refunds with its customers and suppliers. Additionally, the Debtor may be party to pending litigation in which the Debtor has asserted, or may assert, claims as a plaintiff or counter-claims and/or cross-claims as a defendant. Because certain of these claims are unknown to the Debtor and not quantifiable as of the Petition Date, they may not be listed on Schedule A/B, Part 11.

- d. **Schedule D - Creditors Who Have Claims Secured by Property.** The Debtor reserves its rights to dispute or challenge the validity, perfection, or immunity from avoidance of any lien purported to be granted or perfected in any specific asset to a secured creditor listed on Schedule D. Moreover, although the Debtor has scheduled claims of various creditors as secured claims, the Debtor reserves all rights to dispute or challenge the secured nature of any such creditor’s claim or the characterization of the structure of any such transaction or any document or instrument related to such creditor’s claim.

The descriptions provided in Schedule D are intended only to be a summary. Reference to the applicable agreements and other related relevant documents is necessary for a complete description of the collateral and the nature, extent, and priority of any liens.

The Debtor has not included on Schedule D parties that may believe their claims are secured through setoff rights or inchoate statutory lien rights. Although there are multiple parties that hold a portion of the debt included in the secured

facilities, only the administrative agents have been listed for purposes of Schedule D.

e. **Schedule E/F - Creditors Who Have Unsecured Claims.**

Part 1 - Creditors with Priority Unsecured Claims. Pursuant to the *Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (11) Granting Related Relief* [Docket No. 39] (the “Wage Order”), the Debtor received authority to pay certain prepetition obligations, including to pay employee wages and other employee benefits, in the ordinary course of business. The Debtor believes that any non-insider employee claims for prepetition amounts related to ongoing payroll and benefits, whether allowable as a priority or nonpriority claim, which were due and payable at the time of the Petition Date have been or will be satisfied as permitted pursuant to the Wage Order. The Debtor filed the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] pursuant to which the Debtor seeks authority to pay and honor certain prepetition bonus programs. Employee claims related to these programs are shown in the aggregate amounts in Schedule E/F for privacy reasons. Additional information is available by appropriate request to the Debtor. The listing of a claim on Schedule E/F, Part 1, does not constitute an admission by the Debtor that such claim or any portion thereof is entitled to priority status.

Part 2 - Creditors with Nonpriority Unsecured Claims. The liabilities identified in Schedule E/F, Part 2, are derived from the Debtor’s books and records. The Debtor made a reasonable attempt to set forth its unsecured obligations, although the actual amount of claims against the Debtor may vary from those liabilities represented on Schedule E/F, Part 2. The listed liabilities may not reflect the correct amount of any unsecured creditor’s allowed claims or the correct amount of all unsecured claims.

Schedule E/F, Part 2 reflects liabilities based on the Debtor’s books and records.

Schedule E/F, Part 2, contains information regarding threatened or pending litigation involving the Debtor. The amounts for these potential claims are listed as “unknown” and are marked as contingent, unliquidated, and disputed in the Schedules and Statements. Additionally, the amounts of certain litigation claims may be estimates based on the allegations asserted by the litigation counterparty, and do not constitute an admission by the Debtor with respect to either liability for, or the amount of, such claims.

Schedule E/F, Part 2, reflects certain prepetition amounts owing to counterparties to executory contracts and unexpired leases. Such prepetition amounts, however,

may be paid in connection with the assumption or assumption and assignment of an executory contract or unexpired lease. In addition, Schedule E/F, Part 2, does not include claims that may arise in connection with the rejection of any executory contracts and unexpired leases, if any, that may be or have been rejected.

As of the time of filing of the Schedules and Statements, the Debtor had not received all invoices for payables, expenses, and other liabilities that may have accrued prior to the Petition Date. Accordingly, the information contained in Schedules D and E/F may be incomplete. The Debtor reserves its rights to amend Schedules D and E/F if and as it receive such invoices.

- f. **Schedule G - Executory Contracts and Unexpired Leases.** While reasonable efforts have been made to ensure the accuracy of Schedule G, inadvertent errors or omissions may have occurred.

Listing a contract or agreement on Schedule G does not constitute an admission that such contract or agreement is an executory contract or unexpired lease or that such contract or agreement was in effect on the Petition Date or is valid or enforceable. The Debtor hereby reserves all of its rights to dispute the validity, status, or enforceability of any contracts, agreements, or leases set forth in Schedule G and to amend or supplement such Schedule as necessary. Certain of the leases and contracts listed on Schedule G may contain renewal options, guarantees of payment, indemnifications, options to purchase, rights of first refusal and other miscellaneous rights. Such rights, powers, duties and obligations are not set forth separately on Schedule G. In addition, the Debtor may have entered into various other types of agreements in the ordinary course of its business, such as supplemental agreements, amendments, and letter agreement, which documents may not be set forth in Schedule G.

Certain of the agreements listed on Schedule G may have expired or terminated pursuant to their terms, but are listed on Schedule G in an abundance of caution.

The Debtor reserves all rights to dispute or challenge the characterization of any transaction or any document or instrument related to a creditor's claim.

In some cases, the same supplier or provider may appear multiple times in Schedule G. Multiple listings, if any, reflect distinct agreements between the Debtor and such supplier or provider.

The listing of any contract on Schedule G does not constitute an admission by the Debtor as to the validity of any such contract. The Debtor reserves the right to dispute the effectiveness of any such contract listed on Schedule G or to amend Schedule G at any time to remove any contract.

Omission of a contract or agreement from Schedule G does not constitute an admission that such omitted contract or agreement is not an executory contract or

unexpired lease. The Debtor's rights under the Bankruptcy Code with respect to any such omitted contracts or agreements are not impaired by the omission.

Exhibit 2

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Maxim B. Litvak (Texas Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
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Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

_____)
In re:) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054-sgj11
)
Debtor.) **Re: Docket No. 247**
_____)

NOTICE OF FILING OF DEBTOR’S AMENDED SCHEDULES

PLEASE TAKE NOTICE that the above-captioned debtor and debtor-in-possession (the “Debtor”) hereby files its *Amended Schedules of Assets and Liabilities – Schedule E-F* (the “Amended Schedules”).

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLEASE TAKE FURTHER NOTICE that the following changes were made to the Amended Schedules attached hereto as **Exhibit 1**:

- Schedule E/F – add claims of Andrew Parmentier (E-2.2; F-3.15)
- Schedule E/F – Change name from Highland CLO Holdco (previously F-3.64 & F-3.65) to Highland CLO Management, Ltd. (F-3.65 & F-3.66).

PLEASE TAKE FURTHER NOTICE that, other than the changes listed above, there are no other changes to the Debtor’s Schedules.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], any creditor affected by this notice may file a proof of claim no later than thirty (30) days after the date that the notice of the Amended Schedules is served on the entity.

PLEASE TAKE FURTHER NOTICE that, notwithstanding the filing of the Amended Schedules, the Debtor reserves the right to further amend, in any way and at any time, the schedules of assets and liabilities filed in this chapter 11 case, consistent with the provisions of title 11 of the United States Code (the “Bankruptcy Code”) and the Federal Rules of Bankruptcy Procedure.

[Remainder of Page Intentionally Left Blank]

Dated: September 22, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Maxim B. Litvak (TX Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
mlitvak@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

**GLOBAL NOTES AND STATEMENT OF LIMITATIONS,
METHODS, AND DISCLAIMER REGARDING DEBTOR’S AMENDED SCHEDULES
OF ASSETS AND LIABILITIES**

Highland Capital Management, L.P. (the “Debtor”) submits its Amended Schedules of Assets and Liabilities (the “Schedules”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”). The Debtor, with the assistance of its advisors and management, prepared the Schedules in accordance with section 521 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

These Global Notes and Statement of Limitations, Methods, and Disclaimer Regarding the Debtor’s Schedules (collectively, the “Global Notes”) pertain to, are incorporated by reference in, and comprise an integral part of the Schedules. These Global Notes should be referred to, and reviewed in connection with any review of the Schedules.² These Global Notes are intended to supplement the Global Notes filed at Docket No. 247 and 248 which remain applicable to the Schedules and Statement of Financial Affairs (“SoFA”) filed at Docket No. 247 and 248, respectively and, to the extent not revised, shall be applicable to the attached Schedules.

The Schedules have been prepared by the Debtor with the assistance of its professionals and are unaudited and subject to further review and potential adjustment and amendment. In preparing the Schedules, the Debtor and its professionals relied on financial data derived from the Debtor’s books and records that was available at the time of preparation. The Debtor and its professionals have made reasonable efforts to ensure the accuracy and completeness of such financial information, however, subsequent information or discovery of other relevant facts may result in material changes to the Schedules and inadvertent errors, omissions, or inaccuracies may exist. The Debtor reserves all rights to amend or supplement its Schedules and SoFA.

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² These Global Notes are in addition to any specific notes contained in the Debtor’s Schedules or SoFA. The fact that the Debtor has prepared a “general note” with respect to any of the Schedules and SoFA and not to others should not be interpreted as a decision by the Debtor to exclude the applicability of such general note to any of the Debtor’s remaining Schedules and SoFA, as appropriate.

Reservation of Rights. The Debtor reserves all rights to amend the SoFA and Schedules in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.” Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other applicable non-bankruptcy laws.

Description of the Case and “As Is” Information Date. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”) under Chapter 11 of the Bankruptcy Code. The Debtor is managing its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On December 4, 2019, the Delaware Bankruptcy Court entered an Order transferring this case to the Bankruptcy Court [Docket No. 1].

Asset information in the Schedules reflects the Debtor’s best estimate of asset values as of the Petition Date, unless otherwise noted. No independent valuation has been obtained.

Basis of Presentation. The Schedules and SoFA do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles (“GAAP”), nor are they intended to fully reconcile to any financial statements otherwise prepared and/or distributed by the Debtor.

Although these Schedules and SoFA may, at times, incorporate information prepared in accordance with GAAP, the Schedules and SoFA neither purport to represent nor reconcile to financial statements prepared and/or distributed by the Debtor in accordance with GAAP or otherwise. Moreover, given, among other things, the valuation and nature of certain liabilities, to the extent that the Debtor shows more assets than liabilities, this is not a conclusion that the Debtor was solvent at the Petition Date. Likewise, to the extent that the Debtor shows more liabilities than assets, this is not a conclusion that the Debtor was insolvent at the Petition Date or any time prior to the Petition Date.

Estimates. To timely close the books and records of the Debtor, the Debtor and its professionals must make certain estimates and assumptions that affect the reported amounts of assets and liabilities and reported revenue and expenses. The Debtor reserves all rights to amend the reported amounts of assets, liabilities, revenue, and expenses to reflect changes in those estimates and assumptions.

Confidentiality. There may be instances within the Schedules and SoFA where names, addresses, or amounts have been left blank. Due to the nature of an agreement between the Debtor and the third party, concerns of confidentiality, or concerns for the privacy of an individual, the Debtor may have deemed it appropriate and necessary to avoid listing such names, addresses, and amounts.

Intercompany Claims. Any receivables and payables between the Debtor and affiliated or related entities in this case (each an “Intercompany Receivable” or “Intercompany Payable” and, collectively, the “Intercompany Claims”) are reported as assets on Schedule B or liabilities on Schedule E and Schedule F. These Intercompany Claims include the following components, among others: 1) loans to affiliates or related entities, 2) accounts payable and payroll disbursements made out of an affiliate’s or related entity’s bank accounts on behalf of the Debtor, 3) centrally billed expenses, 4) corporate expense allocations, and 5) accounting for trade and other intercompany transactions. These Intercompany Claims may or may not result in allowed or enforceable claims by or against the Debtor, and by listing these claims the Debtor is not indicating a conclusion that the Intercompany Claims are enforceable. Intercompany Claims may also be subject to set off, recoupment, and netting not reflected in the Schedules. In situations where there is not an enforceable claim, the assets and/or liabilities of the Debtor may be greater or lesser than the amounts stated herein. All rights to amend intercompany Claims in the Schedules and SoFA are reserved.

The Debtor has listed the intercompany payables as unsecured claims on Schedule F. The Debtor reserves its rights to later change the characterization, classification, categorization, or designation of such items.

Insiders. For purposes of the Schedules and SoFA, the Debtor defines “insider” pursuant to section 101(31) of the Bankruptcy Code. Payments to insiders are set forth on Question 3.c. of the SoFA.

Persons listed as “insiders” have been included for informational purposes only. The Debtor did not take any position with respect to whether such individual could successfully argue that he or she is not an “insider” under applicable law, including without limitation, the federal securities laws, or with respect to any theories of liability or for any other purpose. Inclusion of any party in the Schedules and SoFA as an insider does not constitute an admission that such party is an insider or a waiver of such party’s right to dispute insider status.

Excluded Accruals and GAAP Entries. The Debtor’s balance sheet reflects liabilities recognized in accordance with GAAP; however, not all such liabilities would result in a claim against the Debtor. Certain liabilities (including but not limited to certain reserves, deferred charges, and future contractual obligations) have not been included in the Debtor’s Schedules. Other immaterial assets and liabilities may also have been excluded.

Classification and Claim Descriptions. Any failure to designate a claim on the Schedules as “disputed,” “contingent” or “unliquidated” does not constitute an admission by the Debtor that such amount is not “disputed,” “contingent” or “unliquidated.” The Debtor reserves the right to dispute, or to assert offsets or defenses to, any claim reflected on its Schedules as to amount, liability or classification or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.”

Listing a claim (i) in Schedule D as “secured,” (ii) in Schedule E as “priority” or (iii) in Schedule F as “unsecured nonpriority,” or listing a contract in Schedule G as “executory” or “unexpired,” does not constitute an admission by the Debtor of the legal rights of the claimant or a waiver of the Debtor’s right to recharacterize or reclassify such claim or contract.

Moreover, the Debtor reserves all rights to amend the SoFA and Schedules, in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.” Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other relevant non-bankruptcy laws.

Credits and Adjustments. The claims of individual creditors for, among other things, goods, products, services or taxes are listed as the amounts entered on the Debtor’s books and records and may not reflect credits, allowances or other adjustments due from such creditors to the Debtor. The Debtor reserves all of its rights respecting such credits, allowances or other adjustments.

Setoffs. The Debtor may incur setoffs from third parties in its business. Setoffs in the ordinary course can result from various routine transactions, including intercompany transactions, pricing discrepancies, warranty claims and other disputes between the Debtor and third parties. Certain of these constitute normal setoffs consistent with the ordinary course of business in the Debtor’s industry. In such instances, such ordinary course setoffs are excluded from the Debtor’s responses to Question 13 of the SoFA. The Debtor reserves all rights to enforce or challenge, as the case may be, any setoffs that have been or may be asserted.

Specific Notes. These general notes are in addition to the specific notes set forth below or in the related Statement and Schedules hereinafter.

General Disclaimer

The Debtor has prepared the Schedules and the SoFA based on the information reflected in the Debtor’s books and records. However, inasmuch as the Debtor’s books and records have not been audited or formally closed and evaluated for proper cut-off on the Petition Date, the Debtor cannot warrant the absolute accuracy of these documents. The Debtor has made a diligent effort to complete these documents accurately and completely. To the extent additional information becomes available, the Debtor will amend and supplement the Schedules and SoFA.

Specific Schedules Disclosures

a. **Schedule E/F - Creditors Who Have Unsecured Claims.**

Part I - Creditors with Priority Unsecured Claims. Pursuant to the *Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief* [Docket No. 39] (the “Wage Order”), the Debtor received authority to pay certain prepetition obligations,

including to pay employee wages and other employee benefits, in the ordinary course of business. The Debtor believes that any non-insider employee claims for prepetition amounts related to ongoing payroll and benefits, whether allowable as a priority or nonpriority claim, which were due and payable at the time of the Petition Date have been or will be satisfied as permitted pursuant to the Wage Order. The Debtor filed the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] pursuant to which the Debtor sought authority to pay and honor certain prepetition bonus programs. The Court granted certain relief with respect to this motion at Docket No. 380. Employee claims related to these programs are shown in the aggregate amounts in Schedule E/F for privacy reasons. Additional information is available by appropriate request to the Debtor. The listing of a claim on Schedule E/F, Part 1, does not constitute an admission by the Debtor that such claim or any portion thereof is entitled to priority status.

Part 2 - Creditors with Nonpriority Unsecured Claims. The liabilities identified in Schedule E/F, Part 2, are derived from the Debtor's books and records. The Debtor made a reasonable attempt to set forth its unsecured obligations, although the actual amount of claims against the Debtor may vary from those liabilities represented on Schedule E/F, Part 2. The listed liabilities may not reflect the correct amount of any unsecured creditor's allowed claims or the correct amount of all unsecured claims.

Schedule E/F, Part 2 reflects liabilities based on the Debtor's books and records.

Schedule E/F, Part 2, contains information regarding threatened or pending litigation involving the Debtor. The amounts for these potential claims are listed as "unknown" and are marked as contingent, unliquidated, and disputed in the Schedules and Statements. Additionally, the amounts of certain litigation claims may be estimates based on the allegations asserted by the litigation counterparty, and do not constitute an admission by the Debtor with respect to either liability for, or the amount of, such claims.

Schedule E/F, Part 2, reflects certain prepetition amounts owing to counterparties to executory contracts and unexpired leases. Such prepetition amounts, however, may be paid in connection with the assumption or assumption and assignment of an executory contract or unexpired lease. In addition, Schedule E/F, Part 2, does not include claims that may arise in connection with the rejection of any executory contracts and unexpired leases, if any, that may be or have been rejected.

As of the time of filing of the Schedules and Statements, the Debtor had not received all invoices for payables, expenses, and other liabilities that may have accrued prior to the Petition Date. Accordingly, the information contained in Schedules D and E/F may be incomplete. The Debtor reserves its rights to amend Schedules D and E/F if and as it receive such invoices.

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 206Sum
Summary of Assets and Liabilities for Non-Individuals

12/15

Part 1: Summary of Assets

1. **Schedule A/B: Assets-Real and Personal Property** (Official Form 206A/B)

1a. Real property: Copy line 88 from <i>Schedule A/B</i>	\$ <u>523,970.00</u>
1b. Total personal property: Copy line 91A from <i>Schedule A/B</i>	\$ <u>409,580,813.30</u>
1c. Total of all property: Copy line 92 from <i>Schedule A/B</i>	\$ <u>410,104,783.30</u>

Part 2: Summary of Liabilities

2. Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D) Copy the total dollar amount listed in Column A, <i>Amount of claim</i> , from line 3 of <i>Schedule D</i>	\$ <u>34,862,225.94</u>
3. Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)	
3a. Total claim amounts of priority unsecured claims: Copy the total claims from Part 1 from line 5a of <i>Schedule E/F</i>	\$ <u>13,650.00</u>
3b. Total amount of claims of nonpriority amount of unsecured claims: Copy the total of the amount of claims from Part 2 from line 5b of <i>Schedule E/F</i>	+\$ <u>244,753,977.33</u>
4. Total liabilities Lines 2 + 3a + 3b	\$ <u>279,629,853.27</u>

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 206E/F Schedule E/F: Creditors Who Have Unsecured Claims

12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY unsecured claims and Part 2 for creditors with NONPRIORITY unsecured claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B) and on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G). Number the entries in Parts 1 and 2 in the boxes on the left. If more space is needed for Part 1 or Part 2, fill out and attach the Additional Page of that Part included in this form.

Part 1: List All Creditors with PRIORITY Unsecured Claims

1. Do any creditors have priority unsecured claims? (See 11 U.S.C. § 507).

No. Go to Part 2.

Yes. Go to line 2.

2. List in alphabetical order all creditors who have unsecured claims that are entitled to priority in whole or in part. If the debtor has more than 3 creditors with priority unsecured claims, fill out and attach the Additional Page of Part 1.

		Total claim	Priority amount
2.1	Priority creditor's name and mailing address All Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	<u>Unknown</u> <u>Unknown</u>
	Date or dates debt was incurred 2019	Basis for the claim: Employee Wages & Bonuses	
	Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
2.2	Priority creditor's name and mailing address Andrew Parmentier 1821 Redwood Ave. Boulder, CO 80304	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	<u>\$13,650.00</u> <u>\$13,650.00</u>
	Date or dates debt was incurred 5/31/2019	Basis for the claim: Separation and Release Agreement	
	Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. List in alphabetical order all of the creditors with nonpriority unsecured claims. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

Amount of claim

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ
 Name

3.1 Nonpriority creditor's name and mailing address **45 Employees**
300 Crescent Ct.
Suite 700
Dallas, TX 75201
 Date(s) debt was incurred 2017, 2018 & 2019
 Last 4 digits of account number
 As of the petition filing date, the claim is: *Check all that apply.*
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Deferred Awards
 Is the claim subject to offset? No Yes
Unknown

3.2 Nonpriority creditor's name and mailing address **46 Employees**
300 Crescent Ct.
Suite 700
Dallas, TX 75201
 Date(s) debt was incurred 2018
 Last 4 digits of account number
 As of the petition filing date, the claim is: *Check all that apply.*
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Prior year employee bonuses
 Is the claim subject to offset? No Yes
\$5,758,166.67

3.3 Nonpriority creditor's name and mailing address **Abrams & Bayliss**
20 Montchanin Road, Suite 200
Wilmington, DE 19807
 Date(s) debt was incurred
 Last 4 digits of account number
 As of the petition filing date, the claim is: *Check all that apply.*
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes
\$108,399.83

3.4 Nonpriority creditor's name and mailing address **ACA Compliance Group**
8403 Colesville Road
Suite 870
Silver Spring, MD 20910
 Date(s) debt was incurred
 Last 4 digits of account number
 As of the petition filing date, the claim is: *Check all that apply.*
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes
\$26,324.25

3.5 Nonpriority creditor's name and mailing address **Acis Capital Management**
c/o Brian P. Shaw
Rogge Dunn Group PC
500 N. Akard Street Ste 1900
Dallas, TX 75201
 Date(s) debt was incurred
 Last 4 digits of account number
 As of the petition filing date, the claim is: *Check all that apply.*
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Litigation Claim
 Is the claim subject to offset? No Yes
Unknown

3.6 Nonpriority creditor's name and mailing address **Acis Capital Management, L.P.**
c/o Brian P. Shaw
Rogge Dunn Group, PC
500 N. Akard Street Ste 1900
Dallas, TX 75201
 Date(s) debt was incurred
 Last 4 digits of account number
 As of the petition filing date, the claim is: *Check all that apply.*
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Litigation Claim
 Is the claim subject to offset? No Yes
Unknown

3.7 Nonpriority creditor's name and mailing address **Action Shred of Texas**
1420 S. Barry Ave
Dallas, TX 75223
 Date(s) debt was incurred
 Last 4 digits of account number
 As of the petition filing date, the claim is: *Check all that apply.*
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes
\$3,825.00

Debtor Name	Case number (if known)	
Highland Capital Management, L.P. Name	19-34054-SGJ	
3.8 Nonpriority creditor's name and mailing address Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue Suite 4100 Dallas, TX 75201 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$113,947.86
3.9 Nonpriority creditor's name and mailing address All Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred 2019 Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Employee Bonuses Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
3.10 Nonpriority creditor's name and mailing address Allen ISD Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred 2019 Last 4 digits of account number 2301	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Ad Valorem Taxes Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,522.33
3.11 Nonpriority creditor's name and mailing address Allen ISD Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred 2019 Last 4 digits of account number 9351	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Ad Valorem Taxes Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,188.30
3.12 Nonpriority creditor's name and mailing address Alston & Bird LLP 1201 W. Peachtree Street Atlanta, GA 30309-3424 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,234.00
3.13 Nonpriority creditor's name and mailing address American Arbitration Association 120 Broadway, 21st Floor New York, NY 10271 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$55,511.80
3.14 Nonpriority creditor's name and mailing address American Solutions for Business NW#7794 PO Box 1450 Minneapolis, MN 55485-7794 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$7,470.04

Debtor Name	Case number (if known)	
Highland Capital Management, L.P. Name	19-34054-SGJ	
3.15 Nonpriority creditor's name and mailing address Andrew Parmentier 1821 Redwood Ave. Boulder, CO 80304 Date(s) debt was incurred <u>5/31/2019</u> Last 4 digits of account number _	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Seperation and Release Agreement Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$136,350.00
3.16 Nonpriority creditor's name and mailing address Andrews Kurth 111 Congress Ave Suite 1700 Attn: Scott Brister Austin, TX 78701 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$137,637.81
3.17 Nonpriority creditor's name and mailing address Arkadin, Inc. Lockbox #32726 Collection Center Dr Chicago, IL 60693-0726 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$647.59
3.18 Nonpriority creditor's name and mailing address ASW Law Limited Crawford House 50 Cedar Avenue Hamilton HM11 Bermuda Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$77,044.60
3.19 Nonpriority creditor's name and mailing address AT&T PO BOX 5001 Carol Stream, IL 60197-5001 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$927.16
3.20 Nonpriority creditor's name and mailing address AT&T Mobilty PO Box 6444 Carol Stream, IL 60197-6444 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$6,728.59
3.21 Nonpriority creditor's name and mailing address Bates White, LLC 2001 K Street, NW North Building, Suite 500 Washington, DC 20006 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$90,855.79

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

3.22 Nonpriority creditor's name and mailing address **Bell Nunnally & Martin LLP**
 3232 MCKINNEY AVE
 STE 1400
 DALLAS, TX 75204
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$6,934.79**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.23 Nonpriority creditor's name and mailing address **Bloomberg Finance LP**
 731 Lexington Ave.
 New York, NY 10022
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$25,384.89**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.24 Nonpriority creditor's name and mailing address **Boies, Schiller & Flexner LLP**
 5301 Wisconsin Ave NW
 Washington, DC 20015-2015
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$115,714.80**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.25 Nonpriority creditor's name and mailing address **Brandywine Process Servers, Ltd.**
 PO Box 1360
 Wilmington, DE 19899
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$69.00**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.26 Nonpriority creditor's name and mailing address **Caledonian Directors Limited**
 PO Box 1043
 George Town
 Grand Cayman KY1-1002
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$325.00**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.27 Nonpriority creditor's name and mailing address **Canteen Vending Services**
 PO Box 417632
 Boston, MA 02241-7632
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$4,233.60**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.28 Nonpriority creditor's name and mailing address **Carey International, Inc.**
 7445 New Technology Way
 Frederick, MD 21703
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$2,059,337.01**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Uncompleted Transaction
 Is the claim subject to offset? No Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
 Name

3.29 Nonpriority creditor's name and mailing address **Carey Olsen**
PO Box 10008
Willow House, Cricket Square
Grand Cayman KY1-1001
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 As of the petition filing date, the claim is: *Check all that apply.* **\$38,930.00**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **See Exhibit A**
 Is the claim subject to offset? No Yes

3.30 Nonpriority creditor's name and mailing address **Case Anywhere LLC**
21860 Burbank Blvd.
Ste 125
Woodland Hills, CA 91367
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 As of the petition filing date, the claim is: *Check all that apply.* **\$417.20**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **See Exhibit A**
 Is the claim subject to offset? No Yes

3.31 Nonpriority creditor's name and mailing address **CBIZ Valuation Group, LLC**
ATTN: ACCOUNTS RECEIVABLE
PO BOX 849846
DALLAS, TX 75284-9846
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 As of the petition filing date, the claim is: *Check all that apply.* **\$545.77**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **See Exhibit A**
 Is the claim subject to offset? No Yes

3.32 Nonpriority creditor's name and mailing address **CDW Direct**
PO Box 75723
Chicago, IL 60675-5723
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 As of the petition filing date, the claim is: *Check all that apply.* **\$4,998.70**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Trade Payable**
 Is the claim subject to offset? No Yes

3.33 Nonpriority creditor's name and mailing address **Centroid**
1050 Wilshire Dr.
Ste #170
Troy, MI 48084
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 As of the petition filing date, the claim is: *Check all that apply.* **\$1,155.00**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Trade Payable**
 Is the claim subject to offset? No Yes

3.34 Nonpriority creditor's name and mailing address **Chase Couriers, Inc**
1220 Champion Circle
#114
Carrollton, TX 75006
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 As of the petition filing date, the claim is: *Check all that apply.* **\$155.81**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Trade Payable**
 Is the claim subject to offset? No Yes

3.35 Nonpriority creditor's name and mailing address **CLO Holdco, Ltd.**
c/o Grant Scott, Esq
Myers Bigel Sibley & Sajovec, P.A.
4140 Park Lake Ave, Ste 600
Raleigh, NC 27612
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 As of the petition filing date, the claim is: *Check all that apply.* **\$11,340,751.26**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: **Contractual Obligation**
 Is the claim subject to offset? No Yes

Debtor Name	Case number (if known)	
Highland Capital Management, L.P.	19-34054-SGJ	
3.36 Nonpriority creditor's name and mailing address Cole Schotz Court Plaza North 25 Main Street P.O. Box 800 Hackensack, NJ 07602-0800 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$198,760.29
3.37 Nonpriority creditor's name and mailing address Coleman Research Group, Inc. 120 West 45th St 25th Floor New York, NY 10036 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$52,500.00
3.38 Nonpriority creditor's name and mailing address Concur Technologies, Inc. 18400 NE Union Hill Road Redmond, WA 98052 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$4,090.46
3.39 Nonpriority creditor's name and mailing address Connolly Gallagher LLP 1201 North Market Street 20th Floor Wilmington, DE 19801 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$118,831.25
3.40 Nonpriority creditor's name and mailing address Crescent Research PO Box 64-3622 Vero Beach, FL 32964 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,200.00
3.41 Nonpriority creditor's name and mailing address CSI Global Deposition Services Accounting Dept-972-719-5000 4950 N. O'Connor Rd, 1 st Fl Irving, TX 75062-2778 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$826.01
3.42 Nonpriority creditor's name and mailing address CT Corp PO Box 4349 Carol Stream, IL 60197-4349 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$515.25

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ
 Name

3.43 Nonpriority creditor's name and mailing address **CVE Technologies Group Inc.** As of the petition filing date, the claim is: *Check all that apply.* \$1,500.00
 1414 S. Gustin Rd. Contingent
 Salt Lake City, UT 84104 Unliquidated
 Date(s) debt was incurred Disputed
 Last 4 digits of account number Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.44 Nonpriority creditor's name and mailing address **Dallas County** As of the petition filing date, the claim is: *Check all that apply.* \$47,809.87
 Attn: Elizabeth Weller Contingent
 2777 N. Stemmons Freeway Unliquidated
 Suite 1000 Disputed
 Dallas, TX 75207 Basis for the claim: Ad Valorem Taxes
 Date(s) debt was incurred 2019 Is the claim subject to offset? No Yes
 Last 4 digits of account number 3150

3.45 Nonpriority creditor's name and mailing address **Daniel Sheehan & Associates, PLLC** As of the petition filing date, the claim is: *Check all that apply.* \$21,226.25
 8150 N. Central Expressway Contingent
 Suite 100 Unliquidated
 Dallas, TX 75206 Disputed
 Date(s) debt was incurred Basis for the claim: See Exhibit A
 Last 4 digits of account number Is the claim subject to offset? No Yes

3.46 Nonpriority creditor's name and mailing address **Debevoise & Plimpton LLP** As of the petition filing date, the claim is: *Check all that apply.* \$20,658.79
 c/o Accounting Dept. 28th Floor Contingent
 909 Third Ave Unliquidated
 New York, NY 10022 Disputed
 Date(s) debt was incurred Basis for the claim: See Exhibit A
 Last 4 digits of account number Is the claim subject to offset? No Yes

3.47 Nonpriority creditor's name and mailing address **Denton County** As of the petition filing date, the claim is: *Check all that apply.* \$553.46
 PO Box 90223 Contingent
 Denton, TX 76202 Unliquidated
 Date(s) debt was incurred 2019 Disputed
 Last 4 digits of account number ODEN Basis for the claim: Ad Valorem Taxes
 Is the claim subject to offset? No Yes

3.48 Nonpriority creditor's name and mailing address **Denton County** As of the petition filing date, the claim is: *Check all that apply.* \$3.68
 PO Box 90223 Contingent
 Denton, TX 76202 Unliquidated
 Date(s) debt was incurred 2019 Disputed
 Last 4 digits of account number 5DEN Basis for the claim: Ad Valorem Taxes
 Is the claim subject to offset? No Yes

3.49 Nonpriority creditor's name and mailing address **DLA Piper LLP (US)** As of the petition filing date, the claim is: *Check all that apply.* \$1,318,730.36
 1900 N Pearl St, Suite 2200 Contingent
 Dallas, TX 75201 Unliquidated
 Date(s) debt was incurred Disputed
 Last 4 digits of account number Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

Debtor Name	Case number (if known)	
Highland Capital Management, L.P.	19-34054-SGJ	
3.50 Nonpriority creditor's name and mailing address Dow Jones & Company, Inc. 1211 Avenue of the Americas New York, NY 10036 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,038.26
3.51 Nonpriority creditor's name and mailing address DTCC ITP LLC PO Box 27590 New York, NY 10087-7590 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3.30
3.52 Nonpriority creditor's name and mailing address Duff & Phelps, LLC c/o David Landman Benesch, Friedlander, Coplan & Aronoff 200 Public Sq. Suite 2300 Cleveland, OH 44114-4000 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$350,000.00
3.53 Nonpriority creditor's name and mailing address Elite Document Technology 403 North Stemmons Freeway Suite 100 Dallas, TX 75207 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,837.30
3.54 Nonpriority creditor's name and mailing address Epiq eDiscovery Solutions Dept 2651 PO Box 122651 Dallas, TX 75312-2651 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$9,972.65
3.55 Nonpriority creditor's name and mailing address Eric Girard 312 Polo Trl Colleyville, TX 76034 Date(s) debt was incurred 10/14/2019 Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Consulting fee Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$11,430.14
3.56 Nonpriority creditor's name and mailing address Felicity Toubé QC 3-4 South Square Gray's Inn London, WC1R 5HP Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,546.65

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ
 Name

3.57 Nonpriority creditor's name and mailing address **Foley Gardere**
2021 McKinney Ave
Suite 1600
Dallas, TX 75201
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$1,446,136.66**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.58 Nonpriority creditor's name and mailing address **Four Seasons Landscaping, LLC**
139 Turtle Creek Blvd.
Dallas, TX 75207-6807
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$108.95**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.59 Nonpriority creditor's name and mailing address **Gardner Haas PLLC**
2501 N. Harwood Street
Suite 1250
Dallas, TX 75201
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$522.72**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.60 Nonpriority creditor's name and mailing address **Gold's Gym International**
Attn: Corporate Billing
125 E John Carpenter Frwy
Suite 1300
Irving, TX 75062
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$561.75**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.61 Nonpriority creditor's name and mailing address **Greenwood Office Outfitters**
2951 Suffolk Drive
Suite 640
Fort Worth, TX 76133-1149
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$2,371.07**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.62 Nonpriority creditor's name and mailing address **Greyline Solutions**
PO Box 733976
Dallas, TX 75373-3976
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$11,250.00**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.63 Nonpriority creditor's name and mailing address **Harder LLP**
132 S. RODEO DRIVE
FOURTH FLOOR
BEVERLY HILLS, CA 90212
 Date(s) debt was incurred _____
 Last 4 digits of account number _____

As of the petition filing date, the claim is: *Check all that apply.* **\$5,464.13**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

Name

3.64 Nonpriority creditor's name and mailing address **Highland Capital Management (Singapore)**
 300 Crescent Ct.
 Suite 700
 Dallas, TX 75201
 Date(s) debt was incurred Prior to 12/31/2018
 Last 4 digits of account number

As of the petition filing date, the claim is: *Check all that apply.* **\$248,745.28**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: The balance shown is updated annually for service fees and has not been updated since 12/31/2018
 Is the claim subject to offset? No Yes

3.65 Nonpriority creditor's name and mailing address **Highland CLO Management Ltd.**
 PO Box 309
 Uglund House
 Grand Cayman KY1-1104
 Cayman Island
 Date(s) debt was incurred
 Last 4 digits of account number

As of the petition filing date, the claim is: *Check all that apply.* **\$599,187.26**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Interest payable
 Is the claim subject to offset? No Yes

3.66 Nonpriority creditor's name and mailing address **Highland CLO Management Ltd.**
 PO Box 309
 Uglund House
 Grand Cayman KY1-1104
 Cayman Island
 Date(s) debt was incurred
 Last 4 digits of account number

As of the petition filing date, the claim is: *Check all that apply.* **\$9,541,446.00**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Note payable
 Is the claim subject to offset? No Yes

3.67 Nonpriority creditor's name and mailing address **Highland RCP Offshore, LP**
 300 Crescent Ct.
 Suite 700
 Dallas, TX 75201
 Date(s) debt was incurred
 Last 4 digits of account number

As of the petition filing date, the claim is: *Check all that apply.* **\$2,447,870.00**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Unearned Revenue
 Is the claim subject to offset? No Yes

3.68 Nonpriority creditor's name and mailing address **Highland RCP, LP**
 300 Crescent Ct.
 Suite 700
 Dallas, TX 75201
 Date(s) debt was incurred
 Last 4 digits of account number

As of the petition filing date, the claim is: *Check all that apply.* **\$1,945,067.00**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Unearned Revenue
 Is the claim subject to offset? No Yes

3.69 Nonpriority creditor's name and mailing address **Hunton Andrews Kurth LLP**
 1445 Ross Avenue
 Suite 3700
 Dallas, TX 75202-2799
 Date(s) debt was incurred
 Last 4 digits of account number

As of the petition filing date, the claim is: *Check all that apply.* **\$107,221.92**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.70 Nonpriority creditor's name and mailing address **ICE Data Pricing & Reference Data, LLC**
 PO Box 98616
 Chicago, IL 60693
 Date(s) debt was incurred
 Last 4 digits of account number

As of the petition filing date, the claim is: *Check all that apply.* **\$1,565.23**
 Contingent
 Unliquidated
 Disputed

Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

Debtor Name	Case number (if known)	
Highland Capital Management, L.P. Name	19-34054-SGJ	
3.71 Nonpriority creditor's name and mailing address Intralinks P.O. Box 10259 New York, NY 10259 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$7,995.00
3.72 Nonpriority creditor's name and mailing address JAMS, Inc PO Box 512850 Los Angeles, CA 90051-0850 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,352.27
3.73 Nonpriority creditor's name and mailing address Joshua & Jennifer Terry c/o Brian P. Shaw, Esq. Rogge Dunn Group, PC 500 N. Akard Street, Suite 1900 Dallas, TX 75201 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Litigation Claim Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$425,000.00
3.74 Nonpriority creditor's name and mailing address Katten Muchin Rosenman LLP 525 W Monroe St Chicago, IL 60661-3693 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$16,695.00
3.75 Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0606</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Ad Valorem Taxes Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$585.09
3.76 Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0600</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Ad Valorem Taxes Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3,090.25
3.77 Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0600</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Ad Valorem Taxes Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$125.05

Debtor Name	Case number (if known)	
Highland Capital Management, L.P. Name	19-34054-SGJ	
3.78 Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0600</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$5,732.15</u>
3.79 Nonpriority creditor's name and mailing address Legalpeople LLC 134 N LaSalle Street Suite 800 Chicago, IL 60602 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$34,425.72</u>
3.80 Nonpriority creditor's name and mailing address Levinger PC 1445 Ross Avenue Suite 2500 Dallas, TX 75202 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$3,778.01</u>
3.81 Nonpriority creditor's name and mailing address Lexitas PO Box 734298 Dept. 2012 Dallas, TX 75373-4298 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$2,583.66</u>
3.82 Nonpriority creditor's name and mailing address Loews Coronado Bay Resort 4000 Coronado Bay Road Coronado, CA 92118 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$57,628.65</u>
3.83 Nonpriority creditor's name and mailing address Lynn Pinker Cox & Hurst, LLP 2100 Ross Ave Suite 2700 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$436,538.06</u>
3.84 Nonpriority creditor's name and mailing address Maples and Calder UGLAND HOUSE PO BOX 309GT; S CHURCH ST George Town Grand Cayman Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$25,800.11</u>

Debtor Name	Case number (if known)	
Highland Capital Management, L.P.	19-34054-SGJ	
3.85 Nonpriority creditor's name and mailing address MarkitWSO Corporation Three Lincoln Centre 5430 LBJ Frwy; Ste 800 Dallas, TX 75240 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$12,015.91
3.86 Nonpriority creditor's name and mailing address McKool Smith 300 Crescent Court Suite 1500 Dallas, TX 75201 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,163,976.00
3.87 Nonpriority creditor's name and mailing address Meta-e Discovery LLC Six Landmark Square Fourth Floor Stamford, CT 06901 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$780,645.36
3.88 Nonpriority creditor's name and mailing address Nick Meserve 11835 Brandywine Ln Houston, TX 77024 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$300.00
3.89 Nonpriority creditor's name and mailing address NWCC, LLC c/o of Michael A. Battle Barnes & Thornburg, LLP 1717 Pennsylvania Ave N.W. Ste 500 Washington, DC 20006 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Litigation Claim Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$375,000.00
3.90 Nonpriority creditor's name and mailing address Opus 2 International, Inc. 100 Pine Street Suite 560 San Francisco, CA 94111 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$15,669.86
3.91 Nonpriority creditor's name and mailing address PACER Service Center P.O. Box 5208 Portland, OR 97208-5208 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$435.30

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ

3.92 Nonpriority creditor's name and mailing address **Patrick Daugherty
c/o Thomas A. Uebler
McCollom D'Emilio Smith
2751 Centerville Rd #401
Wilmington, DE 19808** As of the petition filing date, the claim is: *Check all that apply.* **\$11,700,000.00**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Litigation Claim
 Date(s) debt was incurred: Is the claim subject to offset? No Yes
 Last 4 digits of account number:

3.93 Nonpriority creditor's name and mailing address **Pitney Bowes- Purchase Power
PO Box 371874
Pittsburgh, PA 15250-2648** As of the petition filing date, the claim is: *Check all that apply.* **\$1,611.00**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Date(s) debt was incurred: Is the claim subject to offset? No Yes
 Last 4 digits of account number:

3.94 Nonpriority creditor's name and mailing address **ProStar Services, Inc
PO Box 110209
Carrollton, TX 75011** As of the petition filing date, the claim is: *Check all that apply.* **\$1,064.58**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Date(s) debt was incurred: Is the claim subject to offset? No Yes
 Last 4 digits of account number:

3.95 Nonpriority creditor's name and mailing address **Quintairos, Prieto Wood & Boyer
865 S. Figueroa St
10th FL
Los Angeles, CA 90017** As of the petition filing date, the claim is: *Check all that apply.* **\$8,608.17**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Date(s) debt was incurred: Is the claim subject to offset? No Yes
 Last 4 digits of account number:

3.96 Nonpriority creditor's name and mailing address **Redeemer Committee - Highland Crusader
Attn: Eric Felton
731 Pleasant Ave.
Glen Ellyn, IL 60137** As of the petition filing date, the claim is: *Check all that apply.* **\$189,314,946.00**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Litigation Claim
 Date(s) debt was incurred: Is the claim subject to offset? No Yes
 Last 4 digits of account number:

3.97 Nonpriority creditor's name and mailing address **Reid Collins & Tsai
810 Seventh Ave Ste 410
New York, NY 10019** As of the petition filing date, the claim is: *Check all that apply.* **\$258,526.25**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Date(s) debt was incurred: Is the claim subject to offset? No Yes
 Last 4 digits of account number:

3.98 Nonpriority creditor's name and mailing address **Scott Douglass & McConnico LLP
303 Colorado St
Ste 2400
Austin, TX 78701** As of the petition filing date, the claim is: *Check all that apply.* **\$1,478.59**
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Date(s) debt was incurred: Is the claim subject to offset? No Yes
 Last 4 digits of account number:

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ
 Name

3.99 Nonpriority creditor's name and mailing address **Secured Access Systems, LLC** As of the petition filing date, the claim is: *Check all that apply.* \$24.37
 1913 Walden Court
 Flower Mound, TX 75022
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.100 Nonpriority creditor's name and mailing address **Siepe Services, LLC** As of the petition filing date, the claim is: *Check all that apply.* \$80,183.88
 5440 Harvest Hill Road
 Suite 100
 Dallas, TX 75230
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.101 Nonpriority creditor's name and mailing address **Southland Property Tax Consultants, Inc** As of the petition filing date, the claim is: *Check all that apply.* \$309.11
 421 W. 3rd Street
 Ste 920
 Fort Worth, TX 76102
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: Trade Payable
 Is the claim subject to offset? No Yes

3.102 Nonpriority creditor's name and mailing address **Squire Patton Boggs (US) LLP** As of the petition filing date, the claim is: *Check all that apply.* \$5,208.40
 PO Box 643051
 Cincinnati, OH 45264
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.103 Nonpriority creditor's name and mailing address **Stanton Advisors LLC** As of the petition filing date, the claim is: *Check all that apply.* \$10,000.00
 300 Coles Street
 Apt. 802
 Jersey City, NJ 07310
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.104 Nonpriority creditor's name and mailing address **Stanton LLP** As of the petition filing date, the claim is: *Check all that apply.* \$90,712.65
 9400 N Central Expwy
 Ste 1304
 Dallas, TX 75231
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

3.105 Nonpriority creditor's name and mailing address **State Street Global Exchange** As of the petition filing date, the claim is: *Check all that apply.* \$2,500.00
 Elkins/McSherry, LLC
 One Lincoln Street
 Boston, MA 02111
 Date(s) debt was incurred _____
 Last 4 digits of account number _____
 Contingent
 Unliquidated
 Disputed
 Basis for the claim: See Exhibit A
 Is the claim subject to offset? No Yes

Debtor Name	Case number (if known)	
Highland Capital Management, L.P. Name	19-34054-SGJ	
3.106 Nonpriority creditor's name and mailing address Stinson Leonard Street LLP PO Box 843052 Kansas City, MO 64184 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$246,802.54</u>
3.107 Nonpriority creditor's name and mailing address Thomson West PO Box 64833 St. Paul, MN 55164-0833 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$1,158.52</u>
3.108 Nonpriority creditor's name and mailing address UBS AG, London Branch c/o Andrew Clubock, Esq. Latham & Watkins LLP 555 11th Street NW #1000 Washington, DC 20004 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>Unknown</u>
3.109 Nonpriority creditor's name and mailing address UBS Securities LLC c/o Andrew Clubock Latham & Watkins LLP 555 11th Street NW #1000 Washington, DC 20004 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>Unknown</u>
3.110 Nonpriority creditor's name and mailing address UPS Supply Chain Solutions 28013 Network Place Chicago, IL 60673-1280 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$90.45</u>
3.111 Nonpriority creditor's name and mailing address Wakefield Quin Victoria Place 31 Victoria St Hamilton, HM10 Bermuda Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$2,334.80</u>
3.112 Nonpriority creditor's name and mailing address Wilks, Lukoff & Bracegirdle, LLC 4250 Lancaster Pike #200 Wilmington, DE 19805 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<u>\$3,411.87</u>

Debtor Highland Capital Management, L.P. Case number (if known) 19-34054-SGJ
 Name

3.113	Nonpriority creditor's name and mailing address Xerox Corporation PO Box 650361 Dallas, TX 75265 Date(s) debt was incurred __ Last 4 digits of account number __	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,348.31
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Part 3: List Others to Be Notified About Unsecured Claims

4. List in alphabetical order any others who must be notified for claims listed in Parts 1 and 2. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for unsecured creditors.

If no others need to be notified for the debts listed in Parts 1 and 2, do not fill out or submit this page. If additional pages are needed, copy the next page.

Name and mailing address	On which line in Part 1 or Part 2 is the related creditor (if any) listed?	Last 4 digits of account number, if any

Part 4: Total Amounts of the Priority and Nonpriority Unsecured Claims

5. Add the amounts of priority and nonpriority unsecured claims.

	Total of claim amounts
5a. Total claims from Part 1	5a. \$ <u>13,650.00</u>
5b. Total claims from Part 2	5b. + \$ <u>244,753,977.33</u>
5c. Total of Parts 1 and 2 Lines 5a + 5b = 5c.	5c. \$ <u>244,767,627.33</u>

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) 19-34054-SGJ

Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

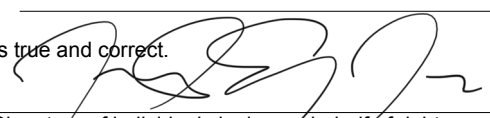
I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule **Amended Schedule E/F and Summary of assets and liabilities for non-individuals**
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 22, 2020

x 

Signature of individual signing on behalf of debtor

James P. Seery, Jr.

Printed name

CEO/CRO

Position or relationship to debtor

Exhibit 3

Exhibit 1

PROMISSORY NOTE

\$12,666,446

October __, 2016

FOR VALUE RECEIVED, the undersigned, Highland Capital Management, L.P., a Delaware limited partnership ("Maker"), hereby promises to pay to the order of Acis Capital Management, L.P., a Delaware limited partnership ("Payee"), at its office at 300 Crescent Court, Suite 700, Dallas, Texas 75201 in lawful money of the United States of America, the principal sum of TWELVE MILLION SIX HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS (\$12,666,446), together with interest on the outstanding principal balance thereof from day to day remaining at the rate of three percent (3%) per annum, as provided herein.

Payments

THE UNPAID PRINCIPAL HEREOF, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST THEREON, SHALL AUTOMATICALLY BE DUE AND PAYABLE IN FULL, WITHOUT NECESSITY OF DEMAND OR NOTICE, ACCORDING TO THE AMORTIZATION TABLE ATTACHED HERETO AS EXHIBIT A.

All past due principal and interest shall bear interest from and after the date when due at a rate equal to the rate equal to the lesser of (a) eighteen percent (18.0%) per annum or (b) the Maximum Rate (as defined herein).

Interest on the indebtedness evidenced by this Note shall be computed on the basis of a year of 360 days and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a rate that exceeds the maximum rate allowed by applicable law (such rate, the "Maximum Rate") in which case interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be. If the regularly scheduled due date for any payment under this Note is not a Business Day, the due date for such payment shall be the next succeeding Business Day, and payment made on such succeeding Business Day shall have the same force and effect as if made on the regularly scheduled due date. "Business Day" means a day, other than a Saturday, Sunday or legal holiday, on which a bank in Dallas, Texas is open for business.

Maker shall have the right to prepay this Note, in whole or in part, at any time and from time to time without premium or penalty. Amounts borrowed and repaid hereunder may not be reborrowed.

Conditions Precedent

This Note shall not become effective and Payee shall have no obligation to make the advance hereunder until Payee has received each of the following in form and substance acceptable to Payee:

- (a) this Note executed by Maker;
- (b) the Agreement for Purchase and Sale of CLO Participation Interests dated of even date herewith (the "Purchase Agreement"), by and between Maker and Payee, and copies of all agreements, documents and instruments executed or delivered in connection therewith and evidence that all conditions to the effectiveness of the Purchase Agreement have been or will be fulfilled contemporaneously with the initial advance under this Note;
- (c) evidence that the execution, delivery and performance by Maker of this Note and all other documents and instruments related to this Note have been duly authorized by, or on behalf of, Maker; and

(d) such other agreements, documents, information, and other assurances as Payee may reasonably request.

Events of Default

Maker shall be in default under this Note upon the occurrence of any of the following events or conditions (each, an "Event of Default"):

(a) the failure of Maker to make any payment required to be made under this Note when such payment becomes due;

(b) Maker defaults in the performance of any obligation, covenant, or agreement now or hereafter made or owed by Maker to Payee, whether under this Note or any related document;

(c) any representation or warranty made by Maker to Payee in connection with this Note or any document executed or delivered in connection therewith, is false or misleading in any material respect when made;

(d) Maker shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(e) any involuntary proceeding shall be commenced against Maker seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property, in each case, that results in the entry of an order for any such relief or appointment that has not been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof;

(f) any lien, attachment, sequestration or similar proceeding against any of Maker's assets or properties other than liens in favor of Payee;

(g) any event or condition occurs that results in any indebtedness of Maker becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time, or both) the holder of such indebtedness to cause any of such indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(h) the validity or enforceability of this Note shall be contested or challenged by Maker.

Remedies

Should an Event of Default exist, Payee may but without any obligation to do so, at its option and at any time, and without presentment, demand, or protest, notice of default, dishonor, demand, non-payment, or protest, notice of intent to accelerate all or any part of the advances hereunder, notice of acceleration of all or any part of the indebtedness evidenced by this Note, or notice of any other kind, all of which Maker hereby expressly waives, except for any notice required by applicable statute which cannot be waived: (a) terminate Payee's commitment to make any advances under this Note; (b) declare the indebtedness evidenced by this Note, or any part thereof, immediately due and payable, whereupon the same shall be due and payable (provided, however, that upon the occurrence of any event described in clause (e) of the definition of "Event of Default", such indebtedness shall become immediately due and payable in full without demand or acceleration); (c) reduce any claim to judgment; (d) to the maximum extent permitted under applicable laws, set-off and apply any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Payee to or for the credit or the account of Maker against any and all obligations, whether or not Payee exercises any other right or remedy hereunder and whether or not such obligations are then matured; (e) may cure any Event of Default, or event of nonperformance under this Note and/or (f) exercise any and all rights and remedies afforded by this Note, or by law or equity or otherwise, as Payee deems appropriate. No failure or delay of the holder hereof to exercise any of its rights or remedies shall not constitute a waiver thereof.

If the holder hereof incurs any costs or expenses in any attempt to enforce payment of all or any part of this Note, or if this Note is placed in the hands of an attorney for collection, Maker agrees to pay all such costs fees and expenses incurred, including without limitation, reasonable attorneys' fees.

Miscellaneous

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with the applicable law of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the indebtedness under this Note (or applicable United States federal law to the extent that it permits Payee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If such law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received with respect to this Note, or if any payment by Maker results in Maker having paid any interest in excess of the amount that is permitted by such law, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance hereof (or, if the principal balance has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with all such applicable laws, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Payee for the use, forbearance or detention of money and other indebtedness evidenced by this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the applicable usury ceiling provided by such applicable law. Notwithstanding any provision contained herein to the contrary, the total amount of interest that Maker is obligated to pay and Payee is entitled to receive with respect to this Note shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate allowed by applicable law on principal amounts actually advanced hereunder to or for the account of Maker.

MAKER AND EACH SURETY, GUARANTOR, ENDORSER, AND OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE JOINTLY AND SEVERALLY WAIVE NOTICE, PRESENTMENT, DEMAND FOR PAYMENT, PROTEST, NOTICE OF PROTEST AND NON-PAYMENT OR DISHONOR, NOTICE OF ACCELERATION, NOTICE OF INTENT TO ACCELERATE, NOTICE OF INTENT TO DEMAND, DILIGENCE IN COLLECTING, GRACE, AND ALL OTHER FORMALITIES OF ANY KIND, AND CONSENT TO ALL EXTENSIONS WITHOUT NOTICE FOR ANY PERIOD OR PERIODS OF TIME AND PARTIAL PAYMENTS,

BEFORE OR AFTER MATURITY, AND ANY IMPAIRMENT OF ANY COLLATERAL SECURING THIS NOTE, ALL WITHOUT PREJUDICE TO THE HOLDER. Without limiting the foregoing, any notice or demand upon Maker in connection with this Note shall be in writing and shall become effective (a) upon personal delivery, (b) three (3) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid or (c) when properly transmitted by telecopy, in each case addressed to Maker's address for notice specified in connection with its signature below.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THIS NOTE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS NOTE AGAINST MAKER OR ANY OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN DALLAS COUNTY, TEXAS. MAKER AND EACH SUCH OTHER PARTY HEREBY IRREVOCABLY (I) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS AND (II) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF PAYEE TO BRING ANY ACTION OR PROCEEDING AGAINST MAKER OR ANY OTHER PARTY LIABLE HEREUNDER OR WITH RESPECT TO ANY COLLATERAL IN ANY STATE OR FEDERAL COURT IN ANY OTHER JURISDICTION. ANY ACTION OR PROCEEDING BY MAKER OR ANY OTHER PARTY LIABLE HEREUNDER AGAINST PAYEE SHALL BE BROUGHT ONLY IN A COURT LOCATED IN DALLAS COUNTY, TEXAS.

MAKER AND PAYEE EACH IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY KIND BROUGHT BY EITHER AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. MAKER AND PAYEE EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS NOTE OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS NOTE, WHETHER OR NOT SPECIFICALLY SET FORTH THEREIN.

This Note embodies the final, entire agreement of Maker and Payee with respect to the indebtedness evidenced hereby and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating thereto and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of Maker and Payee. There are no oral agreements between Maker and Payee.

Signed effective as of the date of this Note.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____

Name: _____

Title: _____

Maker's address for notice:

HIGHLAND CAPITAL MANAGEMENT, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201
Attention: Frank Waterhouse
Fax: 972-628-4147

EXHIBIT A

Amortization Schedule

Interest Rate 3.0%

Payment Date	Beg Principal	Interest	Principal	Payment	End Principal
10/7/2016	12,666,446				12,666,446
5/31/2017	12,666,446	245,694	3,125,000	3,370,694	9,541,446
5/31/2018	9,541,446	286,243	5,000,000	5,286,243	4,541,446
5/31/2019	4,541,446	136,243	4,541,446	4,677,690	-

Exhibit 4

THIS AGREEMENT FOR PURCHASE AND SALE OF CLO PARTICIPATION INTERESTS (this “Agreement”), dated as of the 7th day of October, 2016, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership (the “Seller”), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership (the “Purchaser”).

RECITALS

Whereas, the Seller is the owner of certain rights to receive senior and subordinated management fees (the “Servicer Fees”), as described in Schedule A, attributable to the collateralized loan obligation issuances also listed in Schedule A (the “CLOs”);

Whereas, all of the reinvestment periods of the CLOs will have expired by August 2019;

Whereas, the Seller operates an investment management business focused on sponsoring and managing collateralized loan obligations (“CLO Investments”);

Whereas, Seller has recently engaged an investment bank to actively market a new CLO to prospective investors and Seller currently is uncertain as to the likelihood of success and timing of securing new investors;

Whereas, recent European and U.S. regulatory rules require sponsors of newly issued CLO investments, such as Seller, to retain during the life of the CLO, a five percent ownership interest in the equity or capital structure of the CLO (the “Risk Retention Amount”);

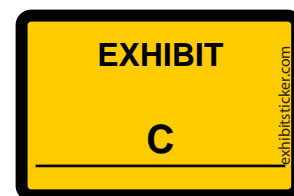
Whereas, in order to fund the Risk Retention Amount, Seller has undertaken a joint venture with another entity to originate and sponsor new CLO investments, pursuant to which Seller is obligated to contribute fifty-one percent of the Risk Retention Amount;

Whereas, Seller has typically paid overhead expenses first with its revenue, then made an annual distribution of excess cash to the partners of Seller;

Whereas, Seller has determined to stop making annual distributions of excess cash to Seller’s partners while efforts are underway to form new CLOs;

Whereas, cash flows from the Servicer Fees are unpredictable and unstable;

Whereas, Seller has determined that obtaining a guaranteed fixed amount of cash flow from Buyer is a prudent business decision in order to facilitate Seller’s compliance with its



obligation to contribute funds toward the Risk Retention Amount to the joint venture entity;

Whereas, the Purchaser acknowledges it is a sophisticated investor and, in particular, has a knowledge and understanding of CLO Investments;

Whereas, the Purchaser acknowledges that it understands the inherent risk in the timing and amount of the payment of the Servicer Fees by the trustees of the respective CLOs; and

Whereas, the Purchaser acknowledges that it has undertaken all the necessary due diligence to feel comfortable in determining the inherent risks of purchasing such Servicer Fees from the Seller.

AGREEMENT

Now, therefore, in consideration of the premises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Sale and Purchase of Acis Participation Interests.

Subject to and upon the terms and conditions set forth in this Agreement, the Seller hereby sells to the Purchaser, and the Purchaser hereby purchases from the Seller, participation interests in the Servicer Fees (the "ACIS Participation Interests") in an amount equal to (A) the total Servicer Fees paid to Seller by each of the CLOs beginning in November 2016 and ending August 2019 (each, with respect to both a particular CLO payor and a particular payment date, a "Servicer Fee Payment," and in the aggregate for a particular payment date the "Aggregate Servicer Fee Payment") less (B) the Servicer Fee Retention Amount with respect to each CLO, as shown on Schedule A.

Purchase Price; Additional Documents; Termination.

- 1.1 In consideration of the sale of the Acis Participation Interests to the Purchaser, the Purchaser shall (a) pay to the Seller an amount equal to **\$666,655.00** in cash (the "Cash Purchase Price"), and (b) deliver to the Seller a promissory note (the "Note"), duly executed by the Purchaser and substantially in the form of Exhibit I, with an initial principal balance of **\$12,666,446.00** (the Cash Purchase Price and the delivery of such Note, collectively, the "Purchase Price").

- 1.2 The Purchaser shall pay the Cash Purchase Price to the Seller by wire transfer of immediately available funds to an account designated in writing by the Seller.
- 1.3 The parties acknowledge and agree that the Purchase Price reflects the arm's-length value of the Acis Participation Interests as of the date of this Agreement as determined by mutually agreed appraisal methods.
- 1.4 Notwithstanding any other provision of this Agreement, to the extent that the sale and purchase of the Acis Participation Interests hereunder shall require the consent or approval of another party or any governmental authority, the consummation of the transactions contemplated by this Agreement shall not constitute an assignment or an attempted assignment with respect to the Servicer Fees if such assignment or attempted assignment would constitute a breach or violation with respect to the terms of the governing CLO agreements (the "CLO Documents"). Each of the parties hereto shall use its commercially reasonable efforts to obtain any such consent or approval. If such consent or approval is not obtained, each party agrees to cooperate with the other party in any reasonable manner necessary or desirable to provide the Purchaser the benefits of the Acis Participation Interests.
- 1.5 In the event that any governmental entity commences a formal regulatory proceeding against Seller and within 90 days thereof (or later, but solely in the event of removal of Seller by order of such governmental entity), Seller is terminated or otherwise removed as manager of one or more of the CLOs and such governmental action results in the seizure or forfeiture of Servicer Fees, then the outstanding principal of the Note shall be reduced in proportion to the reduction in Servicer Fees resulting from such termination or seizure.

2. **Representations and Warranties of the Seller.**

The Seller represents and warrants to the Purchaser that each of the following representations and warranties is true and correct as of the date of this Agreement:

- 2.1 Organization and Authority of the Seller. The Seller is a limited partnership, duly formed, validly existing and in good standing under the laws of the State of Delaware and has requisite power and authority to enter into this Agreement and

any other agreements entered into in connection herewith and to perform its obligations hereunder and thereunder.

- 2.2 Title to the Acis Participation Interests. The Seller owns good and valid title to, and is the sole record and beneficial owner of, the Servicer Fees, free and clear of any and all mortgages, liens, pledges, charges, adverse rights or claims, security interests, restrictions on use and/or transfer or encumbrances of any kind (collectively, "Liens"), except as provided herein and in the CLO Documents and agreements governing the CLOs. Other than as provided in the CLO Documents, the Acis Participation Interests are not subject to any rights of first refusal or other rights to purchase such Acis Participation Interests.
- 2.3 Due Authorization and Enforceability. All action on the part of the Seller necessary for the authorization, execution and delivery of this Agreement and any other agreements entered into in connection herewith and the performance by the Seller of its obligations hereunder and thereunder has been taken. This Agreement and any other agreements entered into in connection herewith constitute the valid and legally binding obligations of the Seller, enforceable in accordance with their terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.
- 2.4 Consents. Except as may be required under the CLO Documents, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any third party is required by the Seller in connection with the consummation of the transactions contemplated by this Agreement or any other agreements entered into in connection herewith.
- 2.5 Non-Contravention. Other than with respect to any consents required under the CLO Documents, the execution, delivery and performance of this Agreement and any other agreements entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby will not result in (a) a

violation or default, or be in conflict with or constitute a default, under the Seller's organizational documents, or any agreement or contract that the Seller is party to or that its assets are bound by, (b) a violation of any statute, law, regulation or order; provided, however, that with respect to any statute, law, regulation or order applicable to any of the CLO Documents the foregoing is limited to the knowledge of the Seller, or (c) the creation of any Lien upon any asset of, or the loss of any right or asset by, the Seller that would not reasonably be expected to cause a material adverse effect on the Seller.

3. **Representations and Warranties of the Purchaser.**

The Purchaser represents and warrants to the Seller that each of the following representations and warranties is true and correct as of the date of this Agreement:

- 3.1 Organization and Authority of the Purchaser. The Purchaser is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware and has requisite power and authority to enter into this Agreement and any other agreements entered into in connection herewith and to perform its obligations hereunder and thereunder.
- 3.2 Due Authorization and Enforceability. All action on the part of the Purchaser necessary for the authorization, execution and delivery of this Agreement and any other agreements entered into in connection herewith and the performance by the Purchaser of its obligations hereunder and thereunder has been taken. This Agreement and any other agreements entered into in connection herewith constitute the valid and legally binding obligations of the Purchaser, enforceable in accordance with their terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.
- 3.3 Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any third party is required by the Purchaser in

connection with the consummation of the transactions contemplated by this Agreement or any other agreements entered into in connection herewith.

- 3.4 Non-Contravention. The execution, delivery and performance of this Agreement and any other agreements entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby will not result in (a) a violation or default, or be in conflict with or constitute a default, under the Purchaser's organizational documents, or any agreement or contract that the Purchaser is party to or that its assets are bound by, (b) a violation of any statute, law, regulation or order, or (c) the creation of any Lien upon any asset of, or the loss of any right or asset by the Purchaser.
- 3.5 Information Concerning the Acis Participation Interests. The Purchaser (a) has received and had the opportunity to review information with respect to the Seller, the Acis Participation Interests, the CLOs, and the CLO Documents, (b) is familiar with the Seller, the CLOs and the CLO Documents, and (c) has been afforded the opportunity to ask questions of and received satisfactory answers concerning the Seller, the CLOs and the CLO Documents and has asked any questions the Purchaser desires to ask and all such questions have been answered to the full satisfaction of the Purchaser. The Purchaser understands that the purchase and/or receipt of the Acis Participation Interests involves various risks and that the Purchaser may lose some or all of its investment due to economic conditions that could negatively impact the CLOs and/or the Seller and/or for other unforeseen reasons. The Purchaser acknowledges and agrees that no representations or warranties have been made to the Purchaser by the Seller, or any person acting on the Seller's behalf, as to the tax consequences of this investment, or as to profits, losses or cash flow that may be received or sustained as a result of this investment. All documents, records and books pertaining to a proposed investment in and/or receipt of the Acis Participation Interests which the Purchaser has requested have been made available to the Purchaser.
- 3.6 Acknowledgments of the Purchaser. Subject to Section 1.5, the Purchaser acknowledges and agrees that: (a) except as provided in Section 1.5, should the

Seller's rights with respect to the Servicer Fees be terminated, such termination shall not affect the Purchaser's obligations under the Note; (b) except as provided in Section 1.5, the Seller may exercise all of its legal rights and remedies to enforce the Purchaser's obligations under the Note even if the Acis Participation Interests are not paid, in full or part, by the CLO trustees for any reason, including the termination of the Seller as the manager, a hostile buyout of such CLO, or any other reason (other than as a result of the Seller breaching its covenants under this Agreement or as a result of fraud or by willful misconduct of the Seller); and (c) Purchaser has had the opportunity to consult with its own legal counsel with respect to the purchase of the Acis Participation Interests. The Purchaser understands such actions could negatively impact the timing and amount of payment of such Acis Participation Interests during the pendency of such dispute by the trustee of such CLO. The Purchaser bears the sole risk with respect to non-payment of the Acis Participation Interests (other than as a result of the Seller breaching its covenants under this Agreement or as a result of the fraud or willful misconduct of the Seller).

3.7 No additional Representations. The Purchaser has relied solely upon its investigation and analysis and the representations and warranties of the Seller set forth in this Agreement and the Purchaser acknowledges that, other than as set forth in this Agreement, the Seller does not make any other representation or warranty, either express or implied.

4. Covenants.

4.1 Payments on the Acis Participation Interests. The Seller agrees to promptly remit, or cause to be promptly remitted, to the Purchaser the cash received with respect to the Acis Participation Interests. If the Seller is required at any time to return to any person, any portion of the payments made to the Seller pursuant to the Servicer Fees, then the Purchaser shall, on demand of the Seller, forthwith return to the Seller any such payments transferred to the Purchaser by the Seller but without interest or penalty on such payments.

4.2 Actions With Respect to Servicer Fees. Notwithstanding anything else contained in this Agreement, the Seller shall not, without the Purchaser's written consent, and other than as required by the CLO Documents, take or omit to take any action which would (a) postpone any date fixed for any payment under the CLO Documents of the Servicer Fees; (b) amend the CLO Documents so as to materially and adversely affect the payment of the Servicer Fees; or (c) release any material claim of the Seller under the CLO Documents that relates to the Servicer Fees.

4.3 Reporting. Seller shall provide Purchaser a detailed certification of any Servicer Fees received from the CLOs within forty-five (45) business days of the date such Servicer Fees are received by the Seller.

5. Miscellaneous.

5.1 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties; provided, however, that no party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other parties hereto.

5.2 Terms Confidential. The parties agree that they will keep the terms, amounts and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the principles thereof relating to conflicts of law.

- 5.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 5.5 Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.
- 5.6 Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):

- (i) if to the Purchaser:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse
Telephone: 972-628-4100
Facsimile: 972-628-4147

with copies to:

Hunton & Williams LLP
1145 Ross Avenue, Suite 3700
Dallas, Texas 75202
Attention: Alexander McGeoch
Telephone: 214-979-3041
Facsimile: 214-979-3938

(ii) if to the Seller:

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

- 5.7 Specific Performance. The Seller and the Purchaser agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Seller and the Purchaser agree that an action for specific performance (including for temporary and/or permanent injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and the Purchaser shall be entitled to such relief without the necessity of proving actual damages or posting a bond.
- 5.8 Costs, Expenses. The Seller and the Purchaser shall each pay their own costs, fees and expenses in connection with this Agreement and the transactions contemplated herein. The Seller will pay any and all transfer, recording, sales, use or similar taxes and fees in connection with the consummation of the transaction contemplated herein. If any party is forced to institute legal proceedings to enforce its rights in accordance with the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable expenses, including attorneys' fees and expenses, in connection with any such action.
- 5.9 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.
- 5.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such

provision(s) were so excluded and shall be enforceable in accordance with its terms.

- 5.11 Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.
- 5.12 Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.
- 5.13 Construction. The parties acknowledge that each has had the advice of independent counsel selected by it in connection with the terms of this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 5.14 Arbitration. Any disputes or controversies arising out of or related to this Agreement that are not resolved by the parties shall be resolved by arbitration under the administration of the American Arbitration Association (“AAA”). The Seller and the Purchaser will seek to agree on an arbitrator. If the parties cannot agree, each of the Seller and the Purchaser will appoint an arbitrator, and such arbitrators will select a third arbitrator to serve as the sole arbitrator to determine the dispute. Such dispute or controversy shall be resolved pursuant to the rules of the AAA with the findings and any award by such arbitrator being final and binding upon all parties. Judgment on any award or finding rendered by the arbitrator may be entered in any court of proper jurisdiction. The location of any such arbitration proceedings shall be in the greater Dallas, Texas metropolitan


area or such other location as mutually agreed by the parties. Each party shall bear its own costs related to any dispute or controversy arising out of or related to this agreement. The parties agree any dispute or controversy arising out of or related to this Agreement shall be kept confidential between the relevant arbitrators, the parties, and their appointed counsel and agents.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

THE PURCHASER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

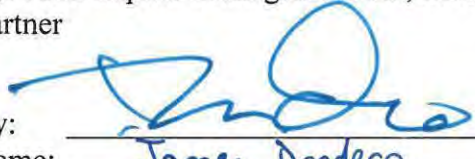
By: Strand Advisors, Inc., its General Partner

By: 
Name: James Donders
Title: President

THE SELLER:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: 
Name: James Donders
Title: President

Schedule A

Participation Interests

CLO Issuer	Total Servicer Fee	Servicer Fee Retention Amount	Acis Participation Interests
Acis CLO 2013-1, Ltd.	50 bps	20 bps	30 bps
Acis CLO 2014-3, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-4, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-5, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2015-6, Ltd.	40 bps	20 bps	20 bps

Exhibit 5

ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF PROMISSORY NOTE (this "Agreement"), dated as of November 3, 2017, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("Acis"), HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("HCM") and HIGHLAND CLO MANAGEMENT, LTD., a Cayman Islands exempted company ("HCLOM", and together with HCM and Acis, the "Parties"). Capitalized terms used herein but not defined have the meanings ascribed thereto in the Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "Purchase Agreement" and the promissory note therein, the "Note").

RECITALS

Whereas, Acis is portfolio manager to certain collateralized loan obligations listed in Schedule A of the Purchase Agreement and is entitled to fee compensation in connection therewith as set forth therein (the "CLOs", the governing documents thereof, the "CLO Documents" and such fees, the "Servicer Fees");

Whereas, Acis and HCM entered into the Purchase Agreement, whereby Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "HCM Stabilization Fees" and such cash flows from HCM, the "Stabilization Payments");

Whereas, HCM has notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs (the "Notification");

Whereas, Acis has determined that the effect of the Notification is that it cannot fulfill its duties as portfolio manager of the CLOs, and in order to ensure the continued operation of such CLOs and protection for its stakeholders, it must assign its rights as portfolio manager in the CLOs to a qualified successor portfolio manager pursuant to the CLO Documents (a "Successor Manager");

Whereas, HCLOM, a qualified Successor Manager, irrevocably commits to be appointed as Successor Manager in consideration of Acis assigning to it the Note, subject to the conditions set forth in the CLO Documents and pursuant to the terms herein;

Whereas, Acis is expected to incur significant costs and expenses related to ongoing claims and litigation to which Acis is either a party or is otherwise obligated with respect to such costs and expenses (the "Acis Legal Expenses"); and

Whereas, Acis also is expected to have ongoing accounting and administrative expenses (the "Acis Administrative Expenses" and together with the Acis Legal Expenses, the "Acis Expenses").



AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Succession**. Acis shall promptly provide the Controlling Class (as defined in each of the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager pursuant to the requirements of the CLO Documents (each, a “*Notice*” and the period between the Notice and an Appointment (as such term is defined below), the “*Post-Notice Period*”).
2. **Successor Manager**. Subsequent to the Notices, each of Acis and HCLOM shall promptly pursue Successor Manager appointment of HCLOM in respect of each CLO, including but not limited to achieving all conditions precedent required by the CLO Documents in such respect (consummation of HCLOM’s appointment as Portfolio Manager of a given CLO, an “*Appointment*”).
3. **Assignment and Transfer of the Promissory Note; Stabilization Payments**.
 - a. Effective immediately upon execution of this Agreement by the Parties, all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis, are hereby irrevocably assigned and transferred by Acis to HCLOM, it being understood that from the date of such assignment, HCLOM shall become the “Payee” thereunder.
 - b. For so long as Acis shall receive Servicer Fees following the date hereof, Acis shall remit to HCM the HCM Stabilization Fees pursuant to the Note Purchase Agreement.
 - c. For so long as HCLOM receives any Servicer Fees following any Appointment, then HCLOM shall remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note Purchase Agreement if Acis was the recipient of such fees.
 - d. HCLOM shall sign a joinder to Note Purchase Agreement upon HCM’s written notice thereof.
4. **Expense Support**. In the event Acis delivers written notice to HCLOM that Acis is unable to pay when due any Acis Expenses, then HCLOM shall promptly pay to Acis, or at Acis’ written request, to Acis’ creditors, the amount of such shortfall, provided that in no event shall HCLOM’s obligations under this paragraph exceed greater than \$2 million of Acis Legal Expenses in the aggregate, or greater than \$1 million of Acis Administrative Expenses in the aggregate.
5. **Indemnity**. Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or

unliquidated (“*Claims*”), that my accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys’ fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a “*Proceeding*”), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as “*Damages*”), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. “*Covered Person*” means each of HCLOM and HCM, as well as each and every one of their affiliates (other than Acis), and all of HCLOM’s and HCM’s respective managers, members, principals, partners, directors, officers, shareholders, employees and agents.

6. Miscellaneous.

- a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.
- b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.
- c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.
- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

- e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.
- g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):
 - i. If to Acis:
Acis Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147
 - ii. If to HCM:
Highland Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147
 - iii. If to HCLOM:
Highland CLO Management, Ltd.
PO Box 309
Ugland House
Grand Cayman KY1-1104
Cayman Islands
- h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and HCM shall be

entitled to such relief without the necessity of proving actual damages or posting a bond.

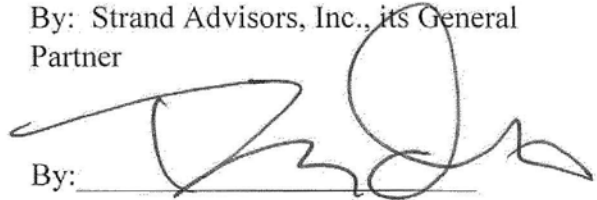
- i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection
- j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.
- k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
- l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.
- m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of November 3, 2017.

HIGHLAND CAPITAL MANAGEMENT,
L.P.

By: Strand Advisors, Inc., its General
Partner



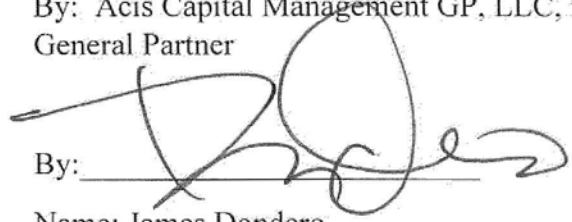
By: _____

Name: James Dondero

Title: President

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its
General Partner

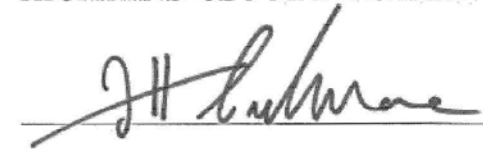


By: _____

Name: James Dondero

Title: President

HIGHLAND CLO MANAGEMENT, LTD.



For and on behalf of Summit Management,
Limited

Director

Exhibit 6

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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)	Case No. 19-34054-sgj-11
In Re:)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	Tuesday, October 20, 2020
)	9:30 a.m. Docket
Debtor.)	
)	MOTIONS TO COMPROMISE
)	CONTROVERSY WITH ACIS CAPITAL
)	MANAGEMENT [1087] AND THE
)	REDEEMER COMMITTEE OF THE
)	HIGHLAND CRUSADER FUND [1089]
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor:	Ira D. Kharasch PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For UBS Securities, LLC:	Andrew Clubok Sarah A. Tomkowiak LATHAM & WATKINS, LLP 555 Eleventh Street, NW, Suite 1000 Washington, DC 20004 (202) 637-2200

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9 the Highland Crusader JENNER & BLOCK, LLP
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11 For Redeemer Committee of Mark A. Platt
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20 For James Dondero: John T. Wilson, IV
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Bryan C. Assink
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15 Austin, TX 78701
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22 For HarbourVest, et al.: Erica S. Weisgerber
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For the Official Committee Matthew A. Clemente
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Chicago, IL 60603
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Recorded by: Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

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transcript produced by transcription service.

1 DALLAS, TEXAS - OCTOBER 20, 2020 - 9:41 A.M.

2 THE COURT: A little bit of a wait. I was trying to
3 make sure I was caught up on all of the late-day filings
4 yesterday. There were a few of them.

5 All right. This is Judge Jernigan, and we're ready to
6 start our setting in Highland Capital Management, Case No. 19-
7 34054. We have two motions set today where the Debtor is
8 seeking approval for compromise and settlement agreements, one
9 with Acis and related parties and one with Redeemer Committee
10 and the Crusader Fund.

11 All right. We have 70 or so people on the line, so we
12 have put you all on mute. But I am going to now take a roll
13 call, so you'll have to take yourself off mute when I call
14 your name for an appearance.

15 All right. First, for the Debtor team, do we have Mr.
16 Pomerantz and a team of others? Would you appear at this
17 time?

18 MR. KHARASCH: Good morning, Your Honor. Ira
19 Kharasch of Pachulski Stang Ziehl & Jones on behalf of the
20 Debtor and Debtor-in-Possession.

21 I'd first like to let the Court know that Mr. Pomerantz is
22 on the phone in a listening mode. He will not be appearing
23 today as he's still recuperating from successful surgery last
24 week, but glad to say that he's improving daily and looking
25 forward to appearing in front of Your Honor again in the very

1 near future.

2 THE COURT: All right.

3 MR. KHARASCH: I have with me today John Morris as
4 well as Greg Demo.

5 THE COURT: All right. Good morning to all of you.
6 And we wish Mr. Pomerantz well.

7 All right. For the Redeemer Committee, Crusader Funds, do
8 we have a team appearing for them this morning? Go ahead.

9 MS. MASCHERIN: Yes, Your Honor. Terri Mascherin of
10 Jenner & Block. I'm appearing today on behalf of both The
11 Redeemer Committee of the Crusader Funds and also the Crusader
12 Funds, --

13 THE COURT: Okay.

14 MS. MASCHERIN: -- whose claim is likewise resolved
15 in the settlement.

16 With me today on the line are my partner Mark Hankin, and
17 Mark Platt of Frost Brown Todd.

18 THE COURT: All right. Good morning to all of you.

19 All right. For Acis, do we have Ms. Patel and others
20 appearing this morning?

21 MS. PATEL: Yes. Good morning, Your Honor. Rakhee
22 Patel on behalf of Acis Capital Management, LP, with the
23 Winstead firm. Also on the line is Brian Shaw of the Rogge
24 Dunn Group, also counsel for Acis and counsel for Mr. Terry.
25 I'll let him announce if he has additional parties.

1 THE COURT: All right. Mr. Shaw, are you there with
2 us?

3 MR. SHAW: (no response)

4 THE COURT: Okay. Maybe technical --

5 MS. PATEL: Brian, we can't hear you.

6 (No response.)

7 THE COURT: All right. Well, Mr. Shaw, --

8 MS. PATEL: Well, --

9 THE COURT: -- we put -- the Court put everyone on
10 mute, so if you could take yourself off mute if you are trying
11 to appear. (No response.) Well, maybe we'll get him at some
12 point when -- if he wants to speak up.

13 All right. We have several objecting parties this
14 morning. I'll start with Mr. Dondero's counsel. Do we have
15 Mr. Lynn or someone from his team on the phone or on the
16 video?

17 MR. WILSON: Yes, Your Honor. This is John Wilson
18 with Bonds Ellis Eppich Schafer Jones, LLP. I am joined today
19 by John Bonds, Michael Lynn, and Bryan Assink.

20 THE COURT: All right. Good morning to all of you.
21 All right.

22 MR. WILSON: Thank you.

23 THE COURT: We had Patrick Daugherty as an objecting
24 party to the Acis settlement. Do we have Mr. Kathman and his
25 team?

1 MR. KATHMAN: Good morning, Your Honor. Jason
2 Kathman on behalf of Mr. Daugherty.

3 THE COURT: Okay. Good morning.

4 All right. We had UBS objecting to the Redeemer
5 Committee/Crusader Fund settlement. Do we have Mr. Clubok or
6 others appearing for UBS?

7 MR. CLUBOK: Good morning, Your Honor. This is
8 Andrew Clubok from Latham & Watkins, LLP on behalf of UBS.
9 I'm here with Sarah Tomkowiak, who will actually be leading
10 the proceedings for us today, and also Kimberly Posin.

11 THE COURT: All right. Good morning to all of you.
12 We had a few reservation of rights type limited
13 objections, so I'll check now on these parties. CLO Holdco:
14 Do we have Mr. Kane or others appearing?

15 MR. KANE: Yes, Your Honor. John Kane on behalf of
16 CLO Holdco, specifically related to the Acis settlement.

17 THE COURT: Okay. Thank you, Mr. Kane.

18 All right. HCLO Funding: Do we have either Mr. Maloney
19 or Ms. Matsumora on the line?

20 MS. MATSUMORA: Yes, Your Honor. This is Rebecca
21 Matsumora from King & Spalding. And Mr. Maloney may be
22 joining us later, once we turn to the Acis settlement.

23 THE COURT: All right. Thank you.

24 HarbourVest filed a limited objection to the Acis
25 settlement. Do we have Ms. Driver or others appearing for

1 HarbourVest?

2 MS. WEISGERBER: Good morning, Your Honor. Erica
3 Weisgerber from Debevoise & Plimpton appearing for HarbourVest
4 this morning.

5 THE COURT: Okay. Good morning.

6 All right. Well, I think I've covered all of the parties
7 who filed a pleading today. I suspect the Unsecured
8 Creditors' Committee is out there. Do we have someone
9 appearing for them?

10 MR. CLEMENTE: Good morning, Your Honor. Matthew
11 Clemente from Sidley Austin on behalf of the Unsecured
12 Creditors' Committee.

13 THE COURT: All right. Good morning, Mr. Clemente.

14 All right. Is there anyone else who wishes to appear that
15 I did not hear from?

16 All right. Well, Mr. Kharasch, do you want to start us
17 off this morning?

18 MR. KHARASCH: I would like to, Your Honor, just very
19 briefly, before I turn it over to my partner, John Morris.

20 As you know, Your Honor, we're down to two motions to
21 approve the separate settlements, one with Acis and Josh and
22 Jennifer Terry on the one hand, as well as the Redeemer
23 Committee and the Highland Crusader Funds on the other.

24 There's one significant update in the case that may come
25 up during today's proceeding, it may not, but it's that Mr.

1 James Dondero has resigned from his position where he held the
2 title of Portfolio Manager where he managed certain assets
3 under the direction of the Independent Directors, and all
4 actions were subject to the protocols and director oversight.

5 Here's how we'd like to proceed, Your Honor, today. John
6 Morris of our firm, senior bankruptcy litigator, will be the
7 one to primarily handle most aspects of the 9019 settlement
8 motions, including putting on the testimony of our CEO, Mr.
9 James Seery, and responding to the objections. However, Greg
10 Demo will deal with the response to the technical arguments
11 raised by Mr. Daugherty.

12 If that works with the Court, I would now turn the floor
13 over to John Morris to present the motions.

14 THE COURT: All right. Let me just ask one
15 clarification on the Dondero announcement. Does that mean he
16 has no role at all with the Debtor only, or does it mean he
17 has no role with the various affiliates out there as well?

18 MR. KHARASCH: Your Honor, certainly, I mean, I would
19 defer to Mr. Seery when he gets on the stand, --

20 THE COURT: Okay.

21 MR. KHARASCH: -- but there's no role with the
22 Debtor. In terms of the word affiliates, Your Honor, that
23 gets a little tricky in the Highland case. Certainly, you
24 know, it's no -- no role with the controlled entities,
25 Highland's -- the Debtor's controlled entities. But,

1 obviously, the word affiliates could spill over to other
2 entities that are truly managed and owned by Mr. Dondero or
3 his various companies.

4 THE COURT: Okay. I know folks tend to bristle when
5 I use that word affiliate. I know there's nuance in some
6 situations. But all right.

7 Well, let's go ahead, then, and hear from Mr. Morris. And
8 I'll just say right now I don't think I need lengthy opening
9 statements. I don't know if that was your intention, to go
10 straight to the evidence. Certainly, if people feel like
11 they've got to say a word or two, I'll let that happen, but
12 we've done our best to read all the pleadings so I don't
13 really think I need much of an opening statement. I'd rather
14 go to evidence pretty quickly. Mr. Morris?

15 MR. MORRIS: Good morning, Your Honor. Can you hear
16 me?

17 THE COURT: I can. Uh-huh.

18 OPENING STATEMENT ON BEHALF OF THE DEBTORS

19 MR. MORRIS: Thank you. John Morris from Pachulski
20 Stang Ziehl & Jones for the Debtor. Thank you for the
21 guidance, Your Honor. I'll probably cut considerably on what
22 I had been prepared to say, but I appreciate the time that the
23 Court has taken to review our papers. I know that we didn't
24 get them in until last evening, although they weren't
25 particularly voluminous.

1 We're really pleased to be here today, Your Honor. This
2 case has just recently passed its one-year anniversary. We're
3 here today, really, quite excited to resolve two of the most
4 contentious, litigious cases that the Debtor has faced, both
5 on a pre-petition basis, and frankly, in certain respects, on
6 a post-petition basis. These cases with Acis -- and Acis, in
7 particular, Your Honor, you're very familiar with, and I just
8 wanted to let the Court know that our plan here is to proceed
9 first with the Redeemer settlement.

10 THE COURT: Okay.

11 MR. MORRIS: And so let me just say a few words about
12 that. (garbled) I've shared with all of the objecting
13 parties, so there's no surprise here. I think everybody is
14 prepared for the path that we're going to go down. I'd like
15 to do my short opening. Ms. Patel and Mr. Shaw may -- I
16 apologize, Ms. Mascherin may speak on behalf of the Redeemer
17 Committee. Somebody may speak on behalf of the Crusader
18 Funds. UBS, who is the only objecting party, may choose to
19 make an opening. And I'll call Mr. Seery. And I'll do my
20 direct of Mr. Seery. I've got just a few exhibits to put into
21 the record, and we expect to rest. And I'll leave it to Mr.
22 Clubok and the Latham firm to decide how they want to respond.

23 So, once that's completed, we will shift to the Acis
24 settlement. I would propose to proceed in the same manner,
25 with a very short opening, put Mr. Seery on the stand to

1 testify as to the issues and the facts relating to the Acis
2 settlement, and hopefully we'll be done.

3 THE COURT: All right. So, in both situations, Mr.
4 Seery would be the only witness for --

5 MR. KHARASCH: Yes.

6 THE COURT: -- the Debtor. And I guess with regard
7 to the UBS objection to the Redeemer Committee/Crusader Fund
8 settlement, there is a person that was identified for UBS:
9 Moentmann. I'm not sure if I'm saying that correctly. Are we
10 anticipating having him as a witness? I guess I need to hear
11 from Mr. Clubok, but --

12 MR. CLUBOK: Yeah. Yeah, I don't -- I don't --

13 MS. TOMKOWIAK: I think --

14 MR. CLUBOK: -- I'll speak.

15 MS. TOMKOWIAK: Good morning, Your Honor. This this
16 is Sarah Tomkowiak on behalf of UBS.

17 THE COURT: Okay. Good morning.

18 MS. TOMKOWIAK: Yes, we do intend to present Mr.
19 Moentmann as a witness today.

20 THE COURT: All right. Well, I'm getting ahead on
21 this because what I want to know is, do people -- can people
22 give me a time estimate at least of your direct? Okay? I'm
23 trying to figure out, are we going to need to put any time
24 limitations, reasonable time limitations on witnesses?

25 Mr. Morris, you acted like Mr. Seery would be fairly quick

1 in both situations.

2 MR. MORRIS: Yeah, I would appreciate 10 minutes for
3 an opening, and then certainly no more than 30 but hopefully
4 closer to 20 minutes for direct.

5 THE COURT: All right. Ms. Tomkowiak, what do you
6 think as far as time?

7 MS. TOMKOWIAK: Yeah. We would like about the same,
8 approximately 10 minutes for our opening and about 20 minutes
9 to cross-examine Mr. Seery. And then I expect that our direct
10 of Mr. Moentmann would take about the same amount of time.

11 THE COURT: All right . Well, I've got some loose
12 estimates. If you start going well beyond those estimates,
13 I'm going to kind of rein it in, but I think this all sounds
14 very reasonable.

15 All right. Mr. Morris, you may make your opening
16 statement.

17 MR. MORRIS: Thank you very much, Your Honor. What I
18 want to do with my opening is just describe at a very high
19 level what we expect the evidence to show today. The Court is
20 obviously familiar with the settlement terms, so I'm not going
21 to spend any time with that. They're set forth both in our
22 papers and in the agreement itself. The Court is familiar
23 with the legal standard. So I'd like to spend a few minutes
24 at the end talking about the UBS objection and why the Debtor
25 firmly believes that it ought to be overruled.

1 As Your Honor is aware, the Debtor had served as the
2 investment manager of the Crusader Funds. In 2008, following
3 the stock market and financial crisis, the Debtor put the
4 Crusader Funds into (garbled). Disputes arose among the
5 interest holders of the Crusader Funds, and they spent a few
6 years fighting among themselves. And a few years later, they
7 came up with a plan and scheme, pursuant to which the Redeemer
8 Committee was formed. The Redeemer Committee had the -- had
9 the right, the unfettered right to decide when, how, and
10 whether the Debtor would continue on as its financial manager.
11 And in the summer of 2016, it decided to terminate the
12 Debtor's position as investment manager.

13 An arbitration ensued. Litigation, frankly, throughout --
14 throughout numerous countries and numerous courts ensued.
15 There were two cases in Aruba, I believe. There was a case in
16 the Cayman Islands. There was a case filed in the Delaware
17 Chancery Court. You had the arbitration. So I think there
18 was litigation going on on five different fronts.

19 The parties spent two years in arbitration, engaged in
20 extensive discovery and motion practice. They had a nine-day
21 trial in September of 2018, and ultimately the panel issued an
22 award, and that award came in three parts. The first part was
23 called a partial final award, which was rendered in March of
24 2019. That was followed, I think, about eight days later with
25 a modification award. And finally, in May, they issued their

1 final award.

2 All three awards are attached to my declaration. They
3 have been offered into evidence under seal. The sealing order
4 has already been entered, and that sealing order, I think, is
5 also one of our exhibits. I'm not moving them into evidence
6 yet. We'll get to that point. But I just wanted Your Honor
7 to know that the arbitration awards are very much part of the
8 record.

9 That award, I don't think there's any dispute that,
10 pursuant to the award, the Debtor was obligated to pay
11 approximately \$190 million. Shortly after the award was
12 filed, the Redeemer Committee and the Crusader Funds moved to
13 have the arbitration award confirmed in the Delaware Chancery
14 Court, and Highland moved for partial -- for a partial
15 vacation of that award.

16 Notably, Highland did not challenge any of the Court --
17 any of the arbitration panel's factual findings. They didn't
18 challenge any substance of the award. But they raised a
19 number of procedural defects that primarily went to the
20 overarching argument that the partial final award should have
21 been treated as the final award, such that any relief granted
22 in the modification award and the actual final award was
23 impermissible.

24 I think UBS has calculated the value of the awards given
25 post those two documents as approximately \$36 million.

1 So, you've -- the Redeemer Committee has filed their claim
2 in this case of \$490 million. The Crusader Funds have filed a
3 separate proof of claim for approximately \$23 million, if I
4 remember correctly. And their basis for the Crusader's Fund
5 claim is that they sued to claw back certain fees that had
6 been paid to Highland in its role as investment manager.
7 Admittedly, I think -- I don't want to speak for the Crusader
8 Funds -- but I do think they acknowledge that there is some
9 overlap in those amounts.

10 You will hear from Mr. Seery today. Mr. Seery will
11 describe for you what he and an independent board of directors
12 did to educate themselves about the scope, nature, and value
13 of the Redeemer Committee's claim. They will -- Mr. Seery
14 will discuss the extensive advice that the board was given
15 with respect to these matters. Mr. Seery will also describe
16 for you the extensive negotiations that took place between the
17 Debtor and representatives of the Redeemer Committee and the
18 Crusader Funds. You will hear about communications between
19 and among lawyers, communications between and among
20 principals.

21 I recall, Your Honor, back in June, when we I think first
22 alerted to the Court that we were negotiating the settlement,
23 you expressed some mild surprise, because, after all, this is
24 an arbitration award, so what -- what, in fact, was there to
25 settle? And it was a very fair point, and we appreciated the

1 fact that you didn't have visibility into the specifics. But
2 lo and behold, there were really -- let's just call them very
3 two -- two very large issues.

4 And Mr. Seery will describe this in more detail for the
5 Court so it's part of the evidentiary record, but the first
6 issue related to something called deferred fees. Pursuant to
7 the plan and scheme that were agreed upon, Highland was
8 entitled to recover its fees as investment manager only upon
9 the completion of the Crusader Funds' liquidation. But in the
10 early part of 2016, as the panel found, Highland had helped
11 itself to approximately \$32 million in deferred fees, and that
12 was one of the claims that the Crusader Fund and the Redeemer
13 Committee brought in the arbitration, and the arbitration
14 required that Highland return that \$32 million plus interest.

15 So why is that an issue now in the settlement? It's an
16 issue because the Debtor chose a different path. Rather than
17 paying that money now and waiting for some time in the future
18 to seek to collect that money, it compromised. And it's a
19 very reasonable and fair and rational compromise, Your Honor.
20 They took two-thirds of the value of the deferred fee today
21 instead of having no settlement, continuing with the
22 litigation, having a fight on setoff issues, because
23 undoubtedly the Redeemer Committee would argue that they ought
24 to get paid a hundred-cent dollars. So we'd have another
25 litigation over setoff. We would have to wait until the

1 completion of the Crusader Funds' liquidation before we could
2 even make a demand for the deferred fee. And as Your Honor
3 knows, the Crusader Funds are going to have and the Redeemer
4 Committee will have an allowed claim in this case, and that
5 claim won't be satisfied until all distributions are made, and
6 those distributions won't be completed until all estate claims
7 are pursued.

8 It may be many years before this happens. And so the
9 Debtor, I think rationally, chose to take two-thirds now
10 rather than fight over setoff issues, rather than wait what
11 would likely be many years to even apply for it. And then
12 once they did that, we'd be litigating over the Redeemer
13 Committee's faithless servant defense, one that, if you read
14 the -- if you read the partial final award, I think it's fair
15 to say there would be risk here that the Debtor would get
16 nothing on the deferred fee. So that was one big issue that
17 we dealt with.

18 The other one related to Cornerstone. Under the terms of
19 the final order by the Court -- the panel, not the Court, but
20 the panel -- but the panel found that Highland acted
21 improperly and was required to buy -- basically buy out the
22 Redeemer Committee and the Crusader Funds' interest in
23 Cornerstone. They would have been required to pay \$48 million
24 to do that.

25 Again, issues of setoff would have abounded. And frankly,

1 the Debtor doesn't have the money to pay that, doesn't think
2 it's, frankly, worth that price.

3 So, instead, negotiations, very, very solid negotiations,
4 the Debtor chose to allow the Redeemer Committee and the
5 Crusader Funds to retain those Cornerstone shares and instead
6 give us a credit of \$30.5 million against the gross value of
7 the arbitration award.

8 So the \$190 million is reduced first by \$21 million for
9 the deferred fee; then, second, by \$30-1/2 million for the
10 Cornerstone issue.

11 How did they arrive at the \$30.5 million figure? We'll
12 hear Mr. Seery testify about the diligence that he did and
13 about how he relied in substantial part on certain valuation
14 reports that the Debtor receives in the ordinary course of
15 business from Houlihan Lokey.

16 He will tell you that these reports are provided by
17 Houlihan for a fee. They're provided not just with respect to
18 Cornerstone but with respect to lots of other assets that the
19 Debtor either owns or manages.

20 He will tell you that the Debtor relies on the Houlihan
21 reports for setting the marks on their books and for all kinds
22 of other reasons.

23 We believe that that, again, is a perfectly rational
24 statement, and we want to emphasize to the Court that we're
25 not here today to tell you that this is the absolute best

1 result that the Debtor could obtain, because no settlement can
2 ever represent that.

3 Instead, this is a compromise, where everybody gives a
4 little and everybody gets a little. And within that context,
5 no expert that comes in here after having spent 20 or 30 hours
6 doing their own analysis should be able to upset this apple
7 cart. And that's what you're going to hear from UBS's expert.
8 This is the only point that they really make, is that he did
9 his analysis and he thinks that the value is higher. And I
10 don't think that's the corpus of Rule 9019. It's the Debtor's
11 judgment. Is what the Debtor doing fair and reasonable? Has
12 the Debtor engaged in a process to educate itself? Has the
13 Debtor thoughtfully gone through negotiations? Is there a
14 rational basis for where the Debtor is coming out with? There
15 is no question as to all of those things.

16 And so those are the two big adjustments. Mr. Seery will
17 tell you that there was one other more modest adjustment that
18 was made, another million dollars in favor of the Debtor. But
19 that is the evidence that we plan on presenting, Your Honor.

20 We think that there will be no dispute that this
21 negotiation was arm's length, it was not the product of fraud
22 or collusion, and that it is in the paramount interest of the
23 Debtor and its estates and all constituents that this
24 litigation with the Redeemer Committee finally be brought to
25 an end.

1 I have no further comment, unless you have any questions,
2 Your Honor.

3 THE COURT: Thank you. I guess I should ask Ms.
4 Mascherin, before I go to Ms. Tomkowiak: Did you have
5 anything you wanted to say, as you represent the settling
6 party, obviously?

7 MS. MASCHERIN: Yes, Your Honor, I would appreciate
8 it if you'd allow me just a brief set of remarks.

9 THE COURT: Okay.

10 OPENING STATEMENT ON BEHALF OF THE REDEEMER COMMITTEE

11 MS. MASCHERIN: The standard, of course, that governs
12 us today is a familiar standard under Fifth Circuit law. In
13 the Debtor's papers, the Debtor has cited to *In re Cajun*
14 *Electric Power Co-Op, Incorporated*, 119 F.3d 349, a Fifth
15 Circuit decision from 1997. And the Fifth Circuit tells us
16 that approval is to be given to a settlement if it is fair and
17 equitable and in the best interest of the estate. And the
18 Fifth Circuit has guided courts to consider such issues as
19 probability of success in litigation, taking into account any
20 uncertainties in fact and in law; the complexity and likely
21 duration of a litigated resolution of the dispute, and any
22 attendant expense, inconvenience, and delay; and other
23 factors, such as whether the settlement would be in the best
24 interest of all creditors and whether the settlement was the
25 result of arm's-length negotiation.

1 Your Honor, I would -- I will submit that after you hear
2 Mr. Seery's testimony, and even in light of the Debtor's -- or
3 UBS's, rather -- effort now to turn this into a valuation
4 dispute over Cornerstone, that the Court will agree that this
5 settlement was in the reasonable business judgment of the
6 Debtor and is in the best interest of the creditors.

7 Just very briefly, Your Honor, the current state of
8 affairs is that the Redeemer Committee holds an arbitration
9 award entitling it to almost \$190 million in damages. As part
10 of that award, as Mr. Morris said, the Debtor is required to
11 pay \$48 million in principal plus an additional \$21 million in
12 pre-judgment interest to purchase the 42 percent minority
13 interest in Cornerstone that's held by the Crusader Fund.

14 In addition, under that award, the Redeemer Committee is
15 entitled to the cancellation of several limited partnership
16 interests in Crusader Funds which the panel found Highland
17 Capital Management had obtained by way of breaching the
18 Crusader Fund plan of liquidation and breaching its fiduciary
19 duties.

20 Only one small piece of that limited partnership interest
21 relief was challenged by the Debtor in the action to confirm
22 or vacate the award, and only one small piece of that, which
23 we'll refer to, I think, in arguments later, perhaps, is the
24 Barclay's claim for a limited partnership interest which
25 Highland transferred to its wholly-owned affiliate Eames,

1 E-A-M-E-S, is at issue in UBS's objection.

2 In addition to the relief that the Redeemer Committee was
3 granted in the arbitration award, Your Honor, the Crusader
4 Fund, as Mr. Morris says, has asserted its own separate claim
5 to claw back certain fees paid in the past to the Debtor and
6 also to avoid the payment of any further fees under what New
7 York law recognizes as the Faithless Servant Doctrine, which I
8 will submit there is ample findings in the arbitration awards
9 in this case of breaches of fiduciary duty, and New York law
10 holds that when a servant has been found to have breached its
11 fiduciary duties and acted unfaithfully, that servant is not
12 entitled to further compensation from the client -- in this
13 case, the Crusader Fund.

14 Now, all of that, as Mr. Morris notes, would be for
15 litigation many years from now upon complete liquidation of
16 the Crusader Fund, because the deferred fees that the Crusader
17 Fund would seek to avoid paying would not be payable in any
18 event unless and until the Fund -- the Crusader Fund was
19 completely liquidated, which, as Mr. Morris notes, could not
20 happen until this claim is fully paid, because this claim now
21 is -- will be the single largest claim -- the single largest
22 asset, rather -- of the Crusader Fund.

23 Your Honor, this compromise, this settlement, would be to
24 the benefit of the Debtor's estate for several reasons. First
25 and foremost, as Mr. Morris emphasized, it will end all

1 disputes between the Redeemer Committee and the Crusader Fund
2 on one hand and Highland Capital Management, the Debtor, on
3 the other, and would provide for releases of the Debtor and
4 several of its affiliates and employees in connection with the
5 settlement.

6 As a net matter, this compromise would reduce the amount
7 of the Redeemer Committee's damages claim to an allowed claim
8 of just over \$137 million, a reduction of over \$54 million
9 from the amount of the arbitration award.

10 This settlement would also allow a very modest claim to
11 the Crusader Funds of only \$15,000, Your Honor.

12 It would provide for the same relief as the arbitration
13 panel ordered with respect to the disputed limited partnership
14 interests, including the interests that is currently held by
15 the Debtor's wholly-owned affiliate, Eames.

16 And, significantly, it would also relieve the Debtor of
17 its obligation to purchase the shares of Cornerstone that are
18 held by the Crusader Fund -- as I mentioned, a 42 percent
19 minority interest in that company -- which otherwise, under
20 the terms of the award, the Debtor would be required to pay a
21 total of \$79 million to acquire. As Mr. Morris said and as I
22 believe Mr. Seery will testify, the Debtor doesn't have that
23 kind of money and has no interest in buying those shares. The
24 Debtor is in liquidation, and its interest is in monetizing
25 the 58 percent majority interest that it owns or controls in

1 Cornerstone.

2 And significantly, Your Honor, to that end, this
3 settlement also includes an agreement by my clients, the
4 Redeemer Committee and the Crusader Fund, to cooperate with
5 the Debtor so that the Cornerstone asset, the company as a
6 whole, can be monetized jointly. And we've even agreed upon
7 some terms, which I won't get into because they are
8 confidential, given that this is an asset that the Debtor will
9 be seeking to deal with in the future, but under those terms,
10 faithfully cooperate and will attempt to achieve a
11 monetization that would bring in substantial value of what the
12 Debtor could otherwise achieve holding a 58 percent interest
13 rather than a 100 percent interest in that asset.

14 So, Your Honor, in sum, I submit that this settlement was
15 in the reasonable business judgment of the Debtor and it amply
16 meets the requirements for approval that the Fifth Circuit set
17 forth in *In re Cajun Electric Power Co-Op*. Thank you.

18 THE COURT: All right. Thank you.

19 All right. Now I will go back to UBS. Ms. Tomkowiak? Am
20 I saying your name correctly? Correct me if I'm not.

21 MS. TOMKOWIAK: It's pretty close for a first try.

22 THE COURT: Okay.

23 MS. TOMKOWIAK: It's Tomkowiak.

24 THE COURT: Tomkowiak? Okay. Thank you. You may
25 proceed.

1 MS. TOMKOWIAK: Thank you, Your Honor. Before I
2 proceed, I did want to raise one housekeeping issue that
3 hopefully will not count against my time, but I think it's
4 important to resolve it before I do my opening statement.

5 As you just heard from both the Debtor and Redeemer's
6 counsel, part of the -- one of two very large issues in this
7 settlement relate to the value of Cornerstone, and
8 specifically the value of Crusader's ownership interest in
9 Cornerstone. The Debtor put -- assigned a value to that of
10 \$30.5 million, and they put that in their papers, they filed
11 that in court, they've said it here again here today, and
12 they've said that Mr. Seery intends to testify as to the
13 diligence that he purportedly did in order to arrive at that
14 number.

15 We've, you know, received documents from the Debtor and
16 Redeemer showing the valuations that were alluded to. The
17 numbers in those valuations are substantially higher. Our own
18 expert has also performed his own analysis of the valuations,
19 and his own valuation analysis, and we would like to be able
20 to testify to those numbers and talk about them.

21 Frankly, we're surprised that the Debtor doesn't want to
22 put those valuations into evidence, considering that it is the
23 Debtor's burden to show that the settlement had some rational
24 basis, as they just said.

25 But, and we have previewed that to the Debtor, and they

1 have expressed their views that those values and those
2 valuation reports are confidential and should not be part of
3 the public record. We think that is prejudicial. We think it
4 is prejudicial to put the lowest of the low of any of these
5 ranges into the public record without also being allowed --
6 allowing us to put on evidence that the true valuation is, in
7 fact, much higher.

8 Again, they put into the record that the perceived fair
9 market value of this asset, which is critical and central to
10 our objection and to their -- the value of the settlement and
11 whether or not it's fair and equitable, they've put that into
12 the record, and we would like to be able to get evidence into
13 the record relating to that number and relating to our
14 analysis of it and why we believe it's well, you know, below
15 any range of reasonableness.

16 We don't think it's confidential. We think it should all
17 be part of the public record. We do not object if the Court
18 wishes to proceed in some other manner, such as, you know,
19 sealing the courtroom, although, again, that's not our
20 preference. We would prefer to just be able to talk about the
21 evidence and the numbers. But we would welcome your Court's
22 guidance on this. You know, I believe, and I won't speak for
23 the Debtor's counsel, but I believe that that is -- was their
24 preference.

25 MR. MORRIS: May I be heard, Your Honor?

1 THE COURT: You may.

2 MR. MORRIS: Okay. Your Honor, the reports that are
3 being referred to are reports that were provided on a
4 confidential basis. They're stamped confidential. They were
5 produced pursuant to the protective order.

6 I'm a little confused as to why no effort has been made to
7 deal with the issue prior to the last 12 hours or so, because
8 (garbled). They received the documents as confidential
9 documents. There's no question about that.

10 And the important point here, Your Honor, is why are they
11 marked confidential. It's one thing to disclose a settlement
12 number. It's very different to disclose the analyses. There
13 may be discounts. There may be adjustments. We're about to
14 embark, if this settlement is approved, the Debtor and the
15 Redeemer Committee and the Crusader Funds are about to embark
16 on a sales and marketing process. That part is known to the
17 public. But the value, if the value -- I'm stunned that UBS
18 is surprised that we care. There's probably not many things
19 that we care about more than maintaining the confidence of the
20 value -- of our perception of value, how we get there, the
21 methodologies that were employed, and particularly when we're
22 about to go into the marketplace. And we believe this
23 information really does need to be kept confidential for that
24 reason.

25 The option that I can think of, Your Honor, and I know it

1 may not be popular with everybody here, but there is only one
2 objecting party. There's nobody else here. You've got your
3 statutory committee. You've got the U.S. Trustee. They've
4 got statutory obligations to continue to be part of the
5 process. You've got UBS and you've got the Debtor. I would
6 respectfully request that this part of the proceeding be
7 limited, or at least the portion when their expert witness is
8 testifying, because -- well, be limited to those folks, and
9 everybody else just has to go off the line. That would be my
10 proposal, Your Honor.

11 If this information gets into the marketplace, not only
12 the Debtor but the other stockholders, including the Crusader
13 Funds, will be harmed.

14 MS. MASCHERIN: Your Honor, may I speak?

15 THE COURT: You may.

16 MS. MASCHERIN: May I, just briefly?

17 THE COURT: You may.

18 MS. MASCHERIN: On behalf of the Crusader Funds and
19 the Redeemer Committee, Your Honor, I join in Mr. Morris's
20 objection. We have produced in discovery and UBS has included
21 on its exhibit list the independent third-party valuations
22 that the Crusader Fund has obtained, pursuant to strict
23 confidentiality obligations, with respect to the Crusader
24 Funds' shares in the Cornerstone asset, as well as highly
25 confidential portions of reports by the Crusader Funds'

1 manager to the Redeemer Committee concerning its opinions
2 regarding the value of that asset.

3 And we share the concern. And there should be a concern,
4 I think, Your Honor, with respect to anyone who cares about
5 the Debtor's ability to maximize the value of the Cornerstone
6 asset. The market should not see the confidential valuation
7 reports and other advice that the Debtor and my clients
8 considered when we negotiated this compromise.

9 THE COURT: Okay. Let me --

10 MS. TOMKOWIAK: Your Honor, may I --

11 THE COURT: Let me think about --

12 MS. TOMKOWIAK: May I briefly make just a couple
13 points?

14 THE COURT: Well, just a minute. Let me think about
15 the mechanics here. I know there was a declaration of your
16 expert submitted ahead of time. Have you filed under seal --
17 I've granted lots of sealing motions and I'm losing track --
18 have you filed under seal a valuation report of your expert?

19 MS. TOMKOWIAK: Your Honor, we have filed these
20 papers under seal, to be cautious. Again, we view that
21 differently than an open proceeding. These documents were on
22 our exhibit list. No one objected to them. Some of these
23 documents we did not have a chance to file because, although
24 we've been asking for them for a very long time, we've only
25 received them in the last, you know, 36, 24 hours.

1 So while some of them are under seal, there are other more
2 recent valuations that would not be. And, again, we have a
3 very different view here of what would or would not be harmful
4 to a sales process.

5 We believe it is incredibly more harmful and prejudicial
6 to have put in their motion, and I'm looking at it -- Page 10,
7 Paragraph 31 -- to say that there's a \$30.5 million perceived
8 fair market value of Crusader's 42 percent ownership in
9 Cornerstone, and then not be able to put into the public
10 record all of the numbers in these, you know, secret
11 valuations that suggest that it should be much, much higher
12 than that. Substantially higher than that. Double, triple
13 higher than that.

14 So that's our view. And, you know, again, we're willing
15 to proceed as the Court wishes, but, you know, we have a very
16 different view of who's really being harmed here, and, you
17 know, we think it's the estate and we think it's us.

18 THE COURT: All right. Well, what I was thinking is,
19 because this is going to be mechanically cumbersome and we're
20 not going to have complete certainty about the integrity of
21 the process if I say everyone has to leave the call except
22 UBS, Redeemer, the Debtor, and the Committee, there's always a
23 risk of someone somehow slipping by, I'm wondering if we can
24 have your witness later and he can testify about the under-
25 seal document without -- I don't know, can we have testimony

1 with him just referring to page whatever for the Court to look
2 at, without saying the numbers out loud? Is that a ridiculous
3 thought, or is that possible, do we all think?

4 MS. TOMKOWIAK: That might be possible, Your Honor,
5 when it comes to our witness. And it might be possible to,
6 for example, share slides with you in advance with respect to
7 both my opening and our experts so that only you could see
8 them but then we would talk about them vaguely.

9 I do, you know, I hesitate because we'd also like to use
10 these documents potentially in our cross-examination of Mr.
11 Seery. Again, we literally got some of these, you know,
12 yesterday. And so I'm not sure that that's -- entirely solves
13 the problem.

14 I mean, one other suggestion is that we could pause here
15 and switch to the Acis claim and try in the meantime to work
16 something out. You know, we've already proceeded down this
17 road, though.

18 MS. LAMBERT: Judge Jernigan?

19 THE COURT: Yes.

20 MS. LAMBERT: This is Lisa Lambert for the United
21 States Trustee. I had not anticipated needing to make an
22 appearance in this hearing, but the U.S. Trustee has asked for
23 sealed documents in this case, some of which have not been
24 sent. And in addition, we'd ask to be excluded specifically
25 as contemplated in the argument, but I wasn't sure the Court

1 was aware that we were on the call.

2 THE COURT: Okay. You're saying that if we have
3 sealed testimony or documents, the U.S. Trustee wants to be
4 included?

5 MS. LAMBERT: Yes.

6 THE COURT: Okay.

7 MS. LAMBERT: And for those who have not e-mailed
8 those documents, we would be grateful if there were e-mailed,
9 because I do not have all of them yet.

10 THE COURT: Okay. All right. This is a little bit
11 --

12 MR. MORRIS: Your Honor?

13 THE COURT: -- challenging -- Mr. Morris, I'm going
14 to go to you -- in a vacuum. I mean, I don't know what the
15 whole set of documents are. I mean, a part of me is torn
16 here. If we have the UBS expert's information out there for
17 public consumption, will that alone, in the Debtor's view,
18 chill the bidding process? I mean, this is one objecting
19 party's view of the world, and, you know, perhaps it would
20 simply be perceived as one objecting party's view of the world
21 and not the end-all be-all on value. What do you think?

22 MR. MORRIS: Yeah. You know, I know this is a little
23 unusual, Your Honor, but can Mr. Seery be heard since he is
24 the CEO? I don't want to put him under oath and do -- but I
25 think he can probably articulate much better than I can as to

1 the Debtor's concern. He's very familiar with the documents.
2 He's reviewed them. And I don't know if -- Mr. Seery, are you
3 able to hear me? Do you want to speak up on this particular
4 topic?

5 MR. SEERY: I can hear you, yes. If the Court can
6 hear me, if the Court wants to hear me, I'm happy to --

7 THE COURT: I would like --

8 MR. SEERY: -- describe what these documents are and
9 how they derive into this issue.

10 THE COURT: Please. Go ahead.

11 MR. SEERY: Your Honor, each month -- and this is not
12 unique to the Debtor -- with respect to what our view is of --
13 of the three -- two or three assets, the Debtor gets
14 valuations from a third-party service, in this case Houlihan
15 Lokey, which is probably the most prominent valuator of these
16 assets, these types of assets. They set a -- well, what we
17 call fair value. We use it for our NAV. Doesn't mean that
18 it's fair market value. It's their perception of what value
19 can be for these assets using various models and comparisons.

20 And we use those every month, we try to do it on a
21 consistent basis, and that's how we value all our liquid
22 assets.

23 Houlihan also does this service for a myriad of funds,
24 investment funds, as well as the retail funds that are smaller
25 affiliated with the Debtor but we don't control. So these

1 valuations for various assets go into the NAVs that those
2 entities produce.

3 Again, they're not fair market value, but perception using
4 models and desktop analysis as to what the value is, to allow
5 investors in the funds to understand movements in the value of
6 assets and get a sense of what the value may be.

7 In this case, the Debtor owns around three percent of
8 Cornerstone. RCP owns --

9 THE COURT: I'm sorry.

10 MR. SEERY: -- around 55 --

11 THE COURT: I got the math wrong. What is the
12 Debtor's ownership?

13 MR. SEERY: About three percent, Your Honor.

14 THE COURT: Okay.

15 MR. SEERY: RCP, which is a fund called Restoration
16 Capital Partners, --

17 THE COURT: Uh-huh.

18 MR. SEERY: -- we've dealt with a little bit in the
19 case before, is a fund with third-party investors mostly, a --
20 an interest by some Dondero-affiliated entities, and about 16
21 percent owned by the Debtor. That owns 55 percent of
22 Cornerstone.

23 So, roughly, the Debtor's derivative interest in the asset
24 is around 11 percent, 12 percent. In that neighborhood. The
25 rest is owned by Crusader.

1 UBS -- we provide these documents on a regular basis to
2 the Unsecured Creditors' Committee. UBS sits on that
3 Committee. Our confidential information we provide to the
4 Debtor and provide to the Committee, and have been doing
5 exclusively for months, contains various valuations using
6 these marks, and then what we think we can achieve for various
7 outcomes.

8 We're working with Cornerstone management to put in a
9 management retention program and enhance that opportunity for
10 them so that interests are aligned. We think that's in the
11 best interest of RCP, with whom -- manage the asset. We think
12 it's in the best interest for the estate and our interest.
13 Also in the best interest for Crusader.

14 We hope to then be able to go to the market. We may or
15 may not be able to go to the market. The market may not be
16 ready. It may not be the right time. We may have to do
17 different things to the asset to get it in the best condition
18 to sell it. We may have to even think about (inaudible) to
19 get the best value. Because we have a duty to RCP as well.
20 Releasing the detail that's in these NAV valuations that we
21 get from Houlihan every month would be extremely detrimental
22 to that process.

23 The interests of the Debtor, as I said, it's material, but
24 there's significant third-party interests here. Significant
25 third-party interests. For UBS -- these are not the types of

1 reports that ever are or should be released generally, and
2 they will have an effect on the sale process.

3 MR. MORRIS: Thank you, Mr. Seery.

4 THE COURT: All right. Well, let me go back.

5 MS. TOMKOWIAK: Your Honor, may I -- may I just real
6 briefly reply to that?

7 THE COURT: Let me ask you this first. Are we -- I
8 want to make sure I understand the universe of documents we're
9 talking about. Is it just your expert plus these Houlihan
10 documents?

11 MS. TOMKOWIAK: Well, yes, and a couple of other
12 documents that were produced by the Redeemer Committee. The
13 -- those documents, I think what's confidential about them is
14 that they refer back to these Houlihan valuations.

15 THE COURT: Okay. Isn't there a simpler answer to
16 all of this, and that is, if I don't have a Houlihan person,
17 if I don't have the person who created these documents, then
18 they're hearsay I shouldn't allow in.

19 MS. TOMKOWIAK: Well, Your Honor, but we're not --
20 we're not necessarily putting them in for the truth of what's
21 in them. In fact, we think what's in them is unreasonably low
22 and significantly flawed and inaccurate. But, you know, they
23 are relevant for other purposes, including the fact that they
24 are much, much higher than the perceived fair market value
25 that the Debtor put into their motion.

1 I was confused to hear Mr. Seery say that these don't show
2 anything about fair market value, and those were their words,
3 not ours. It's their burden to show that they had a rational
4 basis and sound business judgment in entering into this
5 settlement, so we are -- we should be allowed to explore with
6 Mr. Seery what, to quote the Debtor's counsel, what diligence
7 he did, including if he looked at these reports; why he didn't
8 accept the higher values that are in these reports; why he
9 took a value as of March, over six months ago, as opposed to
10 the much more recent values in these reports that show that
11 Cornerstone has continued to improve its performance. So, and
12 the -- of our expert, who is allowed to rely on hearsay and
13 allowed to explain what he did and what he reviewed in coming
14 to his own analysis that this asset is worth, you know, two to
15 three times the value that it's been assigned to it, the value
16 that the Debtor's estate is giving up and that Redeemer is
17 getting as part of this deal, which we just think is a
18 windfall. And I don't understand how the Court can have all
19 of the information available to make that independent judgment
20 without --

21 THE COURT: Okay.

22 MS. TOMKOWIAK: -- without seeking that information.

23 THE COURT: Okay. So I'm going to take --

24 MS. TOMKOWIAK: I mean, we want these assets to be
25 worth more. We want them to be able to monetize them and

1 maximize their recovery. We just -- we, again, disagree as to
2 what's more harmful, having one very low, incredibly low,
3 unreasonable number out in the public, or having, you know,
4 the -- all of the information out there in the public that
5 shows that the value of these assets is much higher.

6 THE COURT: Okay. Well, let's take this in chunks.
7 I'm not going to allow any evidence in regarding these
8 Houlihan reports. There was a way to do this, and I may or
9 may not have been amenable to this way, but you could have
10 subpoenaed the Houlihan person. I don't know what kind of
11 fight you would have had on your hand. Probably would have
12 had one. But without a Houlihan person to testify about this,
13 this is hearsay and I think it would be offered to prove the
14 truth of the matter asserted. So I'm not allowing the
15 Houlihan information in for that reason.

16 I'll say a couple of additional things. We have a
17 longstanding rule in this District that the Debtor can always
18 testify about value. Okay? So, it goes to, obviously, the
19 weight and credibility I give it, but -- so if he speaks about
20 value, he's entitled to speak about value. It's just how much
21 weight do I give it. He has the burden of proof.

22 The last thing I want to say on this topic is we all know
23 that, in a 9019 context, the Court is not technically required
24 to have a mini-trial. It needs to consider all facts and
25 circumstances that "bear on the wisdom of the settlement

1 proposed." But I think that is probably yet another reason to
2 keep this information out, that it's going a little bit beyond
3 what I think is necessary today. And, again, the Debtor is
4 either going to meet its burden or not. It has the burden.
5 So that's the Houlihan-related stuff.

6 You've alluded to Redeemer Committee or Crusader Fund
7 information. That's another category of stuff we're talking
8 about?

9 MS. TOMKOWIAK: Yes and no, Your Honor. I think we
10 also have presentations that were provided to the Crusader
11 Fund, I believe by Alvarez & Marsal, that show -- again,
12 discuss the valuation of Cornerstone as of particular dates,
13 and frankly, we believe, directly contradicts the testimony
14 that the Debtor has indicated that they intend to elicit from
15 Mr. Seery and shows how unreasonable the efforts were here.

16 THE COURT: All right. Well, I think my ruling needs
17 to be consistent, then, with the ruling with regard to the
18 Houlihan information. I don't have an Alvarez & Marsal
19 witness. It would be hearsay without the Alvarez & Marsal
20 person here to testify about it. I think it would be offered
21 for the truth of the matter asserted. And so I'm not going to
22 allow that.

23 So, does that bring us down to just this one category of
24 Mr. Moentmann and his work product?

25 MS. TOMKOWIAK: I believe so, Your Honor, in terms

1 of, you know, can he testify about his, you know, his own
2 valuation, his own analysis of what he believes that these
3 assets are worth and the flaws that he's identified in the
4 Houlihan valuations as well, which I think, with respect to
5 his own analysis, you know, I believe it would be helpful for
6 the Court to hear the numbers and, you know, the flaws in what
7 Houlihan has done. That's part of his opinions. And I think
8 he could do that without, you know, referencing specific
9 numbers, if that's what the Court would prefer.

10 THE COURT: All right. So I'm going to go back again
11 to Mr. Morris and Ms. Mascherin. I'm inclined to let Mr.
12 Moentmann testify, and I can -- he can refer to his report
13 that's here under seal. And as long as he doesn't make
14 references to numbers of Houlihan, Alvarez & Marsal, I'm not
15 sure I'm convinced it would hurt the future marketing effort.
16 Again, wouldn't the market just say this is one objector's
17 opinion and they either give it weight or not?

18 MR. MORRIS: Your Honor, I probably should have said
19 this earlier. I am going to have a very short *voir dire*. And
20 I think, you know, if you would allow me to do that, the
21 Debtor expects to move to exclude this witness in its
22 entirety, in his entirety. He's a lovely man, I'm sure he
23 knows his work very well, but I don't think it's worth the
24 time, money, and effort to continue down this path on a 9019
25 motion. And so we will be making that motion.

1 I suppose if that motion is denied, you know, if he can be
2 limited in the manner you're describing, we could probably
3 live with that. But we do intend to make that motion.

4 THE COURT: All right. Ms. Mascherin, anything to
5 add?

6 MS. MASCHERIN: No, Your Honor.

7 THE COURT: Okay. So that is the path we'll take.
8 We'll let Ms. Tomkowiak call Mr. Moentmann. We'll either
9 allow it or exclude it depending on where I go on that
10 request. And then, if he does testify, he will be directed to
11 just cross-reference his report that's here under seal and not
12 mention numbers of other experts that he may be critical of.

13 All right. So, with that, Ms. Tomkowiak, you may make
14 your opening statement.

15 OPENING STATEMENT ON BEHALF OF UBS SECURITIES, LLC

16 MS. TOMKOWIAK: Okay. Thank you, Your Honor. And to
17 -- just to be crystal clear, I do intend in that statement to
18 refer to the conclusions, his own, not those of anybody else.

19 THE COURT: All right.

20 (Pause.)

21 MS. TOMKOWIAK: Your Honor, as I -- I also appreciate
22 you taking the time to read all of our papers. As you know,
23 UBS strongly believes that the settlement is not fair, it is
24 not equitable, and it is not in the best interest of the
25 estate.

1 It is the Debtor's burden, that nobody disagrees about
2 that, to show that it has exercised business judgment within a
3 range of reasonableness. And the Debtor has not submitted to
4 this Court any evidence whatsoever to meet that burden. The
5 Debtor -- Mr. Seery testified at his deposition that he agreed
6 that the only thing before the Court to determine whether or
7 not the settlement is fair and equitable is their motion and
8 that's it.

9 As you've observed, no one from Houlihan Lokey intends to
10 come here and testify today. There is no evidence before you
11 to independently evaluate the true value of these two very
12 large issues, as the Debtor's counsel described them. It's
13 just Mr. Seery and his say so of what he thinks is reasonable.
14 And we don't think that that is enough to show that the
15 settlement is reasonable, we think there's been a complete
16 abdication of business judgment here, and we don't think this
17 is in the best interest of the estate.

18 We believe that the Debtor and Redeemer have negotiated a
19 sweetheart deal, frankly, that gives Redeemer a ginormous
20 windfall and deprives the estate of its right to these
21 meaningful assets that could be available to UBS and to other
22 creditors.

23 And, so, yes, in addition to harming the estate, this deal
24 is absolutely to the detriment of UBS, and we are a
25 significant unsecured creditor whose rights are affected by

1 this deal. Our views must be taken into consideration under
2 the Fifth Circuit law that Ms. Mascherin cited to. And
3 respectfully, we just don't think that the Debtor has met its
4 burden for giving Your Honor the full picture necessary to
5 fully understand the value of this settlement compared to the
6 arbitration award on which it's supposedly based.

7 I wanted to briefly talk a little bit about that
8 arbitration award, if you can go to the next slide. So,
9 again, that we all agree that the claim is based upon an
10 arbitration award. No court has ever confirmed this award.
11 It's not a final judgment. I want to walk you briefly through
12 the components of that award as they're relevant here. So,
13 Gail, if you could pull that up.

14 You know, Redeemer asserted a number of claims against
15 Highland and they're laid out here, including the panel's
16 findings. The first row is the uncontested claims. And by
17 that, I mean that, you know, no one has disputed that portions
18 of them should be subject to vacatur in Delaware law.

19 The next component, there are legal fees and costs that
20 the panel awarded to Redeemer. Next, we have the deferred fee
21 claim. And this was alluded to in the openings of the Debtor
22 and Redeemer as well. And the panel agreed with Redeemer that
23 Highland had, to quote the Debtor's counsel, helped itself to
24 over \$32 million in fees that were supposed to be deferred
25 until the end of liquidation of the Crusader Fund.

1 The panel awarded Redeemer damages, but it did not relieve
2 Redeemer of its obligation to pay the Debtor those fees in the
3 future when they are due. And I don't think that is
4 reasonably in dispute here.

5 The Cornerstone award, as we've all acknowledged, that was
6 a finding by the panel that Highland did not act appropriately
7 in liquidating Cornerstone and Crusader's interest in
8 Cornerstone. And so the panel awarded Redeemer nearly \$70
9 million for that claim. Or, I'm sorry, over \$70 million for
10 that claim. And that was based on the panel's view at the
11 time, around a year or so ago, that the fair market value of
12 Crusader's interest in Cornerstone was \$48 million,
13 approximately, and then plus pre-judgment interest, for a
14 total of \$71 million.

15 And then there was also this claim relating to the
16 Barclay's interest. This particular award was included by the
17 panel as a modification to its first final award. That second
18 final award also increased the amount of pre-judgment interest
19 that Redeemer was receiving under the arbitration award by
20 extending the period of time by which they could receive that.

21 It's that portion of the Barclay's claim here, which is
22 approximately \$30 million, and then another \$6 million of pre-
23 judgment interest. That is the subject of the motion to
24 vacate that was filed in Delaware a long time ago and was set
25 to be heard the day that the Debtor filed this case for

1 bankruptcy.

2 So, the sum of these components, in terms of what Redeemer
3 was owed, is approximately \$190 million, but the story does
4 not end there, as the Debtor and Redeemer would like you to
5 believe. And I think, in fact, they acknowledge, you know,
6 this is not a straightforward arbitration award, because there
7 are reciprocal obligations that Redeemer still owed to the
8 Debtor. And Gail, if you could click here.

9 So, what's reflected here are the various setoffs and
10 other issues that we believe you need to consider when you
11 think about the true value of the arbitration award. So the
12 first one is the Cornerstone shares. We all agree that the
13 arbitration award required -- required Redeemer,
14 simultaneously with payment of the damages award, to give
15 back, to tender back to the Debtor, absolutely no question,
16 not in dispute, they were required to give those shares back
17 to the Debtor.

18 And so we've assigned here, just for purposes about
19 thinking about the arbitration award at the time it was
20 issued, a value of \$48 million, which, again, is the fair
21 market value that the panel concluded was appropriate for
22 Cornerstone at the time this award was issued, which, again,
23 was a long time ago.

24 And then there was the payment of deferred fees. I think
25 you heard a lot about those today. These are the fees that,

1 again, the panel found that Highland took them too soon, but
2 they are required to get -- they are -- they have a right to
3 get them at some future point in time when the Crusader Funds
4 are fully liquidated. And so nothing about the arbitration
5 award relieved Redeemer of its obligation to pay those fees,
6 even though, necessarily, and as you can see by their name,
7 they were deferred until some future point in time.

8 And then finally here, you know, any -- we -- there's a
9 certain amount of contested claims. And, again, that relates
10 to the Barclay's claim and with respect to the amount of pre-
11 judgment interest that was included in the second final award.

12 That -- you know, Mr. Seery, I think, testified at his
13 deposition that he believed they had little chance of
14 succeeding on that motion, and they've assigned that zero
15 value in their settlement and gave one hundred percent of the
16 value of that to Redeemer. We believe that's inappropriate
17 and we believe that even if you take 50-50, although, you
18 know, we think it should be higher than that, but even if you
19 just assume for settlement purposes that they might win that
20 issue, they might lose that issue, and you take 50 percent of
21 those contested amounts that are subject to vacatur by the
22 Delaware Court, or frankly, by this Court, then, accounting
23 for that litigation risk, you should remove another \$18
24 million from the value of this arbitration award.

25 And so, at the end of the day, you've got an adjusted

1 award of around \$90 million, and that's what we believe is the
2 true value of the award.

3 If you go to the next slide. We really just have two
4 large problems with the proposed settlement. The first is the
5 Cornerstone shares. And, again, without getting into the
6 numbers, they are -- indisputably, the Debtor's fair market
7 value calculation is based on the very lowest end of the
8 valuation range prepared by Houlihan Lokey for Crusader, not
9 the Debtor. It's a bit confusing, but Houlihan Lokey actually
10 provided two different valuations: one for Crusader, one for
11 the Debtor. They used the one provided for Crusader, and they
12 took the very lowest end of that range as of March 2020. They
13 did it despite having a different valuation that had a higher
14 range and despite the Debtor's own policy of typically marking
15 assets at the mid-point.

16 They provided no basis for using a valuation in March,
17 when the COVID pandemic was in its very initial stages. The
18 market was very, very low. They've only said and we expect
19 Mr. Seery to testify that, well, that's when the parties first
20 started negotiating this deal. But the settlement wasn't
21 finalized until, you know, six months later, and the Debtor is
22 not bound by that valuation or some handshake deal. They
23 could have but they did not insist that more current numbers
24 were used.

25 And our expert, you know, we intend to offer his testimony

1 that they've used some very flawed assumptions and that the
2 30.5 is well below any range of reasonableness that you could
3 assign to the shares.

4 And then really the -- you know, we don't think that the
5 Debtor has appropriately taken litigation risk into account.
6 You know, they've given a very large litigation discount for a
7 claim regarding the deferred fees and this applicability of
8 the Faithless Servant Doctrine that hasn't even been filed. I
9 mean, that -- that litigation is hypothetical. It's not
10 pending. It's a future dispute that isn't even ripe yet. And
11 yet they've applied a very large litigation discount for that
12 claim.

13 Conversely, they've applied a zero litigation discount for
14 a claim that has been fully briefed to the Delaware court in
15 the form of a motion to vacate. And again, inexplicably, they
16 just (inaudible) amount and provided Redeemer with a hundred
17 percent of the value of that claim.

18 Can you go to the next slide?

19 You will hear from our expert, Mr. Moentmann. He's a
20 principal at Grant Thornton. He has over 30 years of
21 experience in valuations. He specializes in healthcare
22 valuations.

23 I heard Ms. Mascherin say that we would like to turn this
24 into a valuation case. Well, frankly, we don't see how
25 valuation is not relevant when the settlement includes the

1 forfeiture of a very, very meaningful asset such as
2 Cornerstone.

3 He's going to testify, again, that, in his opinion, when
4 he has looked at all of the information and corrected for
5 these assumptions, that the true value of Crusader's ownership
6 in Cornerstone as of June is, you know, as great as -- as much
7 as triple the value that has been assigned to it by Highland
8 as the "perceived fair market value."

9 We believe that this is the value that the estate is
10 giving up. The estate has the right to those shares, and we
11 believe that in forfeiting the right to them they're giving up
12 a meaningful asset that -- that's -- has a much greater value
13 than the amount taken into account by -- in the settlement.

14 And by the way, no one disputes that this asset is
15 performing better today than it was in June, and certainly
16 than it was in March, when they took the very, very lowest of
17 the range of valuations done at that time.

18 What that means is that, under the proposed settlement,
19 Redeemer actually does far better than it ever could under the
20 underlying arbitration award.

21 And if we can go to the next slide, where I have hopefully
22 provided redacted -- yep. And what that means is what the
23 Debtor has said and what Mr. Seery has testified is that he
24 expects the Debtor to be solvent. He expects that Redeemer
25 will recover one hundred percent of its allowed claim in real

1 or one hundred dollars. And so what that means here is that
2 they get to keep their \$137 million allowed claim. They're
3 receiving a release of their obligation to pay \$32.3 million
4 in deferred fees --

5 MS. MASCHERIN: I'm sorry, Your Honor. I must
6 object. This line I believe at the bottom essentially
7 includes the same, if you do the math, the very same values
8 that are discussed in the confidential documents that were
9 just the subject of their sidebar discussion.

10 THE COURT: All right. That does seem to be the
11 case, Ms. Tomkowiak. Agree? I can go backwards and figure
12 out --

13 MS. TOMKOWIAK: Yes, I do apologize. We --

14 THE COURT: -- what that redacted number is. So,
15 yes, move on to another screen, please.

16 MS. TOMKOWIAK: We redacted these on the fly, Your
17 Honor, and we just didn't redact the full column.

18 THE COURT: Okay.

19 MS. TOMKOWIAK: So we apologize for that. I believe
20 it has now been fixed.

21 THE COURT: Okay.

22 MS. TOMKOWIAK: Sarah, does that address your
23 concern? So, --

24 MS. MASCHERIN: No, that's -- no, you're -- you still
25 have a reference in the last column, Counsel.

1 MS. TOMKOWIAK: The 30.5? That's public. That is --

2 MS. MASCHERIN: No, the other number, Counsel. The
3 other number comes from confidential documents.

4 THE COURT: Okay. I thought the --

5 MS. MASCHERIN: Unless I was misreading it.

6 THE COURT: I think it was Grant Thornton. There was
7 a -- there was the public number, the 30.5 March number, and
8 then there was the Grant Thornton number. I think she revised
9 it where those were the only two remaining, correct?

10 MS. TOMKOWIAK: Correct.

11 THE COURT: Okay.

12 MS. MASCHERIN: I apologize, Your Honor. I misread
13 it.

14 THE COURT: Okay. Go ahead.

15 MS. TOMKOWIAK: Okay. Gail, if you could put that
16 back up.

17 The bottom line, then, Your Honor, is that when you take
18 into account one hundred percent recovery in real dollars on
19 the allowed claim, release of the obligation to pay \$32.3
20 million in deferred fees in the future, retaining Crusader's
21 interest in Cornerstone as opposed to giving it back to the
22 estates, we believe that Redeemer could be receiving an actual
23 recovery of over one hundred percent of its filed claim under
24 the arbitration award. Grant Thornton's estimate, you know,
25 over \$60 million -- \$60 million over its allowed claim.

1 But even, even using the 30.5 perceived market value that
2 the Debtor assigned to Cornerstone in the settlement, they
3 still recover more than one hundred percent on their claim, as
4 reflected in that Final column.

5 THE COURT: All right. Ms. Tomkowiak, we have gone
6 well over the ten minutes. I know there have been lots of
7 starts and stops, but you need to wrap it up pretty soon.
8 Okay?

9 MS. TOMKOWIAK: Will do. Absolutely. All right.
10 And I guess I'll just -- I don't -- I don't have any more
11 slides.

12 I will just say that there's a genuine dispute, I think
13 that is apparent now, about the value of Cornerstone. We
14 don't think the Debtor has provided the Court with any
15 evidence, let alone sufficient evidence to accept their
16 valuation of this asset. We don't think Mr. Seery will
17 testify that he's ever talked to Houlihan about this
18 valuation. Houlihan is not here to defend their methodology.
19 And we, fundamentally, we agree that settlement is desirable,
20 we understand that, particularly here in this complex case,
21 and that it is tempting to approve and allow all of this
22 litigation to go away.

23 Quite frankly, UBS still believes that its claim can be
24 settled and the mediation is still open and we're hopeful that
25 we can resolve our claim, too, and we're making every effort

1 to do that. But this, this settlement is designed to overpay
2 Redeemer, frankly. We feel like it has bought their support
3 and they're working together with the Debtor to object to our
4 claim.

5 We think that, at minimum, the settlement should not be
6 approved without further information being provided to the
7 Court in the form of real evidence or an independent valuation
8 of Cornerstone being done.

9 Alternatively, Your Honor, the final thing I will say is
10 that, in the alternative, if Your Honor is inclined to approve
11 the settlement, the -- one of the terms of the settlement
12 requires the -- Redeemer and the Debtor to work together to
13 sell Cornerstone over a period of time. In the event that
14 sale occurs and the purchase price is, as UBS suspects it will
15 be, well above the value that's been calculated by the Debtor,
16 then we believe that it would be appropriate for the Court to
17 take Crusader's proceeds of that sale into consideration at
18 the time of plan confirmation, when distributions are to be
19 made, and any upside should be taken into account when
20 calculating Redeemer's actual recovery.

21 THE COURT: All right.

22 MS. TOMKOWIAK: I appreciate your indulgence, Your
23 Honor, and that's all I have.

24 THE COURT: All right. Thank you. Mr. Morris, shall
25 we go ahead and have Mr. Seery testify now?

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1 MR. MORRIS: I'd be delighted.

2 THE COURT: All right. Mr. Seery, welcome back. I
3 need to swear you in. Please raise your right hand.

4 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

5 THE COURT: All right. Thank you. You may proceed.

6 THE WITNESS: Can you hear me, Your Honor?

7 THE COURT: We can hear you loud and clear. Thank
8 you.

9 MR. MORRIS: Thank you.

10 DIRECT EXAMINATION

11 BY MR. MORRIS:

12 Q Good morning, Mr. Seery. Before we get into the
13 substance, let me just ask you. Is it your -- have you rolled
14 over here?

15 A I'm not known for that. The answer is no.

16 Q Okay. When were you appointed an independent director?

17 A In January of this year.

18 Q Okay. And you were appointed as the CEO in July; is that
19 right?

20 A That's correct.

21 Q And the Court approved that in the form of an order; is
22 that right?

23 A Yes, it is.

24 Q Okay. I want to move this along as efficiently as I can,
25 so let me ask you an open-ended question: Can you describe

1 for the Court the diligence that you and the independent
2 directors did to familiarize yourself with the claims that are
3 being made by the Redeemer Committee and the Crusader Funds?

4 A Yes. From the start, and obviously we have several
5 litigation claims, but Redeemer was a significant litigation
6 claim and they sit on the Committee. So right from the start,
7 even before the appointment as an independent director, I and
8 I'm relatively certain Mr. Dubel, read the Redeemer partial
9 arbitration award and then the final arbitration award. After
10 our appointment and our selection of Mr. Nelms as the third
11 director, I am quite sure that Mr. Nelms did the same thing.

12 So we looked at the awards, investigated with the Debtor's
13 team the underlying nature of the awards, what led to the
14 disputes. Then we worked with counsel, going through the
15 underlying case issues that the arbitration raised. And in
16 particular, the disputes between the partial final award and
17 the final award.

18 And that took place through our initial appointment, after
19 we got our feet wet, as I said, early in February and in
20 March, because we thought this was one of the key issues we
21 had to determine: Would we continue to litigate with Redeemer
22 or would we seek to reach an accommodation and a compromise
23 with respect to their arbitration award?

24 Q And did counsel provide you with written analyses,
25 including advice concerning the nature and scope of the

1 Redeemer Committee's arbitration award?

2 A As with each of the claims that we've looked at, we've had
3 counsel, and I think the time records reflect it, do
4 significant work researching the underlying claims, getting to
5 know the underlying case law. In this case, looking at the
6 arbitration awards. Thinking about the defenses. Thinking
7 about and analyzing the issues that Highland raised,
8 challenging the final award. Analyzing the situation of the
9 Delaware Chancery Court, including the appeals. And then
10 report to us as an independent board on those issues.

11 Our practice -- you know, I don't have a specific
12 recollection if this is the case of every one of the claims --
13 our practice is to have a board meeting after those documents
14 that counsel's produced have been reviewed. Our practice is
15 to challenge them. Our practice is to challenge them quite
16 vigorously and send counsel back to do more work and hopefully
17 educate us in a way that we have a good understanding of the
18 risks and rewards with respect to various options with respect
19 to each of the litigation claims.

20 Q And did the board spend time and did you personally spend
21 time considering and getting advice on the issue of the
22 Faithless Servant defense?

23 A We did. To be frank, it's one that, despite having a lot
24 of experience in these areas, I had not heard of it before.
25 So the board requested that counsel do research and provide

1 additional written information regarding the defense, its
2 likelihood of success, and particularly with respect to the
3 facts that are outlined in the partial award and in the final
4 award and how those might impact attempts that we would have
5 to get around that defense.

6 Q All right. Let's shift from the diligence that you and
7 your fellow board members did to the manner of the
8 negotiations. Did you (audio gap) participate in the
9 negotiations?

10 A I'm sorry. There was a -- there was a beep.

11 Q Did you -- do you have personal knowledge as to the
12 negotiations that led to the agreement?

13 A I did, yes.

14 Q All right. Again, can you just describe in general terms
15 for the Court the process that the Debtor undertook in
16 negotiating the agreement that led to this motion?

17 A Well, there was extensive back and forth, as I think
18 everyone in the case knows, that we started with a hundred
19 percent case, and we negotiated that with Redeemer very
20 aggressively. Redeemer brought in Crusader at times. We
21 negotiated various points to -- where they gave and we did,
22 back and forth. We went back and did additional research on
23 some of their claims with respect to -- and particularly with
24 respect to the interests, which we can get into in detail,
25 that are extinguished in the award. We spent a ton of time

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1 not only with our counsel but also with the Highland team to
2 understand the underlying history, how those interests were
3 obtained, whether they -- what did they cost when they
4 originally purchased them, how they potentially were found to
5 violate the -- the scheme. And then negotiated those points
6 with Redeemer.

7 Q And just to complete the record, did you personally speak
8 with one or more principals who were representing the
9 interests of the Redeemer Committee to negotiate any aspect of
10 the settlement?

11 A I did. We had many discussions, all telephonic,
12 negotiating the particular terms. We also had a number of
13 meetings with counsel with the entire board, with the
14 professional -- the personnel who represented Redeemer plus
15 their professionals, plus counsel and representatives of
16 Crusader in Zoom calls. So there were multiple sessions, both
17 on the phone directly with the Redeemer principal who sits on
18 the Committee as well as with the Redeemer principal and his
19 counsel.

20 Q All right. Let's talk about the adjustments that were
21 made to the gross value of the arbitration award of \$190
22 million. Just to identify them, they include the issue of the
23 deferred fee. Do I have that right?

24 A Yes. I think you summarized it in the opening quite well.
25 Highland had, in the scheme that was approved originally to

1 liquidate the Crusader Fund, Highland had agreed to a fee
2 arrangement where the vast majority of the fees were deferred,
3 and they were deferred until the end of the liquidation --
4 *i.e.*, until all of the assets in the Crusader Fund had been
5 liquidated and funds were distributed, and then Highland would
6 be entitled to receive its fees. And along the lines, for a
7 variety of reasons that the arbitration panel did not give
8 much credence to, Highland took them before the end of the
9 liquidation.

10 Q And did the Debtor decide to reach a compromise with
11 respect to the amount of fees that it might have been owed had
12 it successfully requested them at the end of the day?

13 A We did. We obviously, or maybe not so obviously, but we
14 did start with asking for the full reduction, with the
15 argument that this liquidation will get done quickly, we've
16 only got a couple assets left in Crusader, and we should be
17 entitled to the full setoff.

18 Redeemer's position and Crusader's position was, wait a
19 second, you're asking us to pay you fees on account of a
20 scheme that you were breaching while you were supposedly
21 earning these fees, and then you took the fees that you earned
22 while you breached it early. And they were of the belief that
23 they did not have to pay any of those fees. So we negotiated
24 off of those two positions.

25 The arbitration award does not deal with the fees. It

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1 talks about the repayment of the \$32 million plus the
2 interest, but it doesn't say what happens later. And it's a
3 -- it's a failing or (inaudible) in this, you know, for
4 Highland, but it doesn't -- it certainly doesn't give Highland
5 the award of the fees.

6 And we had similar arguments with respect to briefing
7 before the panel, arguments before the panel, where we were
8 arguing that we were -- we'd be entitled to get those fees at
9 the end, and that Redeemer and Crusader knew it, but there
10 were some holes in those arguments.

11 Q Let's see if we can identify that. Ultimately, the board
12 agreed with the Redeemer Committee and the Crusader Fund to
13 accept a credit today for two-thirds the value of the total
14 deferred fee; is that right?

15 A That's the math in terms of what the reduction in the
16 claim is. It was hard-fought in that we wanted to make a
17 decision if we could get a full settlement with a number of
18 components or whether we would try to get pieces and litigate
19 the other piece. Redeemer wasn't interested in a partial
20 settlement. It was either full or litigate. And that left
21 us, we thought, exposed, both with respect to the time and
22 cost as well as the risk of a complete loss, which we factored
23 into our settlement.

24 Among other things, you know, and this will permeate the
25 case, and we'll talk about it with Acis as well, this case,

1 the business runs the way it runs. It does have revenues and
2 the team does provide service to a number of counterparties
3 and they do a great job. So the employees of Highland are
4 able to execute and perform a valuable service to their shared
5 service counterparties and the funds to which they provide
6 investment management services. But these litigations have
7 been hanging over this case for most of ten years. And it's
8 remarkable in that, every time we try to settle one, someone
9 else wants to keep them going.

10 Q All right. Let's just talk about some of the factors that
11 the Debtor considered or may have considered in agreeing to
12 the compromise that you've described. Did the Debtor take
13 into account the possibility that if there was no agreement
14 that there would be a separate litigation on the question of
15 setoff and how the compensation would have been -- how the
16 compensation would go back and forth?

17 A Certainly. And we considered -- we considered whether
18 that litigation would happen in the Bankruptcy Court in front
19 of Judge Jernigan or whether we would be sent back to the
20 aforementioned Chancery Court, which as counsel for UBS noted,
21 those arguments have already been briefed. And the risks with
22 respect to both avenues in terms of pursuing a -- either a
23 knockout win or a partial win, the time delay, and then the
24 risk of a knockout loss or a partial loss.

25 And so we thought about that with respect to each of the

1 settlement components.

2 Q All right. So, under the agreement, will the Debtor get
3 the value of \$21 million with respect to the deferred fees
4 immediately upon the allowance of the claim?

5 A Well, it reduces the claim. So I think that that's a fair
6 -- that's a fair way to look at it. And each of the board
7 members analyzed it with that perspective.

8 Q And did you and the board members try to make any
9 determination as to how long the Debtor would have to wait
10 before it had the opportunity to request or demand the
11 deferred fee?

12 A We did. It's hard to estimate. So I think that it's, in
13 a vacuum, the Crusader Fund should be able to liquidate pretty
14 quickly. The problem is that the Crusader Fund's liquidation
15 are tied to Highland's liquidation or monetization. And the
16 timing on that, depending on the parties, can be uncertain.
17 We would hope to be able to monetize the assets quickly, but
18 we also are contemplating a litigation trustee. And as we've
19 seen, that -- that litigation can take some time with these
20 parties.

21 In addition, while we -- we had a grand bargain
22 opportunity, we continue to negotiate with Mr. Dondero, who's
23 made a material effort with his counsel on an ongoing but
24 certainly a recent movement. And that could expedite it.
25 It's very uncertain as to how long -- how long a complete

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1 liquidation would take. If we -- if we were able to reach an
2 agreement with Mr. Dondero, we hopefully can, at least with
3 respect to part of the case, resolve it quickly. And I think
4 that that would be more of a pot plan type approach.

5 The problem with a pot plan is that we still have a number
6 of unresolved litigation claims that will take time to
7 resolve.

8 Q All right. So let's just focus on what would happen if we
9 didn't have the agreement. And just assume for the sake of
10 argument that at some point in the future, however many years
11 that may be, the Crusader Fund has completed its liquidation.
12 Do you have any reason to believe that at that time the
13 Crusader Fund would roll over and no longer assert the
14 Faithless Servant defense in the face of a demand for the
15 deferred fee?

16 A Well, I guess you'd have to look at it two ways. If -- if
17 the fees do not reduce the Crusader claim, Redeemer's claim,
18 then there would be nothing to roll over on. Because what's
19 really important that everybody has to understand is Highland
20 got the fees. It took them. It took the cash. And so the
21 only -- the only way that you have a deferral of recovery of
22 that fees, those fees, is if you pay back hundred-cent dollars
23 to Redeemer and Crusader, which would include the \$32 million
24 plus the interest.

25 Q Okay. Are there any other reasons that you can think of

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1 at this time that the board and you as CEO took into account
2 in deciding on the compromise of the deferred fee issue?

3 A Of the fee component? Well, I think -- I think that --
4 that really summarized it. It's not that complex. The only
5 -- the complexity is really if you consider not settling, what
6 are your avenues to, if you will, be able to keep the full
7 amount of the fees and interest.

8 Q So, would it be fair to describe it as taking a certain
9 two-thirds of the fee today rather than a speculative chance
10 of getting a full fee at some undetermined time in the future,
11 after spending money to litigate the Faithless Servant
12 defense?

13 A I think that that -- that's very -- to be honest, it may
14 cabin it too much. We looked at this as a total settlement.
15 And so it's not just one piece. And in an effort to move this
16 case forward, we looked for the reasonableness of each
17 transaction as a whole, and I think that's a more full way to
18 look at it. We could litigate with Redeemer and Crusader for
19 another two years, maybe. I'm sure that there's ways to keep
20 it going and diminish all the assets of the estate in
21 litigation costs. But we thought that this was a fair and
22 equitable settlement as a whole, and this component we thought
23 was pretty straightforward. Getting the full amount of fees,
24 which we would have liked, we thought was not something that
25 we had much success -- much chance of a success if we

1 litigated this.

2 Q Okay. Let's shift to Cornerstone. Can you just describe
3 for the Court what Cornerstone is and who the stakeholders
4 are. I think you -- I think you may have (garbled), but just
5 for context.

6 A Cornerstone is a portfolio company. It's Cornerstone
7 Healthcare Group. It's a portfolio company of Highland, in
8 that Highland owns about three percent of the equity.
9 Restoration Capital Partners, which is a liquidating fund, and
10 Highland, as the advisor to that fund, owns about 55 percent,
11 and Crusader owns about 52 [sic] percent. Cornerstone
12 operates in the LTAC space, which is Long Term Acute Care,
13 Senior, and Behavior Health. Senior living. And it has a
14 home hospice, a smaller home hospice and home -- home business
15 that also helps with rehab, and which -- and some of those are
16 newer acquisitions.

17 It's a -- it's a company that I believe Highland first got
18 involved with in 2007, I believe. And so it's been another
19 asset that's a long-term holding. We have a solid management
20 team. We like the -- we like the team a lot. We think that
21 they've performed and done a great job in incredibly difficult
22 circumstances, you know, through the first half of this year.
23 Against -- against that, some of the related entities, the
24 CLOs, have a loan, a term loan, and there's also other
25 mortgage debt and equipment financing at Cornerstone.

1 Q And do you understand that the Crusader Fund's interest in
2 Cornerstone is a subject of the arbitration award?

3 A Yes.

4 Q And can you describe for the Court your understanding of
5 what the panel found and determined with respect to that
6 asset?

7 A The panel found that basically Highland has an obligation
8 to purchase Cornerstone back from -- those Cornerstone shares
9 back from Crusader. And it assigned a value of \$48 million to
10 those shares, which was considerably in excess of fair market
11 value at the time of the award, we believed, as well as at all
12 times since then.

13 Q And you reached an agreement with the Redeemer Committee
14 on the treatment of the Crusader Fund's interest in
15 Cornerstone; is that right?

16 A Yes.

17 Q Can you describe the treatment of that interest for the
18 Court?

19 A What we agreed with Crusader is that we wouldn't buy back
20 the shares, because we don't have the capital to do that, that
21 we would reduce their total claim by about \$30 million.

22 Q Okay. Before we get to that specific point, are there
23 other aspects of the settlement agreement that concern the
24 Cornerstone asset?

25 A Well, we -- the other piece of Cornerstone is really a

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1 Crusader issue. As I laid out the share holdings, the
2 combined Highland interest, if you will, is about 58 percent.
3 Crusader's is 42 percent. This is a private company. It does
4 not trade. It -- it is -- it was controlled by the majority
5 shareholders. And Crusader was interested in trying to find
6 some liquidity in either their shares --

7 (Audio cuts out.)

8 THE COURT: Uh-huh. Mr. Seery?

9 THE WITNESS: And so we --

10 THE COURT: Mr. Seery, we lost you for about 20
11 seconds there. You were speaking but we couldn't hear you.
12 So repeat the last 20 seconds, please.

13 THE WITNESS: I'm sorry. I'm sorry, Your Honor.
14 That cut out. Highland owns or controls 58 percent, with RCP
15 as the main holder in Highland holding about three percent.
16 Highland's the manager for RCP. Crusader is a minority
17 holder. It has 42 percent. It really has no say or control
18 over the company and what it does.

19 Crusader was looking to create the opportunity to either
20 get real liquidity in for this interest, not just us reducing
21 our claim, or -- or at least the appearance of that, frankly.
22 And so what we have agreed is that, since RCP is actually a
23 liquidating fund and we want to monetize the asset, that we
24 will work with Crusader to try to monetize Cornerstone in
25 2021.

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1 Now, it -- there's -- the way the agreement works is that
2 we'll work in good faith to try to do that. If we're not able
3 to do that, there's really no -- there's no breach. There's
4 no -- there's no damages. There's no -- no penalty. And the
5 reason for that is that monetizing this asset may take work.
6 The management team, as I mentioned, is excellent. They're
7 doing a great job. And we're working with the management team
8 to assure their long-term commitment to the business and the
9 line of interests.

10 But there may be different ways to monetize this asset.
11 It may be that we sell parts of it. May be that we invest in
12 parts of it. It may be that we sell the whole company. It
13 may be that we would go to meet a banker with the management
14 team, that the banker says don't do it now, you should do x,
15 y, and z in order to enhance the value. While RCP is
16 liquidating, we are looking to procure value for their stake
17 in -- in Cornerstone. And we'll take all of those issues into
18 account. And even if Redeemer wants -- or Crusader wants to
19 sell but RCP doesn't and management doesn't, it's unlikely
20 that this asset will trade.

21 That said, as I mentioned, we are looking to see if we can
22 monetize it, and we are looking to try to cash out and
23 liquidate Redeemer -- RCP's interests as well.

24 Q As part of the negotiations that -- the board has agreed
25 to certain milestones and a schedule for the sale and

1 marketing of the asset?

2 A We did. But as I mentioned earlier, I think this had a
3 lot more lead for Crusader than it exactly had for -- for me
4 and for Highland. We've talked to RCP about it and we talked
5 to management at Cornerstone about it.

6 Milestones with respect to a sale process, you know,
7 usually, the only thing you know for certain is that they
8 likely won't be met. And, really, they depend on the market.
9 If you tried to do the same milestones in 2020 as are -- our
10 aspiration to put up for 2021, there's no chance of that. And
11 so we'll have to see what the market looks like, and most
12 importantly, what the management team thinks is in the best
13 interest of the enterprise and what the bankers think is in
14 the best interest of the enterprise and then -- and question
15 -- equally importantly is what RCP wants to do.

16 Q All right. Now let's turn to the \$30.5 million value. I
17 think you heard counsel for UBS refer to our pleading as -- I
18 forget what the exact term was, but an indicator or predictor
19 of -- of fair market value. Did you hear her in that
20 commentary?

21 A I heard it, yes.

22 Q Okay. And do you have a view as to whether that was
23 necessarily the best characterization of the -- of the --

24 A Yeah, I -- I think the reports that we get monthly and
25 that all investment firms get monthly are where they're

1 referred to as fair value valuations. And they help set the
2 NAV.

3 There's a reason they're not called fair market value.
4 There's no market test whatsoever. And so they are -- they
5 are -- they are desktop model-driven valuations. You look for
6 comparables. You look for a DCF. You do a bottoms-up in
7 terms of asset value, depending on the type of asset. And you
8 try to come up with a reasonable way to assess the value of
9 the asset.

10 They are not market tests. So, and I can give you dozens
11 of examples of why they're not, really simple examples of why
12 they're not, as to -- as to fair market.

13 Nevertheless, we use them and rely on them. And investors
14 use them and rely on them. And Houlihan Lokey is probably the
15 preeminent firm doing this in the U.S.

16 Q Do you believe, if 30.5 doesn't represent a fair market
17 value, do you believe that it is nevertheless a fair and
18 reasonable place to come for purposes of the negotiation with
19 the Redeemer Committee?

20 A Certainly. It's typically within our range of
21 reasonableness. We look at, you know, where we have NAVs. We
22 considered the issues with respect to the business. You know,
23 we -- we thought about the total of 48. We considered where
24 third parties, you know, might want to purchase it. But we
25 did not go get a market test.

1 I'm quite certain that if UBS wanted to make a bid because
2 they thought it was so low, that if they took the advice of
3 their expert, they would have a willing seller, and -- and
4 Crusader would sell. We would certainly have a willing seller
5 in RCP. We'd -- happy to negotiate in the range that they
6 threw out. It's a giant bank. They should probably buy it if
7 it's that cheap.

8 Q Do you communicate with either officers or directors of
9 Cornerstone on a regular basis?

10 A I wouldn't say on a regular basis. I do -- I do
11 communicate with them. We have a team that serves as the
12 board of directors at Cornerstone, and they -- they deal on a
13 regular daily and weekly basis with the Cornerstone team, and
14 then they feed me the information and we analyze it and we
15 send them back.

16 So I have talked to the team at Cornerstone. I've
17 discussed the business with them and the approach we're taking
18 in the case, because it's obviously important to them. Their
19 -- their stock is -- it's a -- it's a big company. Their
20 stock is owned by a liquidating fund managed by Highland, a
21 liquidating fund suing Highland, and a small amount by
22 Highland. So I've tried to keep them up to speed. As I -- as
23 I said, we like the team. We think they're -- they're good
24 and we want to see them stay.

25 Q And does your work with the team and the communications

1 that you've just described, do they help to inform you as to
2 the fairness and the reasonableness of the number that you
3 arrived at with the Redeemer Committee?

4 A It certainly -- it certainly factored in. Yeah. We
5 looked at the overall quality of the business, where it was in
6 the -- in cycle, the market that we're in now in terms of
7 where they have to perform, and considered the NAVs that we
8 have as well as the litigation risk with respect to -- with
9 respect to Crusader.

10 Q Do you have a view as to whether Cornerstone has done
11 anything in terms of its business model or business generally
12 that would cause valuation to fluctuate, or is it more
13 attributable to the fluctuations of the marketplace?

14 A Oh, well, I don't think that the value of Cornerstone has
15 moved or should move materially through the year. It probably
16 was depressed from a perception standpoint early, and I think
17 the team has done a good job. They've grown EBITDA from where
18 it was on a trailing basis to, you know, I think quite well.
19 And so the business is in a good, steady place.

20 The LTAC business is performing very well and I think is
21 -- is -- has proven itself to be a valuable asset in the -- in
22 the COVID. The senior living business is more challenged.
23 That business relies on a lot of capital, which we are
24 capital-constrained compared to some of the competitors. And
25 if we look at the public comps for those, those businesses, I

1 think it's fair to say that some of the larger ones are
2 challenged. And I think the company has done a nice job.

3 But if -- I guess the question is, has -- do I think it's
4 materially different than it was early in the year? Depending
5 on perceptions, just like the market, you know, there's highs
6 and lows, but the company is doing a nice job. I think
7 they're planning on a steady pace.

8 Q Did -- you testified to it just a moment ago, but let's
9 talk about the Houlihan Lokey reports. Without going into any
10 substance, can you tell me how many assets or portfolio
11 companies does the Debtor commission Houlihan Lokey to produce
12 valuation reports similar to the one that's been described
13 there?

14 A Yeah. I don't have the exact number, because the Debtor
15 doesn't just do it for its portfolio companies. We have to
16 perform shared services for a myriad of funds, including
17 public funds, and Houlihan provides the -- the NAVs with
18 respect to their Level 2 and 3 assets as well.

19 Q And does the Debtor rely on those reports in the ordinary
20 course of its business?

21 A It does, yes.

22 Q Can you describe for the Court how the Debtor relies on
23 the Houlihan Lokey reports?

24 A In front of -- you know, Level -- Level 1 are assets that
25 have a market that you can look to directly to figure out the

1 value of your asset. Think about Apple stock.

2 Level 2 assets are there is a market, but it may be more
3 -- more of a trade-by-appointment market. Think about not the
4 bigger high-yields, but high-yield loans, distressed or
5 stressed names where there's not a ton of market activity.

6 And Level 3 assets are ones where there's not real good
7 discernible market inputs and you try to value those on a
8 market -- on a model basis.

9 So, we use Houlihan reports in order to set the exit value
10 of various funds. We use it to report to the creditors in our
11 case. We use it for, as I said, like RCP, which is a fund
12 that gets -- strikes a NAV every month. And we use it with
13 respect to the CLO assets that we manage.

14 Q And to the best of your recollection, was the \$30.5
15 million number that has been agreed upon, was that within the
16 range of any of the Houlihan Lokey reports that you reviewed
17 as you were considering whether or not to enter into the
18 agreement?

19 A The number we agreed, the 30.5, was in the range, and it
20 was in the range when we -- when we struck this deal, which I
21 think was April-May. So I think it would fit in the range in
22 the May Houlihan valuation. I don't know about each month.
23 As I said, there are -- because it's a desktop and model-
24 driven valuation, there are anomalies that show up. And we
25 try to review those with Houlihan to try to make it as

1 accurate -- use as accurate information as they can. But
2 that, you know, their numbers in their model over model, we
3 like to use it consistently. And you'll see that with respect
4 to any kind of assets that get this type of valuation before
5 the -- as opposed to a market valuation.

6 Q Okay. Before we leave the topic, let me just ask you: Is
7 there anything else that you recall taking into account when
8 -- when you and the board decided to accept the \$30.5 million
9 number?

10 A Well, we -- we didn't just -- we didn't just accept it.
11 As I say, we negotiated starting at 48, which we didn't think
12 there was a chance that we could sell it for that value. And
13 we negotiated with the Crusader and Redeemer interests to try
14 to come up with a settled amount.

15 So the same issues with respect to the deferred fees
16 factored in here. Again, it's a package deal, so we looked at
17 the litigation, the timing, the risk of not being able to get
18 a deal done and the damages that we would have, the potential
19 impact on RCP and Highland's interest in Cornerstone, the
20 impact on the management team at Cornerstone, the litigation
21 about the -- of who owns the equity interests. And so all of
22 those factors in trying to get to a deal weigh in as we
23 analyzed whether to do this transaction.

24 Q All right. I want to shift gears to one argument that has
25 been made by --

1 THE COURT: Mr. Morris? I'm just letting you know,
2 you've gone 35 minutes. And I said I wouldn't, like, get the
3 shepherd hooks out after 30 minutes, but let's try to wrap it
4 up so we finish today. Okay?

5 MR. MORRIS: Yeah. No problem, Your Honor. I really
6 appreciate it. In fact, I'm going to wait and let UBS
7 question Mr. Seery on its theory concerning going back to
8 Chancery Court and I'll just skip that, because it's not --
9 it's not -- not my -- it's not our issue anyway.

10 BY MR. MORRIS:

11 Q Mr. Seery, let me just finish up, then, and see if we can
12 identify the various litigations that are being resolved if
13 this settlement approved. Would the settlement resolve the
14 Delaware Chancery Court litigation, to the best of your
15 knowledge?

16 A Yes, it would.

17 Q Are you aware that there's litigation pending between the
18 Redeemer Committee and the Debtor in the Cayman Islands?

19 A I -- I've heard of it. To be frank, we haven't looked at
20 it. It was part of the original discussions around all of the
21 open issues, but we expect that will be resolved as well.

22 Q And are you aware that there are two pending litigations
23 in Bermuda between the Redeemer Committee and the Debtor?

24 A Same -- same answer. We looked at those. We understood
25 what they -- you know, in terms of a board perspective.

1 Counsel spent time on them. From a board perspective, it was
2 more of a sideshow. Those will be resolved. We thought the
3 main event was the arbitration award and the issues in
4 Delaware.

5 Q Okay. And did the -- did the elimination of the -- of all
6 of those litigations, the fees that might be incurred with
7 respect to them, the litigation risk, was that also a factor
8 in the board's determination to accept this settlement?

9 A Yeah, it always is. And again, not just the fees with
10 respect to this particular litigation but the overall case.
11 So it factors into analyzing whether this is a good, fair deal
12 for the entire estate and whether each component works to
13 support that overall thesis.

14 Q Okay. Last question. Can you explain to the Court why
15 the Debtor believes that this settlement is in the best
16 interest of the Debtor's estate?

17 A Hopefully, I've encapsulated that in the prior testimony,
18 but I think that, with respect to settling this claim, this
19 one was more straightforward than many of them,
20 notwithstanding the complexity of the arbitration award,
21 because there was an arbitration award. And it had been
22 litigated in front of the arbitration panel, which was an
23 esteemed panel, for a couple years, with tons of testimony,
24 tons of documents, and a partial finding and then a final
25 award that really hit on all the various issues with respect

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1 to disputes among the parties.

2 And if we don't settle it at all, I think we're going to
3 be back in for potentially a lengthy litigation, depending on
4 what happens in the Chancery Court. If we lose in the
5 Chancery Court, it's a significant impact to the estate. So
6 we viewed this as reasonable. We continually updated it and
7 -- our analysis, and, you know, feel confident that this is in
8 the best interest of the estate, the Highland interests, the
9 creditors, the investors.

10 MR. MORRIS: I have no further questions, Your Honor.

11 THE COURT: All right. Pass the witness.

12 Ms. Mascherin, when I was doing my time calculations
13 earlier, I didn't take you into account. Do you have any
14 examination that's not duplicative of Mr. Morris?

15 MS. MASCHERIN: I'll make this easy, Your Honor. No.

16 THE COURT: Thank you. Ms. Tomkowiak, it is your
17 turn to examine Mr. Seery. Go ahead.

18 MR. CLUBOK: Your Honor?

19 MS. TOMKOWIAK: Thank you, Your Honor. My colleague,
20 Andy Clubok, will be cross-examining. Appreciate it.

21 THE COURT: All right. Mr. Clubok, go ahead.

22 MR. CLUBOK: Yes, Your Honor. Ms. Tomkowiak is going
23 to let me do this part of the proceeding.

24 CROSS-EXAMINATION

25 BY MR. CLUBOK:

1 Q Mr. Seery, you just testified that the \$30.5 million
2 assigned credit for Cornerstone was within the range of the
3 Houlihan Lokey reports that you get on a monthly basis.

4 Correct?

5 A Yes.

6 Q Okay. And, in fact, the -- have you reviewed the latest
7 Houlihan Lokey reports?

8 A I have.

9 Q Okay. And isn't it the case that -- or, what's the date
10 of that report, by the way?

11 A There's a draft in for September and there was one for
12 August.

13 Q So, that draft report for September has not been provided
14 to us, and certainly not been submitted to the Court.

15 Let me ask you, then, about the August valuation. It's
16 fair to say that \$30.5 -- well, what Houlihan does is that
17 they give you a low and a high, and that's the so-called range
18 in the value of Cornerstone, in their valuation reports.

19 Correct?

20 A They do.

21 Q And typically what Highland does is it assumes the
22 midpoint is the best number to use for that -- for what it
23 uses those reports for. Correct?

24 A Yes. Yeah.

25 Q Okay. And in the August 2020 Houlihan report, there is a

1 low to high range, and in fact, 30.5 falls below the lowest
2 point in that range. Isn't that true?

3 A I don't recall the specifics of the report.

4 Q Well, you said that 30.5 falls within the range, and my
5 question to you, sir, is would you agree that, at least in the
6 August report, which is the latest that has been provided to
7 us, just, actually, about 24 hours ago, that 30.5 is below the
8 lowest point of the range and not within the range? Would you
9 agree with that?

10 A I don't know the answer off the top of my head. If I had
11 the report, I could look at it.

12 Q Yes, please. If you could look at the report and confirm
13 that.

14 A I don't have it.

15 Q Oh, I'm sorry. You said you don't have it? I see.

16 MR. CLUBOK: Your Honor, I'm mindful of your order
17 and I don't want to run afoul of it, but Mr. Seery testified
18 under oath that he believes that 30.5 is in the range of the
19 Houlihan report, which I will proffer to you that it is not.
20 It is below the range. I would like to present the report to
21 show at least Mr. Seery that contention. I'm not using it for
22 hearsay to prove the truth. Frankly, I think the Houlihan
23 reports (echo) themselves what a reasonable expert will say.
24 But they certainly are in a range that is above the 30.5.

25 THE COURT: All right.

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1 MR. CLUBOK: So I'd like to --

2 THE COURT: Let me start with your premise that he
3 testified inconsistently. My notes are that he said at the
4 time they struck the deal in April or May that this value was
5 within the range of the Houlihan modeling. Okay? So is
6 someone able to correct me one way or another? That -- I may
7 have written it down wrong, but that's what I thought I heard
8 and wrote down. Mr. --

9 MR. MORRIS: Your Honor?

10 THE COURT: Go ahead.

11 MR. MORRIS: Very briefly.

12 THE COURT: Go ahead.

13 MR. CLUBOK: If I may, I believe that is -- Your
14 Honor, I do believe that's what he said on the direct, but I
15 think under cross I asked him if it was in the range of the
16 most -- for the most recent report, and he said it was.
17 That's what I thought he just testified to in response to my
18 question. And if -- if that's the -- if -- Your Honor, if
19 there was a court reporter -- I don't have a real-time
20 transcript, so maybe I misheard it. But --

21 THE COURT: Well, Mr. Seery, why don't you just say
22 again what the answer to that question is, if we're confused
23 what you said. Go ahead.

24 THE WITNESS: Yeah. I think Your Honor had it
25 correctly. When we struck the deal, this was within the

1 range, because I checked.

2 The ranges do move, and they have moved considerably,
3 which is one of the interesting things about these kinds of
4 valuations. Because it's model-input, it does move around
5 even though there's not a market to say that someone would pay
6 more or less for their stock. So, there would be times during
7 2020 that that number would be outside of the range. And even
8 in the -- in the May time frame, the April-May, I don't
9 remember exact numbers off the top of my head, it would be in
10 the -- in the lower end of the range.

11 THE COURT: Okay. Proceed.

12 MR. CLUBOK: Okay. I'll proceed with that, Your
13 Honor.

14 THE COURT: Okay.

15 BY MR. CLUBOK:

16 Q So we're clear, Mr. Seery, as we sit here today, the last
17 completed valuation, the most recent completed final
18 valuation, which was during August, for Houlihan Lokey has a
19 current range such that the lowest point of that range is
20 above the \$30.5 million number, correct?

21 A I don't recall off the top of my head. You've represented
22 it. I wouldn't quibble with it.

23 Q And, in fact, the midpoint of the most current Houlihan
24 Lokey valuation is significantly higher than \$30.5 million;
25 isn't that true?

1 MR. MORRIS: Objection to the form of the question.

2 THE COURT: Sustained.

3 MR. CLUBOK: Your Honor, I -- this is where I would
4 like the read the exact numbers. I have the exact numbers
5 right here. I'm looking at them.

6 THE COURT: We --

7 MR. CLUBOK: And I -- I'm going -- I can impeach him.

8 THE COURT: We've already addressed this issue that
9 we would need a Houlihan witness if you're going to give
10 details about a Houlihan report. And he testified he didn't
11 know. He wouldn't quibble with you. So I think that was sort
12 of a lack of foundation objection Mr. Morris waged, and I'm
13 sustaining it. Okay.

14 MR. CLUBOK: Okay.

15 BY MR. CLUBOK:

16 Q Did you, before submitting the settlement to the Court,
17 check the range of the most current available Houlihan Lokey
18 report before the settlement was submitted to the Court?

19 A I -- I think I may have. I don't -- I don't recall
20 specifically.

21 Q Okay. If we compare to the motion that you submitted, and
22 I think you explained that before the motion was filed you
23 read it carefully and discussed it with your lawyers and had
24 opportunity to ask questions with the other directors about
25 the entirety of the motion. Is that correct?

1 A I think -- I think we -- we fought about the word
2 carefully. I try to read everything carefully, but I assumed
3 you were trying to pin me down to some -- some super-fine
4 reading. I did read the motion. I did comment on the motion.
5 Yes.

6 Q Okay. Now, if we can put the motion up, please. This is
7 Debtor's motion. It's Docket No. 1099, I believe. Yes. You
8 were asked by Mr. Morris about the language that was
9 supposedly used in the motion that my colleague, Ms.
10 Tomkowiak, referenced in her opening. I just want to turn to
11 that exact language that was used in your motion. It's on
12 Page 10, Paragraph 31. And what it said in your motion is
13 that the damage award will be reduced by approximately \$30.5
14 million to account for the perceived fair market value of
15 those shares.

16 Well, the first question I have is, before this was
17 submitted -- well, strike that. Fair to say you have not
18 performed what you would consider to be a fair market
19 valuation of the shares, or caused that to be performed before
20 filing this motion, correct?

21 A Yes.

22 Q Okay. But you did have documents from Houlihan Lokey that
23 reports a -- what they called a fair valuation, and that gives
24 a range of what Houlihan Lokey calls a fair valuation, and you
25 have them -- have available to you every month for the

1 Cornerstone shares, correct?

2 A Yes.

3 Q And do you know whether or not the fair valuation of the
4 most current Houlihan Lokey report that you had in your
5 possession prior to causing this to be submitted to the Court
6 put that fair valuation at, say, at least 50 percent higher
7 than 30.5?

8 A I don't know and I -- off the top of my head, I don't have
9 in front of me. I said I wouldn't quibble with you, but I
10 don't want to accede to your math.

11 Q You wouldn't -- but you wouldn't quibble, based on your --
12 you know enough to know about Cornerstone today that you
13 wouldn't quibble with that rough math? Correct?

14 A Without -- without -- I believe that the valuation in the
15 more current Houlihan values is higher than it was in May. I
16 don't know if it's higher than it was at the beginning of the
17 year off the top of my head. And I don't know whether 50
18 percent is the right number or 40 percent or 52 percent. I
19 take you at your word that it's higher and that this number
20 doesn't fall within the range.

21 Q Okay. Now let's go back, because you said, well, it did
22 fall within the range at one point. I guess you said back in
23 May it fell within the range. Is that correct?

24 A I believe that's correct, yes.

25 Q Okay. So there was a Houlihan Lokey report that was

1 available to you in May of 2020 that had a range where \$30.5
2 million fell within, correct?

3 A There's a report every month. I'm not sure exactly which
4 report we looked at.

5 Q Well, the point on the -- I believe you did testify, this
6 is what the Judge heard, too, that there is a report that you
7 looked at around April or May that had a range from Houlihan
8 Lokey, and 30.5 fell within that range, and that's what you
9 used to in your mind justify the reasonableness of the \$30.5
10 million at that time. Is that correct?

11 MR. MORRIS: Objection to the form of the question.

12 THE COURT: Overruled.

13 MR. MORRIS: Mischaracterizes.

14 THE COURT: Overruled. He can answer.

15 THE WITNESS: The answer is to, with respect to that
16 piece of the discussion, which went along with Mr. Morris's
17 analysis, yes. And it did fall the within the range.

18 BY MR. CLUBOK:

19 Q Right. And, in fact, --

20 MR. CLUBOK: Your Honor, I would like to proffer that
21 the Houlihan Lokey report that was dated -- that was available
22 in April and May had a range that was, in fact, higher at the
23 low point than 30.5. And if we could use that document to
24 impeach Mr. Seery, or we could demonstrate, proffer evidence
25 that's not for hearsay but they're offering it for the truth

1 of the matter asserted. We think that (inaudible) and
2 certainly shows -- it impeaches Mr. Seery telling you
3 repeatedly that 30.5 at least fell within that range.

4 THE COURT: Well, I --

5 MR. MORRIS: Your Honor, may I be heard?

6 THE COURT: I overrule -- I heard him say that at
7 various points during 2020 the modeling of Houlihan would go
8 to different points. I'm not sure what you think you're
9 impeaching. What --

10 MR. MORRIS: Your Honor, may I --

11 THE COURT: Okay. Mr. Morris, go ahead.

12 MR. CLUBOK: Well, Your Honor, I mean, --

13 THE COURT: Mr. Morris, go ahead.

14 MR. MORRIS: Your Honor, I would also point out, Your
15 Honor, consistent with exactly what you just said, that UBS's
16 witness, expert witness, which is one of the reasons why I
17 think he ought to be excluded, expressly says in his report
18 that the value came within the range of the Houlihan Lokey
19 valuation. I think it was from March. But he makes the
20 admission expressly. Expressly. It's --

21 MR. CLUBOK: That is not true. There is a Houlihan
22 Lokey report that I'm looking at right now that was for March
23 of 20 -- I know Mr. Seery just said off the top of his head
24 that the values fluctuate. There is -- I will represent there
25 is no Houlihan Lokey report since March, which was the lowest

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1 point of COVID, through today, that ever had a range that was
2 provided to Highland where 30.5 falls within, as opposed to
3 below the range. So we have the reports. We have every
4 report they produced to us. We asked for all of them. We've
5 got them. We could offer them to the Court and you would see
6 that Mr. Seery's statement off the top of his head that it is
7 in the middle or that it varies or have been telling you that
8 it fluctuates and the ranges go up and down is just not true,
9 --

10 THE COURT: All right.

11 MR. CLUBOK: -- based on the actual Houlihan reports
12 that we have that they just provided to us a few days ago.

13 THE COURT: Okay. Let me take this in parts. I've
14 already ruled that the Houlihan reports will not get in, the
15 main reason out of two or three reasons being that it's
16 hearsay without a Houlihan person here. Okay? And someone
17 could have subpoenaed a Houlihan person and maybe I would have
18 been enforced that subpoena. All right?

19 But second, I just want to be clear what I'm hearing.
20 What I heard -- again, I've taken notes occasionally. The
21 testimony that I guess you're wanting to use the Houlihan
22 reports to impeach is that Mr. -- I heard Mr. Seery say that
23 when the deal was struck, the proposed compromise with the
24 Redeemer Committee was struck in April or May, that he thought
25 this \$30.5 million value was in the range of the modeling --

1 the models or the valuations that Houlihan had done. And I
2 have inferred from other comments and testimony that it was a
3 March -- it was March Houlihan modeling that he was looking at
4 at that point.

5 As for anything else, I'm not sure he used the word -- the
6 words ups and downs. I think he used the words that if you
7 would check at various points in time during 2020, Houlihan's
8 modeling showed different numbers for valuation, but he relied
9 on the information in the April-May time frame when the deal
10 was struck.

11 All right. So, based on what I've heard, I don't think
12 there is some independent grounds to try to get the Houlihan
13 reports in now as impeachment.

14 All right. So that's the ruling. Continue.

15 MR. CLUBOK: Okay.

16 BY MR. CLUBOK:

17 Q Today's fair market value of Cornerstone, in your best
18 judgment, with all the information you have available to you,
19 for 42 percent, is significantly above \$30.5 million, correct?

20 A Fair market value? I don't have that information. I
21 don't -- I don't think that today, if you wanted to transact
22 those shares, in my opinion, other than an insider, that you
23 could sell those shares today for \$30.5 million.

24 Q If the shares were being marketed and sold together, as
25 the settlement requires the Debtor to do in good faith over

1 the next year, the fair value estimates currently today
2 available to the Debtor show that it's worth significantly
3 more than \$30.5 million; isn't that true?

4 A The Houlihan share value marks show a higher value, yes.
5 They're not fair market. Let's make sure we are precise.

6 Q Understood. Houlihan uses the phrase "fair value" in its
7 reports. And the current marks that you pay Houlihan to
8 provide to Highland shows today, October 20th, 2020, that the
9 value of 42 percent of Cornerstone is significantly higher
10 than \$30.5 million, correct? The fair value? Whether or not
11 --

12 A I believe it's -- I believe it's higher. And the last one
13 we have is 8/31. I just don't remember the amount that it is.

14 Q Okay. You did not offer that information into evidence in
15 support of your motion? You chose not to do that, correct?

16 A I -- I chose -- I think -- I don't know what counsel put
17 in other than -- than me.

18 Q Well, you are aware, actually, that the only evidence that
19 counsel put in the record to support this motion is the motion
20 itself and your testimony?

21 MR. MORRIS: Objection, Your Honor. He -- he's here
22 testifying. And --

23 (Audio interruption.)

24 MR. MORRIS: We'll -- we'll be putting our exhibits
25 in as well. But to continually refer to the motion itself as

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1 the only evidence is just not right.

2 THE COURT: Okay. Overruled.

3 MR. CLUBOK: I'll move on, Your Honor.

4 THE COURT: Okay.

5 MR. MORRIS: Thank you.

6 BY MR. CLUBOK:

7 Q You said in your direct that Houlihan -- you called them
8 the premier -- you used some superlative. Said they're the
9 premier valuation experts or something for -- for modeling or
10 -- some superlative about Houlihan. Do you recall that?

11 A Yes, I do. In terms of providing third-party valuations
12 to investment funds and others, I think they are the premier
13 firm.

14 Q Okay. Who -- you don't know who at Houlihan actually
15 works on the valuations for Cornerstone, correct?

16 A I don't, no.

17 Q You have no idea what the credentials are of anybody at
18 Houlihan who have done any work to help prepare those
19 valuations that you've got other than from them, correct?

20 A That's not true.

21 Q You're -- do you know the names of any of these -- their
22 people?

23 A No.

24 Q Okay. You've never spoken to any of them, correct?

25 A In regard to this assignment? No.

1 Q Yeah. You've never asked for anyone at Houlihan who works
2 on valuing Cornerstone to be available to you as part of due
3 diligence in preparing for this settlement review, though.

4 Correct?

5 A I -- I have not, no.

6 Q You yourself have never done a valuation of a health
7 company, healthcare company on your own, correct?

8 A On my own? No.

9 Q You have -- you've never heard -- I asked you on Saturday,
10 but before Saturday, at least, you'd never heard of something
11 called the Gordon Growth Model for estimating terminal value
12 with respect to healthcare funds. That is correct?

13 A I had not heard of it before Saturday, no.

14 Q You have no idea whether or not the choice of using a low
15 exit multiple as compared to using a Gordon Growth method
16 would affect a proper DCF analysis for analyzing a healthcare
17 company like Cornerstone, correct?

18 A No. That's not true.

19 Q Well, you don't know that the Gordon Growth method -- you
20 don't know how the Gordon Growth method factors into any
21 analysis of DCF, correct?

22 A That's not true.

23 MR. CLUBOK: Could we put up Mr. Seery's deposition?

24 BY MR. CLUBOK:

25 Q Well, you certainly don't know how the Gordon Growth

1 method factors into Houlihan's analysis of Cornerstone,
2 correct?

3 A I don't think they use it. They show on their valuations
4 a terminal multiple. And they do a DCF and do a terminal
5 multiple, which is the way virtually everybody does it in
6 these kinds of assets, because Gordon Growth focuses on
7 continued growth businesses that continually grow their
8 dividends.

9 Q Well, now, that -- that statement you gave about Gordon
10 Growth method, that's something you just learned between
11 Saturday and today, correct?

12 A That is correct.

13 Q Okay. Who told you that?

14 A I both looked it up and talked to professionals.

15 Q Who, exactly?

16 A I'd rather not say the names of my friends who provide me
17 help on these things.

18 Q Well, with all due respect, Mr. Seery, if it relates to
19 the basis for a statement you make, I'd just like the source
20 of that statement.

21 MS. LAMBERT: Your Honor, I object on the ground of
22 relevance. I've -- I've held my tongue for overall, but I
23 don't think this is really germane to the issues.

24 THE COURT: Sustained.

25 MR. MORRIS: I join in the objection.

1 THE COURT: I sustain.

2 BY MR. CLUBOK:

3 Q You expect, Mr. Seery -- well, per the settlement,
4 proposed settlement, Crusader would have (garbled) that a
5 claim valued -- a stipulated claim of about \$137 million.
6 Correct?

7 A That's correct.

8 Q And also Redeemer would be allowed to keep their 42
9 percent interest in Cornerstone that the arbitration award had
10 otherwise said needed to be tendered to Highland, correct?

11 A That's correct.

12 Q You, based on your current analysis, expect that the --
13 Redeemer would be fully paid in the full amount of that
14 allowed claim of roughly \$137 million, according to current
15 thinking of the Debtors and creditors in the estate. Is that
16 correct?

17 A I can only speak to my thinking, and that we put forth
18 relatively conservative numbers in our projections, that
19 assuming that the denominator ends up where I believe it
20 should end up, which is the number of claims in the case,
21 which assumes UBS has a zero claim, and that Mr. Daugherty's
22 claim is capped at the amount that we've -- we've agreed to in
23 our papers, which I believe is around \$3.7 million, and that
24 HarbourVest has a zero claim, and then there are some
25 assumptions around operating costs, I believe that we will be

1 able to pay these claims in full.

2 Q Well, but you've made it clear to Redeemer that your
3 current expectation is to be able to pay that \$137 million
4 allowed claim in full, if everything goes the way you just
5 described you think it should go or you believe it will go?

6 A I've never had that discussion with Redeemer.

7 Q You have advised Redeemer in words or substance that you
8 expect there to be full payment of a \$137 million allowed
9 claim under the settlement? Is that true?

10 A I don't believe I have.

11 Q You don't believe you've ever (inaudible) that, in words
12 or substance, with either Redeemer or any of its counsel?

13 A I don't believe I have, no.

14 Q Okay.

15 MR. CLUBOK: Just one moment, Your Honor, while I
16 (inaudible).

17 (Pause.)

18 BY MR. CLUBOK:

19 Q Mr. Morris asked you, asked you whether you roll over.
20 You said no. Then he asked you whether you thought that
21 Redeemer would roll over on one of their claims completely,
22 and you said no.

23 With respect to one point in the settlement, the EERS
24 (phonetic) interest, those (inaudible) that Highland currently
25 holds, if there was a settlement it would it extinguish

1 roughly five to six million dollars of your current
2 valuations. Is that right?

3 A I think that's about right.

4 Q And those -- that five to six million in value is one of
5 the issues that would be subject to a ruling on the vacatur
6 motion that we talked about, the idea that -- that additional
7 substantive elements were added to the arbitration award after
8 the first part of the award. Is that correct?

9 A I believe that's one of the issues that -- that I am
10 briefed.

11 Q Yeah. And on that issue, under this settlement, you're
12 giving a hundred percent credit to Crusader's or Redeemer's
13 claims with respect to that particular element. Correct?

14 A That's correct.

15 Q And, in fact, you're giving a hundred percent credit to
16 all of Redeemer's claims with respect to the amounts that were
17 disputed under the argument that claims added after the first
18 final arbitration award are impermissible, correct?

19 A I'm -- I just -- I'm not -- I'm not sure what you're
20 asking me there. I'm sorry.

21 Q Well, for example, that Barclay's claim is another claim
22 that's worth about \$30 million in total. And that's -- that's
23 about \$21 million awarded, about \$9 million pre-judgment
24 interest. That \$30 million, like the EERS, is subject to this
25 argument that it shouldn't be properly -- it was impermissibly

1 awarded by the arbitration panel because it came after the
2 first final award. Correct?

3 A I think that there's an argument to that effect, correct.

4 Q Yeah. And under the proposed settlement, you're giving it
5 a hundred percent -- you're giving a zero percent settlement
6 discount, or a very -- a zero percent settlement discount for
7 Highland, correct?

8 A That's correct.

9 Q Thank you.

10 MR. CLUBOK: I have nothing further.

11 THE COURT: All right. Redirect?

12 MR. MORRIS: Just a few questions, Your Honor.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION

15 BY MR. MORRIS:

16 Q Mr. Seery, if the Debtor walks away from this agreement,
17 has the Debtor done any analysis and taken advice on the
18 likelihood of succeeding in Chancery Court?

19 A The Debtor has, yes.

20 Q And can you share with the Court the Debtor's view as to
21 the likelihood of success in the Chancery Court?

22 MR. CLUBOK: Objection. Objection, Your Honor.

23 Just, number one, I don't think that's -- to the extent that
24 that's going to rely on advice of counsel, I just (inaudible).

25 We're going to get a -- the percentage that's based on --

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1 waiving the privilege. I raised that ahead of time.

2 MR. MORRIS: I appreciate that, counsel. We're
3 certainly not intending to waive the privilege. I'm just
4 asking for a statement as to the Debtor's position as to why
5 it does not believe it is likely to succeed in Chancery Court.
6 I'm not asking him to share any confidential communications,
7 but thank you for the comment.

8 THE COURT: Okay. Please proceed.

9 MR. CLUBOK: Um, --

10 THE COURT: Mr. Seery, you can answer.

11 THE WITNESS: Thank you, Your Honor. When we looked
12 at the Chancery Court, there is a number of the issues the
13 Debtor raised previously in the arbitration. There was a
14 partial award that clearly says it's a partial award. And
15 then the Debtor raised a number of procedural issues that
16 there were additions to the partial award between the partial
17 and the final. And the final goes through those in detail
18 with this panel that, as we said, is -- was esteemed and had
19 lot of work on it.

20 For example, in one section, they gave the whole rationale
21 in the partial and they left out the damage number. So they
22 -- they had ruled basically fully against the Debtor, but
23 without giving a number. And so Highland attempted to argue
24 that to the arbitration panel in between the partial and the
25 final. The arbitration panel said that's a scrivener's error,

1 we're allowed to do this, and they went through the analysis.

2 Our counsel looked at these issues again. And we thought
3 that the likelihood of success at the Chancery Court to re-
4 raise these issues was very low. So we did factor it in and
5 we did analyze it. It wasn't something that we missed. We
6 just didn't think it was a fruitful opportunity to litigate in
7 the Chancery Court.

8 MR. MORRIS: I have no further questions, Your Honor.

9 THE COURT: All right. Any recross?

10 MR. CLUBOK: No, Your Honor.

11 THE COURT: All right.

12 MR. MORRIS: Your Honor, may I just move my exhibits
13 into evidence, and then I'll rest?

14 THE COURT: Okay. You may.

15 MR. MORRIS: Okay. The Debtor would like, then, to
16 move into evidence exhibits that are marked 1 through 4. And
17 to be specific, and we can take them one at a time, Exhibit 1
18 is Proof of Claim #72. That was filed, I believe, on behalf
19 of the Crusader Funds.

20 MR. CLUBOK: Your Honor, objection on hearsay
21 grounds, Your Honor. It has been offered into evidence.

22 THE COURT: All right.

23 MR. CLUBOK: It's the proof of claim.

24 MR. MORRIS: Object to the compromise. I'm not -- it
25 is the proof -- I'm not offering it for the truth of the

1 matter asserted at all, actually.

2 THE COURT: Okay.

3 MR. CLUBOK: That's fine. If it's not being offered
4 for the truth of the matter asserted, but just for those
5 purposes, then we have no objection.

6 THE COURT: Okay. So that --

7 MR. MORRIS: Correct.

8 THE COURT: -- is admitted. And to be clear where
9 this appears in the Court record, Docket Entry #1178, Debtor's
10 witness and exhibit list, I think it was attached to that as
11 Exhibit 1. That's admitted.

12 (Debtor's Exhibit 1 is received into evidence.)

13 MR. MORRIS: Exhibit 2 is Proof of Claim #81, is the
14 proof of claim filed by the Redeemer Committee. The Debtor
15 respectfully moves that exhibit into evidence as well.

16 THE COURT: Okay. Same sort of concept, for notice
17 purposes only, it's admitted.

18 (Debtor's Exhibit 2 is received into evidence.)

19 MR. MORRIS: Okay. And the Debtor also moves into
20 evidence the declaration of John Morris submitted in support
21 of the 9019 motion and the exhibits annexed thereto. To be
22 clear, Exhibit 1 to my declaration is the stipulation of
23 settlement. Exhibits 2, 3, and 4 are the partial final award,
24 the modification award, and the final award. Those three
25 documents have been filed under seal pursuant to a sealing

1 motion which is on our exhibit list as Exhibit #4. And I
2 think there might also be duplicate copies of the proofs of
3 claim attached to my declaration as well. But we'd move all
4 of those documents into evidence, subject to the sealing
5 order.

6 THE COURT: All right. Any objection? All right.

7 MR. CLUBOK: No objection, for the non-hearsay
8 purposes of those.

9 THE COURT: All right. So, Exhibit 3, with all of
10 those subparts, some of which are under seal, are admitted.

11 (Debtor's Exhibit 3, including subparts, is received into
12 evidence.)

13 MR. MORRIS: I do want to clarify, Your Honor, that
14 with respect to the three parts of the award, we're offering
15 them for the truth of the matter asserted insofar as they are
16 the findings of fact and the conclusions of law of the
17 arbitration panel.

18 MR. CLUBOK: No objection.

19 THE COURT: Okay.

20 MR. MORRIS: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. CLUBOK: Your Honor, and I do have a -- also
23 similar housekeeping. And I raise this with a trembling voice
24 because I really am -- very respectfully. I'd just like to
25 make a proffer that there are four Houlihan Lokey exhibits

1 that have been recently produced to us in the last few days.

2 THE COURT: Okay.

3 MR. CLUBOK: If I can just make my proffer, then I'll
4 stop.

5 THE COURT: Let me -- let me stop -- let me stop you.
6 I'm not sure Mr. Morris was finished yet with the exhibits he
7 was going to offer. Let me clarify.

8 Are you finished, Mr. Morris?

9 MR. CLUBOK: Oh, I apologize.

10 MR. MORRIS: Just -- just to be clear, I think I was,
11 but Exhibit #4, which is the sealing order, we also offer into
12 evidence, just to support the sealing of Exhibits 2, 3, and 4
13 to my declaration.

14 THE COURT: All right. Well, I can certainly take
15 judicial notice of that and we'll go ahead for clarity and
16 admit that as a witness -- as an exhibit.

17 (Debtor's Exhibit 4 is received into evidence.)

18 THE COURT: All right. So, with that, you rest, Mr.
19 Morris?

20 MR. MORRIS: Yes, Your Honor.

21 THE COURT: All right. Now, Mr. Clubok, you were
22 saying?

23 MR. CLUBOK: I appreciate it, Your Honor. There are
24 -- we had a document request. We were provided four Bates-
25 labeled productions within the last few days of Houlihan Lokey

1 reports that are dated March 2020, June 2020, July 2020, and
2 August 2020, the only ones that they've been -- have been
3 provided to us during that time period.

4 I understand Your Honor ruled that they are hearsay and
5 can't come in for the truth of the matter, but we believe that
6 they should properly be admitted for the purpose of notice,
7 the fact that that information is available to Mr. Seery, and
8 also, frankly, for impeachment if we are allowed to present
9 that for the Court's view, at least under seal. I believe
10 we've already submitted two of them under seal on Friday
11 night. The other two, we just got like last night or the wee
12 hours of the morning yesterday. And we would like to proffer
13 that there are four Houlihan Lokey exhibits that were made
14 available to us that should be admitted for non-hearsay
15 purposes.

16 THE COURT: All right. Well, I once again will make
17 clear for the record that I am not admitting those. I think
18 they are hearsay. I think you would need the creator or
19 supervisor of the reports here to properly offer them into
20 evidence.

21 I also think that, as I said earlier, I'm not required to
22 conduct a mini-trial and accept every piece of possible
23 evidence of valuation. I am supposed to, you know, consider
24 facts and circumstances that bear on the wisdom of the
25 compromise. And so I've heard valuation testimony from Mr.

1 Seery and what he considered the range of reasonableness.

2 Anyway, I primarily rely on the hearsay problem here in
3 not admitting these four exhibits. So that is the ruling.

4 If you want to put them into the record under seal for
5 purposes of maybe appeal purposes -- he or she made an error,
6 she didn't accept this stuff -- then obviously you can submit
7 them under seal for the court reporter to keep them in the
8 record. So I assume you'll coordinate after the hearing
9 getting those into the court reporter's hands under seal.

10 Okay?

11 MR. CLUBOK: Thank you, Your Honor. Thank you very
12 much. Appreciate it.

13 THE COURT: Okay. So, I guess at this point we've
14 had the Debtor rest and we're going to go to UBS's evidence.
15 I want to make the most efficient use of time possible. And
16 let me clarify. I had told you all I would stop at 12:30
17 Central time. It's 12:19. My quandary is that I have a 1:30
18 status conference in an adversary proceeding in another case,
19 and then I have a 2:30 hearing that should not last very long
20 in yet another case. So I have told you all you can come back
21 at 3:00 o'clock.

22 Is there anything worthwhile you think we can accomplish
23 in ten minutes, or shall we just break? What do you all
24 think?

25 MR. CLUBOK: What I do think, Your Honor, is if we

1 have the ten minutes, maybe we can work to make sure that we
2 have addressed any other confidentiality issues and make sure
3 that Mr. Morris and his law firm are comfortable with what
4 we're going to do with our next witness so we don't have an
5 accidental foot fault. I think that can be useful. We'll
6 spend the time doing that to make sure that --

7 THE COURT: Okay. You mean talk offline?

8 MR. CLUBOK: Yeah. The attorneys will talk amongst
9 themselves and just --

10 THE COURT: Okay.

11 MR. CLUBOK: We don't want to accidentally put
12 something up that is going to be objected to. We'd rather
13 show it -- now show it to Mr. Morris in advance and hopefully
14 work it out so that we don't have to accidentally put
15 something in the record they're, you know, going to object to.

16 THE COURT: All right. Well, I am good with that.
17 And so let's talk about a couple of additional things. My
18 courtroom deputy I think has put up the instructions for how
19 to reconnect at 3:00 o'clock, because obviously we're going to
20 have to break this off and I have other video hearings. So,
21 you know, contact my courtroom deputy if you don't see those
22 instructions. The instructions should be on the website, as
23 far as numbers and passwords and whatnot to use for the new
24 setting or the new resumption of this hearing at 3:00 o'clock.

25 The next thing I will say is I think I told you all we

1 could go until 5:00 or 5:30-ish. I do want to again be
2 efficient and break when it makes sense to break. I have
3 availability to come back tomorrow at 9:30 in the morning. So
4 maybe you all could be thinking ahead with regard to the Acis
5 motion. You know, do you want to start late today and do your
6 darnedest to finish, or is that a pipe dream and we'll have to
7 come back tomorrow?

8 MR. MORRIS: Your Honor, just speaking for the
9 Debtor, I don't think that we're going to have -- I don't
10 anticipate having any of the same confidentiality issues.

11 THE COURT: Uh-huh.

12 MR. MORRIS: I think that this was handled as
13 efficiently as it could under the circumstances. I have a
14 better sense of how to get this done. I'm hopeful that we
15 won't need but a few more minutes to finish the Redeemer, and
16 I'd like to try to get to as much of the Acis part as we can.

17 THE COURT: Okay. Well, we will shoot to try to get
18 it done today if we can. And if that means we need to go a
19 little later than I've projected, we will, if we can avoid
20 coming back tomorrow.

21 All right. So I shall see you all at 3:00 o'clock Central
22 time. Okay.

23 MS. PATEL: Your Honor, if I -- this is Rakhee Patel.
24 If I could, just quickly on the Acis issue, I am unavailable
25 tomorrow morning, so I just wanted to put everybody -- to put

1 that out there. I haven't discussed that with either Mr.
2 Morris or Mr. Demo. But unfortunately, I've got an unmovable
3 conflict tomorrow morning. So, if it did run over, I wouldn't
4 be available. So if we could finish it today, that would be
5 greatly appreciated.

6 THE COURT: All right. Well, I have in my notes that
7 we'll have Mr. Seery again. And Mr. Daugherty was listed as a
8 witness, possible witness, by his lawyer. And then Ms.
9 Rappaport as a possible expert witness. I'm not a hundred
10 percent clear what the scope of that testimony would be. I
11 don't know if there are objections. But if we do in fact have
12 three witnesses, it may be a challenge finishing tonight.
13 But, you know, I will go past 5:00 or 5:30, but not insanely
14 past those hours. Okay? I don't want to be up here at 9:00
15 o'clock when we have staff who isn't getting paid overtime.
16 So, all right.

17 MR. MORRIS: We're grateful, Your Honor.

18 THE COURT: Okay. Thank you. We stand adjourned.

19 MS. PATEL: Thank you, Your Honor.

20 THE CLERK: All rise.

21 (A recess ensued from 12:24 p.m. until 3:01 p.m.)

22 THE CLERK: All rise.

23 THE COURT: All right. Please be seated. Welcome
24 back. We are going to resume our Highland hearing. It looks
25 like we've got a lot of folks on the phone once again.

1 When we broke at 12:20, the Debtor had rested on the
2 motion to approve the compromise with the Redeemer Committee
3 and the Crusader Fund, and we were about to hear from UBS and
4 their evidence objecting to the settlement.

5 Any housekeeping matters before we turn it over to Mr.
6 Clubok?

7 All right. Well, Mr. Clubok, are you there? Are you
8 ready to call your witness?

9 MR. CLUBOK: Your Honor, it's actually Ms. Tomkowiak.

10 THE COURT: Oh.

11 MS. TOMKOWIAK: I going to handle this portion of the
12 hearing.

13 THE COURT: Okay.

14 MS. TOMKOWIAK: And we are ready to call Mr. (audio
15 gap).

16 THE COURT: Mr. Moentmann? Is that how you say the
17 name? Is it Mr. Moentmann?

18 MS. TOMKOWIAK: Yes, Your Honor.

19 THE COURT: All right.

20 MR. MOENTMANN: That's -- yes, that's correct.

21 THE COURT: All right. Mr. Moentmann, I need to
22 swear you in. So there you are. I can see you now. Please
23 raise your right hand.

24 W. KEVIN MOENTMANN, UBS SECURITIES, LLC'S WITNESS, SWORN

25 THE COURT: All right. You may proceed.

Moentmann - Direct

111

1 MS. TOMKOWIAK: Great.

2 DIRECT EXAMINATION

3 BY MS. TOMKOWIAK:

4 Q And Mr. Moentmann, I understand that you've prepared some
5 demonstratives to assist with your testimony; is that correct?

6 A That is correct.

7 Q Okay.

8 MR. MORRIS: Excuse me. May I -- as I previewed
9 earlier, I have a motion. I'd like to *voir dire*. It'll be
10 about 12 questions, and then I'd like to make a motion to
11 exclude the witness's testimony. May I?

12 THE COURT: All right. Well, Ms. Tomkowiak, you knew
13 this was coming. Anything you want to say at this point?

14 MS. TOMKOWIAK: I don't think this is the motion. I
15 mean, I haven't -- I haven't -- I heard that earlier, but no
16 preview as to the grounds for a motion were provided.

17 THE COURT: All right. Mr. Morris, what about that?

18 MR. MORRIS: It's *voir dire*, Your Honor. I would
19 just like to ask questions to see if this witness can provide
20 testimony consistent with Federal Rule of Evidence 702. I
21 just took his deposition yesterday.

22 THE COURT: Okay. You may proceed with *voir dire*.

23 MR. MORRIS: Okay. Thank you.

24 VOIR DIRE EXAMINATION

25 BY MR. MORRIS:

1 Q Sir, you had never heard of Cornerstone before this case;
2 is that right?

3 A That's correct.

4 Q And you were retained just a couple of weeks ago; is that
5 right?

6 A Yes.

7 Q And you spent approximately 20 or 30 hours preparing your
8 analysis, right?

9 A Yes. Up until my deposition on Saturday, yes.

10 Q Yes. And without getting into the details, one of the
11 biggest drivers in the difference between the values that you
12 come up with and the values that Houlihan Lokey comes up with
13 is a difference in one aspect of the methodology, whereby you
14 use what's called the Growth Model and Houlihan Lokey uses
15 exit -- exit multiples. Do I have that right?

16 A That is one area, yes.

17 Q And it's one of the biggest areas; isn't that right?

18 A It's -- yes and no.

19 Q Okay. But you'll agree that the use of exit multiples in
20 the manner that Houlihan Lokey has done is an accepted
21 practice in the valuation industry; isn't that right?

22 A If the multiples selected are reasonable, yes.

23 Q Okay. The methodology is certainly accepted; is that
24 right?

25 A It's -- it's not the prevalent one that is accepted.

1 Q Okay. And your firm is Grant Thornton; is that right?

2 A Yes. That's right.

3 Q And Grant Thornton prepares valuation reports similar in
4 nature to the ones that Houlihan Lokey prepares; is that
5 right?

6 A Yes, we do.

7 Q And in fact, you personally consider Houlihan Lokey to be
8 a competitor; is that fair?

9 A Yes.

10 Q And you've reviewed Houlihan Lokey reports before being
11 engaged in this matter, haven't you?

12 A I have.

13 Q And based on your professional experience, you believe
14 Houlihan Lokey has a good reputation in the field of
15 valuation; isn't that correct?

16 A I believe it is a reputable firm, yes.

17 Q In fact, you're aware that from time to time Grant
18 Thornton's own audit clients have used Houlihan Lokey's
19 valuation services; isn't that right?

20 A I couldn't tell you specifically which clients, but I'm
21 sure they have, given the large number of audit clients that
22 we have, yes.

23 Q And those audit clients use Houlihan Lokey even though
24 Houlihan Lokey uses a methodology different from the one
25 employed by Grant Thornton; isn't that right?

1 A I couldn't say that affirmatively. I don't know if they
2 use a different methodology when they're performing the
3 valuation for our audit client.

4 Q Okay. You're aware, though, that your audit clients not
5 only use Houlihan Lokey but they actually rely on Houlihan
6 Lokey's valuation services; is that fair?

7 A Again, I'm assuming they do, just given the large number
8 of audit clients. We have, you know, thousand plus audit
9 clients, I would imagine, so I would assume that Houlihan is
10 doing some of them.

11 Q Okay. And --

12 A (overspoken)

13 Q I'm sorry to interrupt.

14 A Yeah. I was just -- I was actually just getting to answer
15 your question. So I'm sure they do and rely on Houlihan for
16 valuation.

17 Q Okay. Thank you, sir. Putting aside your own personal
18 views as reflected in your declaration, you have no reason to
19 believe that it was unreasonable for the Debtor to utilize
20 Houlihan Lokey's reports in this instance; isn't that correct?

21 A Well, I think I've pointed out several areas where I
22 think, given the assumptions made, that it -- it is
23 unreasonable.

24 Q Okay. I'm going to ask the question one more time and ask
25 you to listen very carefully. Putting aside your own personal

1 views as reflected in your declaration, you have no reason to
2 believe that it was unreasonable for the Debtor to utilize
3 Houlihan Lokey's reports in this instance; isn't that correct?

4 A Putting aside my -- my different viewpoint from a
5 valuation -- as a valuation professional, yes.

6 Q Okay.

7 MR. MORRIS: Your Honor, Rule 702 requires that
8 qualified experts may only offer opinion testimony if four
9 specific conditions are satisfied.

10 One of those conditions is that the opinion testimony will
11 help a trier of fact understand the evidence or determine a
12 fact at issue. The only issue in this case is whether or not
13 this settlement is fair or reasonable. This is not a
14 valuation fight. This is not a fight over whether or not the
15 Debtor is maximizing value. This is a dispute over whether or
16 not the Debtor is properly exercising its business judgment,
17 whether it's done a fair and reasonable investigation and
18 diligence of the matters at issue. And I think, given the
19 witness's testimony just now that his own clients use Houlihan
20 Lokey and that he has no reason to believe that it would be
21 unreasonable for the Debtor to use Houlihan Lokey in this
22 instance, I don't see (garbled) respect to the witness.
23 Because I'm not challenging his qualifications. This is not a
24 *Daubert* motion. I just don't see how this is at all useful to
25 you as the trier of fact to understand the evidence and

1 determine a fact at issue.

2 Thank you, Your Honor.

3 THE COURT: Okay. Your response, Ms. Tomkowiak?

4 MS. TOMKOWIAK: Well, Your Honor, I feel like it's
5 important to acknowledge that -- he's saying this is not a
6 *Daubert* motion. This is not a 702 issue. This witness is
7 extremely qualified to provide his opinion on the valuation of
8 Cornerstone, which is an issue in the settlement. It does go
9 exactly to the question that Your Honor is being asked to
10 evaluate, which is, you know, is this settlement fair,
11 equitable, and in the best interest of the estates?

12 I don't understand this hypothetical about, putting aside
13 your opinion, do you have a view? I mean, his opinion is his
14 view. And I believe that it is absolutely relevant. He
15 should be allowed to testify to it. His testimony is based on
16 facts and data. It's the product of a reliable methodology
17 that everybody agrees, you know, can be applied to value an
18 asset. Is to apply that methodology to the facts of this
19 case.

20 So, you know, I understand that the Debtor chose not to
21 put on any evidence regarding the value of this incredibly
22 meaningful asset that they decided to give up in this
23 settlement, but that doesn't mean that UBS shouldn't be
24 allowed to do so in support of its valid objection to the
25 settlement.

1 THE COURT: Okay.

2 MS. TOMKOWIAK: So, I object and I believe we should
3 be allowed to proceed with our examination of Mr. Moentmann.

4 THE COURT: Okay. I overrule the objection. I'm
5 going to allow some testimony. Go ahead.

6 MS. TOMKOWIAK: Thank you. Okay.

7 DIRECT EXAMINATION, RESUMED

8 BY MS. TOMKOWIAK:

9 Q And Mr. Moentmann, I think you prepared some slides to
10 assist with your testimony today; is that correct?

11 A That's correct.

12 Q Can you pull those up? All right. So, very briefly,
13 let's just go to the first slide. Please tell the Court,
14 where do you currently work?

15 A Yes. I work at Grant Thornton.

16 Q How long have you worked at Grant Thornton?

17 A For just over four years.

18 Q Briefly, what are your responsibilities at Grant Thornton?

19 A I'm the principal in the firm responsible for providing
20 valuation services. I provide those services extensively in
21 the healthcare industry to a variety of healthcare entities.

22 Q Where were you employed prior to (garbled)?

23 A I believe the question was prior employment. Was at a --
24 was at another professional services firm, CBIZ.

25 Q And what was your role at CBIZ?

1 A My role at CBIZ, which is publicly-traded professional
2 services firm, was similar. I was a managing director
3 responsible for the Central Region, but provided valuation
4 services really across the country, and, again, extensively in
5 the healthcare industry.

6 Q What's your educational background?

7 A Yes. I'm -- my undergraduate degree was -- was a finance
8 degree from University of Missouri Columbia. I received my
9 MBA, again with a finance emphasis, from Washington University
10 in St. Louis.

11 Q Do you have any professional certifications?

12 A Yes. Two. One, the CFA. And the second, the CEIV.
13 That's a newer designation. I received it through the AICPA.
14 It's Certified -- as you can see there, it's Certified in
15 Entity and Intangible Valuations. But it addresses
16 specifically fair value determinations for publicly-traded
17 entities.

18 Q Over the course of your career, how many valuations have
19 you performed?

20 A I wish I'd kept a log, but over the course of thirty-plus
21 years, you know, maybe fifty or so a year, so well over a
22 thousand. Maybe close to two thousand.

23 Q How many of those have involved healthcare companies?

24 A My focus has been on healthcare really since the early
25 '90s, so maybe two-thirds of my valuation work and experience

1 has been healthcare-related.

2 Q Broadly speaking, when performing a valuation, what do you
3 do?

4 A Yes. All valuations, whether it's on a business or an
5 asset, regardless of the industry, we're looking at three
6 approaches to value: An income approach, a market approach,
7 and an asset or cost approach.

8 Q Are these methodologies commonly used and accepted by your
9 peers as well?

10 A Yes. Yes, they're widely accepted.

11 Q And when you're performing a valuation of a healthcare
12 company, in your day-to-day -- your role at your job, what is
13 the purpose of that valuation work?

14 A It ranges. Oftentimes, we're brought in pre-transaction
15 to assist healthcare entities with their M&A activity. If
16 we're assisting not-for-profits, it's a combination of their
17 M&A activity as well as providing regulatory support if that
18 valuation is ever challenged. We also provide valuations
19 post-transaction for financial reporting purposes.

20 Q And did you apply those same methodologies that you use in
21 your ordinary job to the assignment in this case?

22 A Yes, I did.

23 Q How many times have you testified under oath as an expert?

24 A Probably over -- over the last thirty years, maybe every
25 other year, so maybe -- maybe fifteen times.

1 Q Has any court ever rejected you as an expert?

2 A No.

3 MS. TOMKOWIAK: Your Honor, at this time, pursuant to
4 Rule 702, I'd just like to tender Mr. Moentmann as an expert
5 in the field of valuation.

6 THE COURT: Any comment?

7 MR. MORRIS: No objection.

8 THE COURT: All right.

9 MR. MORRIS: No objection.

10 THE COURT: He is so accepted.

11 BY MS. TOMKOWIAK:

12 Q Mr. Moentmann, what were you asked to do in this case?

13 A Yes. I was asked to assess the valuation of Cornerstone
14 based on the most recent information available, which in this
15 case were certain valuation reports that were prepared for
16 2020. The latest available up until a few days ago were the
17 June 30 reports.

18 Q Have you -- have you formed any opinions?

19 A Yes. We have.

20 Q Let's talk about your opinions. So if you can go to the
21 next slide. Can you please explain to the Court what your
22 first opinion is?

23 A Yes. The first opinion reflects my calculation of
24 Crusader's ownership interest in Cornerstone. It shows, as
25 presented in the second bullet on the slide here, that the

1 subject equity interest ranges in value from \$48 through \$87
2 million.

3 Q If you can go to the next slide. Can you walk the Court
4 through your second opinion that's reflected on this slide?

5 A Yes. Yes, the -- the second opinion here focuses on
6 various issues that we identified in our review of the
7 information that was made available.

8 The first issue was the selection of very low market
9 multiples. The multiples used in the -- in the valuations
10 relative to what we observed in the marketplace were low, and
11 we did not see any explanatory information as to the selection
12 of those multiples.

13 The second, it was previewed a few minutes ago, and I
14 don't want to get too complex here, but involved the use of
15 the -- or, the estimate of the terminal value, their
16 methodology. And this was in the income approach that was
17 referenced earlier. The methodology that was used was market
18 multiples. They were essentially the same market multiples
19 that were applied in the market approach, rather than a Gordon
20 Growth method. And as I mentioned a few minutes ago, the
21 Gordon Growth method is what we typically see. It is the more
22 common of its -- in my experience.

23 I answered a question both yes and no because one could
24 use the market approach, an exit multiple, I think it was --
25 as it was called in the question. But that exit multiple

1 still needs to be consistent with market data, and to the
2 first point here, we think that -- you know, I think -- I feel
3 the exit multiples is -- is low, in my opinion.

4 The third issue here involves a CARES Act loan that the
5 company has on its books. It's a \$30 million liability. The
6 observation here is that, based on the information available,
7 we don't know to what extent, if any, this CARES Act loan is
8 forgivable.

9 Q Okay. And then I see the last bullet there references
10 inconsistencies between valuations. What do you mean by that?

11 A Yeah. The last bullet applies less to our conclusion and
12 more our observation of -- Houlihan had prepared reports as of
13 the same date for different clients, for Highland as well as
14 Crusader. And we're observing that they had a different value
15 opinion depending upon -- a different value range depending on
16 who the client was, even though the valuation was performed as
17 of the same date.

18 Q And I think you said you reviewed multiple valuations
19 provided by Houlihan. Were the issues you identified here --
20 in particular, the first and second issues -- present in all
21 of the valuations that you reviewed for Houlihan, regardless
22 of the particular time period?

23 A Yes. They were prevalent in all. I would say the CARES
24 Act loan I believe did not hit the books until April, so may
25 not have been prevalent in the early -- the early -- the

1 valuations prior to them.

2 Q What happens when you use, in your opinion, the right
3 assumptions?

4 A The use of the -- the right assumptions, is your question?
5 Right. I -- the use of the right -- could you repeat the
6 question?

7 THE COURT: Yes. Could you repeat your answer? You
8 broke off a little bit, sir.

9 MR. MORRIS: Your Honor, I've -- I've objected to the
10 question.

11 THE COURT: Oh. I didn't hear you were -- okay. You
12 objected to the question. And what is your basis?

13 MR. MORRIS: Just the use of the phrase the right
14 approach. Don't know if his opinion is any or more less valid
15 than any other opinion.

16 THE COURT: All right.

17 MS. TOMKOWIAK: Your Honor, I'm -- I can -- I'm happy
18 to rephrase the question.

19 THE COURT: Okay.

20 BY MS. TOMKOWIAK:

21 Q What happens when you use the approaches that you use, Mr.
22 Moentmann?

23 A Yes. The use of the assumptions that -- that I believe
24 are reasonable result in a valuation range -- actually, the
25 valuation range presented earlier.

1 Q You listened to Mr. Seery testify both at his deposition
2 and in court today; is that right?

3 A Yes, I did.

4 Q What are your reactions to his testimony as it relates to
5 the Cornerstone value?

6 A I've -- I had a handful of reactions to the testimony.
7 One was with regard to fair value and fair market value. And
8 as someone who's been in the valuation industry for over
9 thirty years, both premises of value, fair value and fair
10 market value, represent a valuation firm's, whether it's
11 Houlihan or Grant Thornton, it is that firm's opinion and best
12 estimate of a market participant value. Both definitions,
13 whether it's fair value or fair market value, focuses on
14 market participant, market participant concepts.

15 Another observation was the -- the use of -- the Gordon
16 Growth method only being applicable for dividend-paying
17 companies. And I can assure you, that's -- that is not the
18 case. This -- there are some methods, the discounted cash
19 flow method and -- and/or the Gordon Growth method, the use of
20 the Gordon Growth method to calculate a residual value or a
21 terminal value is used for all companies, regardless of
22 whether they're dividend-paying or not.

23 Q What is the most -- and by what, I mean by -- not the
24 information itself, but the date -- what is the most recent
25 value -- valuation information that you've been provided with

1 respect to Cornerstone?

2 A We -- we recently received a valuation, I think within the
3 last day or two, as of August 31st.

4 Q And so that was after you prepared and submitted the
5 declaration that you submitted in this case?

6 A Yes.

7 Q If we could go to that slide.

8 MS. TOMKOWIAK: So, consistent with Your Honor's
9 rulings, you know, we would proffer that we have this
10 information, the valuation performed by Houlihan in August,
11 but we have redacted it per this morning's rulings regarding
12 confidentiality.

13 BY MS. TOMKOWIAK:

14 Q Mr. Moentmann, my question is, without talking about the
15 numbers themselves, based on your of view of that valuation,
16 you know, what did it show in terms of, you know, trends in
17 the -- or performance with respect to the valuation of
18 Cornerstone?

19 A The valuation reflected an upward trend. Really, a
20 continued upward trend in the valuation of Cornerstone.

21 Q Were you able to tell if that was -- what that was based
22 on? Again, broadly speaking.

23 A Based on a quick review of it, yes. The -- that upward
24 trend in value was being driven primarily by the company's
25 continued strong performance and improvement in -- in

1 earnings.

2 Q If you took this latest valuation information, this latest
3 valuation into account in your own analysis, what impact would
4 it have?

5 A It would have a positive impact. The August information
6 reflecting the company's performance through August was
7 strengthening and is -- it would increase our valuation.

8 Q Let's go to the next point on the slide. So, I know that
9 you had summarized the various valuations that you have
10 reviewed. And, again, we have all of these valuations. We
11 have all of these numbers. Pursuant with the Court's rulings
12 this morning, we have redacted the numbers themselves except
13 for the \$30.5 million that the Debtor has already put in the
14 public record and your own valuation. Do you understand --
15 have you reviewed the Debtor's motion for approval of the
16 settlement that we've been discussing today?

17 A Yes.

18 Q And you understand that in that motion they've represented
19 that, for settlement purposes, they valued Crusader's
20 ownership interest in Cornerstone at a perceived fair market
21 value of \$30.5 million?

22 MR. MORRIS: Objection to the form of the question.

23 THE COURT: Okay. What exactly was it about the
24 question that you found objectionable?

25 MR. MORRIS: The number is the result of

1 negotiations. And I think Mr. Seery testified quite clearly
2 that the notion of perceived market value, you know, probably
3 was a little bit misstated. It's -- it's a negotiated number.
4 That's where we are. That's all.

5 THE COURT: Okay. If you could rephrase, I sustain
6 that objection.

7 BY MS. TOMKOWIAK:

8 Q You understand that the damage award in this case is,
9 according to the Debtor in the motion that it's filed, it's
10 reducing the Redeemer award by approximately \$30.5 million to
11 account for the value that they've assigned to the Cornerstone
12 shares owned by Crusader, right?

13 A Yes. That's my understanding.

14 Q In your opinion and based on the accepted valuation
15 methodologies and standards in your field, is \$30.5 million
16 within the range of reasonable valuation of Crusader's
17 interest in Cornerstone today, based on the information
18 available to you?

19 MR. MORRIS: Objection to the form of the question.

20 THE COURT: Overruled.

21 MR. MORRIS: The use of the phrase --

22 THE COURT: Okay.

23 MR. MORRIS: Thank you.

24 THE COURT: I overrule.

25 THE WITNESS: No. As shown here, our opinion of

1 value is presented at the bottom here. I found \$48 to \$87
2 million, I mean, is significantly in excess of the agreed-to
3 amount.

4 BY MS. TOMKOWIAK:

5 Q Right. And then the same question as of June 30, 2020.
6 In your opinion and based on the accepted methodologies and
7 valuation standards in your field, is \$30.5 million within any
8 range of a reasonable valuation of Crusader's interest in
9 Cornerstone, even as of June 30, 2020?

10 A Again, though, I misspoke on the earlier question. I was
11 referencing June on the earlier question. The August
12 valuation, as mentioned earlier, I think it would be only
13 higher than this. In both cases, no.

14 MS. TOMKOWIAK: Subject to redirect, I don't have any
15 further questions.

16 THE COURT: All right. Pass the witness. Mr.
17 Morris, any questions?

18 MR. MORRIS: Just a few, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MORRIS:

21 Q Your valuation hasn't been market-tested, has it, sir?

22 A I'm not sure I understand the question of market testing.

23 Q It's not the result of any negotiation, is it?

24 A No, it is not.

25 Q Okay. And your valuation was prepared for purposes of

1 this motion; isn't that right?

2 A Yes, it was.

3 Q And you understand that the reports that were prepared by
4 Houlihan Lokey were prepared for the client's sole benefit,
5 not for purposes of litigation; is that right?

6 A Well, I'm not sure I understand that. I did not review
7 the engagement letter.

8 Q Okay. But you do understand that they -- because you
9 reviewed a number of monthly reports, you -- withdrawn. You
10 do understand that these reports are prepared monthly for the
11 benefit of Highland; is that right?

12 MS. TOMKOWIAK: Objection. This witness lacks
13 foundation on that.

14 THE COURT: Overruled. He can answer if he knows.

15 THE WITNESS: That's my understanding from the
16 testimony of Mr. Seery.

17 BY MR. MORRIS:

18 Q And in fact, you said that your firm prepares reports
19 similar in nature to the Houlihan reports, right?

20 A Yes.

21 Q And you don't prepare them in the ordinary course of your
22 business for purposes of litigation; is that right?

23 A Can you repeat the question?

24 Q Do you -- do you participate in the preparation of monthly
25 reports on behalf of clients?

1 A No, not in the context of -- of establishing an NAV.

2 Q Okay. I believe you testified that you could use a market
3 approach; there's nothing in the rules or principles of
4 valuation methodology that prohibits the use of a market
5 approach; is that right?

6 A Yes. I testified that a market approach is one of the
7 three primary approaches to value.

8 Q And I think -- I think on one of the slides there were a
9 couple of issues that were raised, and I think you testified
10 or you were asked whether the issues identified were prevalent
11 in each of the Houlihan Lokey reports. Do you remember that?

12 A Yes.

13 Q And that's -- they were prevalent because Houlihan Lokey
14 used consistently the same methodology; is that right?

15 A Yes. They used the same methodology.

16 Q And that's the methodology that you don't think they
17 should use but they think they should use; is that fair?

18 A With respect to the income approach, that's -- that is
19 correct.

20 Q Okay. Have you ever seen anybody publicly criticize
21 Houlihan Lokey for using a market approach as a methodology?

22 A Again, the question -- I think your question is
23 specifically to the use of the market approach within the
24 income approach and calculation of an exit multiple. I have
25 not seen any public statements regarding that topic.

1 Q And in fact, you can't identify any peer-reviewed article
2 or industry publication that specifically says that the Gordon
3 Growth Model is the preferred methodology as opposed to the
4 one employed by Houlihan Lokey; isn't that right?

5 A I can't point you to a peer-reviewed article, but I can
6 tell you from our review of peers what is the prevalent
7 methodology.

8 Q Okay. But nobody's out there writing that; that's your
9 interpretation of the marketplace. Is that fair?

10 A Well, I would say if the marketplace -- there are
11 publications that state how a discounted cash flow analysis is
12 to be performed. There's courses out there that address this.
13 So, --

14 Q Did you ever -- did you ever tell any of your clients who
15 use Houlihan Lokey that they shouldn't do it because Houlihan
16 Lokey uses a flawed methodology?

17 A I've never been asked or had the opportunity to comment on
18 Houlihan's valuation work.

19 Q In the competitive nature, in the competitive field of
20 competing for clients, you never tried to tell you clients,
21 don't use Houlihan, use Grant Thornton, we've got a better
22 method?

23 A I don't run into Houlihan that often in the healthcare
24 industry. I've got too much work myself to -- I find it poor
25 practice to badmouth my competition.

1 Q Good for you. I'm not surprised. Do you think -- do you
2 think Houlihan Lokey artificially manipulated their analysis
3 to come up with a lowball number?

4 A I don't -- I don't know what Houlihan -- I have no idea
5 what Houlihan was thinking with regard to their assumptions in
6 their analysis.

7 Q Did you make any attempt to reach out to anybody at
8 Houlihan to speak to them about their methodologies and the
9 areas that you claim to have identified?

10 A No, I did not contact Houlihan.

11 Q Can you think of -- does Houlihan have a reputation in the
12 industry for undervaluing assets?

13 A I'm not aware of Houlihan's reputation for overvaluing or
14 undervaluing assets.

15 Q So you, in your thirty years of practice, you've never
16 heard anything that causes you to conclude that Houlihan has a
17 reputation for undervaluing assets; is that fair?

18 A That's fair.

19 Q Okay. Can you think of any motivation that Houlihan Lokey
20 would have to undervalue the assets that are reflected in
21 Cornerstone?

22 A No, I'm not aware of Houlihan's motivations.

23 Q Okay. You said that the company was on an upward trend;
24 is that right?

25 A Yes. Specifically, the LTAC business, yes.

1 Q And do you recall yesterday I asked you about the cause of
2 any fluctuation in the value of Cornerstone and you told me
3 that it was the result of market forces and maybe COVID
4 issues?

5 A Yes. The upward trend could be attributed to market
6 forces, including COVID issues.

7 Q Right. Do you remember yesterday I'd asked you whether,
8 since coming to your conclusions, you've gone to your clients
9 and -- or informed your colleagues to try to find a buyer of
10 this grossly-undervalued asset? Remember I asked you about
11 that?

12 A Yes. I recall the question very well.

13 Q And you hadn't done so, right?

14 A I think it would be against our ethical guidelines, so I
15 have not done that.

16 Q Have you made any attempt to confer with either the
17 Redeemer Committee or the Debtor to see if you could, you
18 know, maybe Grant Thornton could act as a broker to, you know,
19 use their valuation report to sell this asset?

20 A No. We are not in the brokerage business.

21 Q Okay.

22 MR. MORRIS: I have no further questions, Your Honor.

23 MS. MASCHERIN: Your Honor, I have just a few
24 questions --

25 THE COURT: Okay.

1 MS. MASCHERIN: -- on cross, if I may.

2 THE COURT: You may. Go ahead, Ms. Mascherin.

3 MS. MASCHERIN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. MASCHERIN:

6 Q Mr. Moentmann, am I correct that the earliest numbers that
7 you've referred to in the two different value estimates that
8 you gave on your last slide, the earliest of those dates was
9 June 30th of 2020? Is that correct?

10 A Yes, that is correct.

11 Q And that was based upon your review of Houlihan Lokey
12 valuation reports dated as -- for -- for the date as June
13 30th, 2020, correct?

14 A Yes. It was their reports as of that same date.

15 Q And would you agree, sir, based on your experience in
16 performing valuations, that that likely indicates a valuation
17 report that was prepared sometime after June 30th of 2020, so
18 as to take into consideration the company's performance during
19 the month of June?

20 A Yes, I would agree.

21 Q And do you have any idea, sir, when it was that either the
22 Crusader Fund or Highland Capital Management received
23 valuation reports for the Cornerstone asset valued as of June
24 30th of 2020?

25 A I don't recall specifically. I thought it was in -- in

1 July. It ought to have been subsequent to the June 30 date.

2 Q And you heard Mr. Seery testify this morning that the
3 negotiations that led to the compromised setoff for the value
4 of the Cornerstone asset took place in the March/April/May
5 time frame? Did you hear that testimony?

6 A Yes.

7 Q Now, in your report, sir, your declaration, and in your
8 testimony today, you made reference to certain different
9 reports that were prepared by Houlihan Lokey for different
10 clients. Do you recall that testimony, sir?

11 A Yes.

12 Q And what you meant by that is that, on the one hand, a
13 team from Houlihan Lokey does regular valuation reports under
14 contract for the Debtor, valuing the 50 -- approximately 58
15 percent or so interest that the Debtor owns or manages in
16 Cornerstone; is that correct?

17 A Yes.

18 Q And would you agree that the Debtor and its managed fund,
19 Restoration Capital Partners, together own the majority
20 interest of the shares in Cornerstone?

21 A Yes. I believe I even pointed that out in my declaration,
22 yes.

23 Q Right. And Crusader, on the other hand, owns something in
24 the low forty percents of the shares of Cornerstone, correct?

25 A Correct.

1 Q And would you agree, sir, that the -- based upon the
2 documents you've seen, the Crusader Fund's manager, Alvarez &
3 Marsal, contracts as well with a team from Houlihan Lokey to
4 value Cornerstone's interest in the Crusader -- or, in the
5 Cornerstone asset?

6 A Could you -- could you repeat the question?

7 Q Sure. You've seen documents that lead you to know, sir,
8 that Crusader likewise uses Houlihan Lokey to value Crusader's
9 low forty percent share of the Cornerstone asset, correct?

10 A Yes.

11 Q And you would agree that Cornerstone -- or, that
12 Crusader's interest in Cornerstone is a minority position?

13 A Yes.

14 Q And you would agree that the Houlihan Lokey valuations
15 that are provided to Crusader value Crusader's interest in
16 Cornerstone on a non-marketable minority interest basis,
17 correct?

18 A That's right.

19 Q And wouldn't you expect, sir, based upon your experience,
20 that there would be a difference in the value of -- in the
21 fair value estimate for a minority position in a privately-
22 traded company as compared to an estimate of value of a
23 majority interest in that same company?

24 A Generally speaking, yes.

25 MS. MASCHERIN: No further questions, Your Honor.

1 THE COURT: All right. Redirect?

2 MS. TOMKOWIAK: Yes.

3 THE COURT: Okay.

4 MS. TOMKOWIAK: I just have one, one question.

5 REDIRECT EXAMINATION

6 BY MS. TOMKOWIAK:

7 Q Sir, even setting aside your opinion regarding the errors
8 and the flawed methodologies in the Houlihan reports, is it
9 fair to say that, just looking at the most recent valuation
10 that you were provided, in your opinion is \$30.5 million
11 within any reasonable range of valuation for Crusader's share
12 of Cornerstone?

13 MR. MORRIS: Objection to the form of the question.

14 THE COURT: Overruled.

15 THE WITNESS: No.

16 BY MS. TOMKOWIAK:

17 Q So, your answer?

18 A Yes. My response was no. Again, based on our analysis
19 and the valuation range that was presented, we don't -- I
20 don't believe it would be reasonable.

21 Q Okay.

22 MS. TOMKOWIAK: I have no further questions.

23 THE COURT: Any recross on that --

24 MR. MORRIS: Nothing, Your Honor.

25 THE COURT: -- question?

1 MR. MORRIS: Nothing, Your Honor.

2 THE COURT: I have one follow-up question.

3 EXAMINATION BY THE COURT

4 THE COURT: I tend to think, and maybe I'm being
5 affected by certain healthcare Chapter 11s I've had in recent
6 months, but is it a tough time to value a healthcare business
7 like Cornerstone in 2020, with COVID? Are there challenges,
8 or am I making something up here?

9 THE WITNESS: I'd say it depends on the segment
10 within the healthcare industry. Some segments are of benefit.
11 I recently called three or four public companies in the
12 healthcare industry on behalf of a client that was selling
13 with -- a business within -- a segment of those within the
14 healthcare industry, and found all four public companies to be
15 highly interested and still very active in their acquisition
16 process.

17 THE COURT: Okay.

18 THE WITNESS: But I am aware there are some companies
19 that have been impacted. And that's -- that's the appearance
20 people --

21 THE COURT: Okay. Well, and maybe I asked it in too
22 general a way. I mean, the understanding I have of
23 Cornerstone is there's the long-term acute care business,
24 which you said is on an upward track, but then we have senior
25 living facilities as another big segment. So, focusing not

1 generally but more on private company in these segments in
2 healthcare, are there challenges with a company like this,
3 valuing it in a post-COVID/still under COVID times?

4 THE WITNESS: I think this is a segment with the
5 healthcare industry that -- where that challenge does not
6 exist. They're well-positioned for what's happening to the
7 population demographically within the United States. I think
8 the performance of the company during this time period is
9 reflective of the ability to continue to perform well and make
10 the evaluation process easier, if you will, or less -- less
11 impacted as compared to some of the other healthcare industry
12 peers.

13 THE COURT: So your answer is no, you don't think
14 there's any challenge valuing Cornerstone right now because of
15 the pandemic?

16 THE WITNESS: That's correct.

17 THE COURT: Okay. How big a segment of its revenue
18 is the senior care segment?

19 THE WITNESS: From a valuation perspective, on an
20 enterprise level, I believe it accounted for 10 to 20 percent
21 --

22 THE COURT: Okay.

23 THE WITNESS: -- of the aggregate enterprise value.

24 THE COURT: Okay.

25 THE WITNESS: That's including all the real estate.

1 Yes.

2 THE COURT: Okay. All right. Thank you.

3 I always give the lawyers a chance, if they want to ask
4 any follow-up questions, only based on the Court's question, I
5 think that's fair. So, anyone feel the need to ask a follow-
6 up question based on my questions?

7 MR. MORRIS: Just one, Your Honor.

8 THE COURT: Okay.

9 RECCROSS EXAMINATION

10 BY MR. MORRIS:

11 Q And that is, talking about COVID, does your valuation
12 assume that Cornerstone has received cash from the government
13 that is forgivable?

14 A We presented our value in a range to reflect that the cash
15 that was received, the \$30 million that I referenced, could be
16 completely repayable or could be completely forgivable. We
17 weren't privy to information with regard to the forgiveness of
18 that liability.

19 Q Okay. But that, that liability and that influx of cash is
20 something that is unique to the COVID period. Is that fair?

21 A It's -- it's fair. The cash is, or was, at least in the
22 -- in the company, although, as mentioned earlier, so is the
23 liability. So, on the one hand, it's neutral. I received \$30
24 million of cash; I have a liability for \$30 million --

25 Q Certainly --

1 A -- (overspoken).

2 Q Certainly helps cash flow, doesn't it?

3 A Yes. And that's why I made the statement about -- it does
4 help liquidity, yeah.

5 MR. MORRIS: Okay. No further questions, Your Honor.

6 THE COURT: All right. Either Ms. Mascherin or
7 Tomkowiak?

8 All right. Well, thank you, Mr. Moentmann. We appreciate
9 your testimony.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Ms. Tomkowiak, do you have
12 any other evidence?

13 MS. TOMKOWIAK: I don't have any other witnesses,
14 Your Honor. Give me one moment, Your Honor, to confer with my
15 colleagues.

16 THE COURT: Okay.

17 (Pause.)

18 MR. CLUBOK: Your Honor, I don't know if this is
19 particularly out of order, but I'm going to just ask Your
20 Honor if we may also proffer. There were two Houlihan Lokey
21 valuations that were prepared for Redeemer and also a
22 presentation that was produced to us by Redeemer, all of those
23 excluded by your order this morning. We just would like to be
24 able to offer them under the same terms that we offered the
25 Houlihan valuations for -- that were prepared for Highland.

1 We'll put them under seal and just proffer them for the
2 record. We think the collection of all that shows a very
3 different story than what Mr. Seery described. But we would
4 get that for the time being, yes, Your Honor, as to avoid
5 that.

6 THE COURT: All right. So, just to be clear, you've
7 offered those and I have declined to admit those for reasons
8 I've stated earlier today. But you can put them in the record
9 as an offer of proof under seal, so that if there's any appeal
10 the higher court can see what it was that I refused to allow.
11 Okay? So you're going to have to get with the courtroom
12 deputy later and submit those under seal to be kept in the
13 record in case there's an appeal, okay?

14 MR. CLUBOK: Thank you, Your Honor.

15 THE COURT: All right. Any other evidence from UBS,
16 then? I think that's it, right?

17 MR. MORRIS: Your Honor, I would just -- I'd just ask
18 that it change sides to (garbled). In fairness (garbled), put
19 them all in, rather than being selective.

20 THE COURT: Okay. So you're saying that if -- you
21 want all --

22 MR. MORRIS: Otherwise (inaudible) better.

23 THE COURT: -- all of the Houlihan -- all of the
24 Houlihan reports should go in as part of the offer for proof?
25 Because your argument is if some of them were allowed in and

1 it was error, then all of them should go in. Is that your
2 point?

3 MR. MORRIS: Correct.

4 THE COURT: Okay.

5 MR. MORRIS: Correct.

6 THE COURT: So I don't know how far you mean to go
7 back in the past.

8 MR. MORRIS: Sure. Just to be very specific, from
9 March, I think, until August is the last one that has been
10 prepared by Houlihan, and it's been provided to UBS.

11 THE COURT: All right. So, Mr. Clubok, that is what
12 you're going to submit to the courtroom deputy to be your
13 offer of proof on this, March through August.

14 MR. CLUBOK: And first, Your Honor, that's fine, Your
15 Honor, with also the clear intention by doing that it reflects
16 that information, then -- and since -- now, since Mr. Morris
17 added that, then I'd (inaudible) there's also some sealed
18 testimony of Mr. Seery during his deposition that I didn't get
19 into because it was all, I thought, excluded under the same
20 rubric. And so the point-counterpoint, if Mr. Morris has an
21 offer of proof, that's fine, but if we just pull the whole
22 record in, the whole line, everything we got into, we could
23 put it in as an offer of proof and combine the information Mr.
24 Morris said and then the deposition testimony of Mr. Seery's
25 deposition. I would have explored all of this had I been

1 allowed to get into it. We make that as an offer of proof.

2 THE COURT: Okay.

3 MR. MORRIS: Your Honor?

4 THE COURT: I'm very confused.

5 MR. MORRIS: Yeah, the Debtor -- this is -- this is
6 -- they offered the reports, Your Honor made the ruling, and
7 they're doing this because they actually made an offer of
8 proof. They actually sought to introduce this into evidence.
9 They had Mr. Seery on the stand. They could have done the
10 exact same thing. They can't clean it up now.

11 THE COURT: Agree.

12 MR. CLUBOK: We -- hold on a second.

13 THE COURT: I sustain that objection.

14 MR. CLUBOK: Your Honor, if I can just respond here.

15 THE COURT: I sustain that objection, okay?

16 All right. Anything else?

17 All right. Anything in rebuttal, Mr. Morris?

18 MR. MORRIS: No, Your Honor.

19 THE COURT: All right. I'll hear closing arguments.

20 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

21 MR. MORRIS: Your Honor, I do want to keep this
22 relatively brief because I think the Debtor was easily -- are
23 you hearing background?

24 THE COURT: We're hearing a little bit of background.

25 Is that -- was that on Mr. Morris's end?

1 THE CLERK: Yes, because he's moving around.

2 THE COURT: Okay. I think it was just because you
3 were moving around, according to the court reporter. So,
4 anyway, but --

5 MR. MORRIS: I apologize.

6 THE COURT: -- I'm timing. Let's keep it within --

7 MR. MORRIS: It's five minutes.

8 THE COURT: -- you know, five to ten minutes per
9 argument, okay? You may proceed.

10 MR. MORRIS: Yeah. Thank you very much, Your Honor.
11 I think this is a very, very simple case under the standards
12 of 9019, a standard the Court is quite familiar with. And I
13 don't think there's any dispute between or among the parties
14 is focusing on the terms of the compromise, determining the
15 probability of success in litigation, the complexity and
16 likely duration of the litigation, other factors that courts
17 in the Fifth Circuit have interpreted to mean the paramount
18 interests of creditors, with proper deference to their
19 reasonable views, and the extent to which the settlement is
20 truly the product of arm's-length bargaining and not fraud or
21 collusion.

22 I'll take the last point first, Your Honor, because it's
23 just so simple. There's absolutely compelling evidence that
24 this settlement was the product of lengthy negotiations
25 between counsel, between principals, between counsel and

1 principals. You've heard Mr. Seery testify quite credibly
2 that there was a lot of back and forth. And obviously, there
3 is no evidence of fraud and collusion. So I think we get a
4 hundred percent on that prong of the ledger.

5 With respect to the paramount interests of creditors, Your
6 Honor, as the evidence shows, the Debtor, in choosing to
7 exercise its judgment to enter into this settlement, will be
8 ending litigation, I think, in five different courts in three
9 different countries, litigation that has cost the estate an
10 enormous amount of money, and they're doing so on terms that
11 are really fair and reasonable. And that is the standard,
12 Your Honor. It is not, is the Debtor maximizing value? While
13 you always hope to do so, that's really difficult when you're
14 in a 9019 motion. I've never heard of a movant either have
15 the burden or even suggest that somehow they're entering into
16 a compromise that maximizes value.

17 We've heard from the one witness that UBS offered. I --
18 there's no reason to challenge his qualifications. I'm sure
19 that he's a perfectly able professional. But I think the
20 Court should take into account the context in which he
21 prepared his analysis. That analysis was prepared in a mere
22 20 or 30 hours. It was prepared solely for purposes of this
23 litigation. And to his credit, the witness testified
24 unambiguously that his own clients rely on Houlihan Lokey.
25 There's nothing -- fraud in the methodology that Houlihan

1 Lokey employs. And the ultimate question is that he has no
2 reason to believe that it was unreasonable for the Debtor to
3 rely on the Houlihan Lokey report.

4 The evidence also showed, Your Honor, though, that the
5 Houlihan Lokey report was not the only data point that Mr.
6 Seery considered. He testified unambiguously and unchallenged
7 that he also communicated with Cornerstone's management, with
8 Cornerstone's board of directors, that he gets regular updates
9 about the financial condition and the performance of the
10 business, and that he specifically used that information to
11 validate the (garbled) further negotiation on this (echoing).

12 With respect to the reasonable deference of creditors,
13 Your Honor -- I don't know if somebody's -- can put their
14 phone on mute.

15 With respect to the reasonable deference of creditors,
16 Your Honor, there's only one creditor here who is challenging
17 the Debtor's motion, and not surprisingly, that creditor, UBS,
18 has had a very longstanding dispute itself with -- with the
19 Redeemer Committee. And I think it would be fair if the Court
20 took that into account in terms of litigation and perhaps
21 prejudice and bias.

22 The likelihood of success, I think, goes to UBS's argument
23 that the Debtor really should walk away from this deal and go
24 back to Chancery Court to relitigate the issues that the panel
25 has already decided with respect to whether the procedural

1 issues and the rendering of the award were proper.

2 You know, we've had a chance to analyze. Mr. Seery
3 actually, I think, described in some detail how the panel came
4 about, about its decision. I think he testified quite clearly
5 that Highland would be a particularly unsympathetic litigant
6 in the Chancery Court, having voluntarily participated in
7 arbitration for years, an arbitration pursuant to which the
8 parties engaged in substantial discovery.

9 Your Honor has the evidentiary -- not the evidentiary
10 record, but Your Honor has the very extraordinarily detailed
11 findings of the panel. Those findings refer to substantial
12 evidence, both documented and testimonial evidence. The
13 findings made severe credibility findings, a lot of which,
14 quite frankly, are not flattering to the Debtor. And Mr.
15 Seery specifically testified that he took all of that into
16 account in assessing the probability or the likelihood of
17 success of going back to Chancery Court and prevailing.

18 With respect to the compromise that was made on the
19 deferred fees, in all honesty, Your Honor, I don't see how
20 that can be challenged on any rational basis. If you followed
21 UBS's path, we would have, in the first instance, another
22 litigation over setoff. And once that litigation was
23 resolved, whether it's hundred-cent dollars or bankruptcy
24 dollars, the Debtor would have to return that to Redeemer
25 Committee and then wait until this bankruptcy is over before

1 it can even ask for the deferred fee.

2 You've heard very, very clear, unambiguous testimony,
3 unchallenged testimony, from Mr. Seery that when they finally
4 do get around to making that request, they're going to be
5 involved in another litigation. Why? Because during the
6 negotiations, the Redeemer Committee made it crystal clear
7 that it was relying on the Faithless Servant defense. Is it
8 one that is, you know, common? It's not common, but it has
9 been used successfully. And the fear that Mr. Seery
10 specifically described is that the findings in the arbitration
11 award might give credence to the Faithless Servant defense.
12 And having gone through the setoff litigation, having paid the
13 money, having waited the time, having spent the cost to
14 litigate the issue again, they might lose. And I think if
15 Your Honor reads the partial final award, you may come to the
16 same conclusion.

17 Whether you do or you don't, Your Honor, the point is that
18 the evidence is crystal clear that there is a very strong
19 foundational evidentiary basis for the Debtor's decision to
20 enter into this award, and there's no question that it meets
21 the standard of 9019.

22 Again, Your Honor, we would remind the Court, not that I
23 need to, but that the test here isn't maximization of value.
24 It's not getting the most that you possibly can. It's taking
25 everything into account. Is this in the best interest of the

1 estate? And I do not think this is a close call.

2 Unless Your Honor has any questions, I have nothing
3 further.

4 THE COURT: I did have one follow-up question on the
5 deferred fee compromise. I'm wondering if you could generally
6 quantify: Assuming a hundred percent success for UBS, I'm
7 trying to figure out how big a discount the 20 percent -- I
8 mean, the \$20 million number was. Because I understand \$32
9 million is what Highland paid itself early. But then I
10 understand the component, the award component of the \$190
11 million arbitration award, it was \$43.105 million because of,
12 I guess, interest, calculating interest from the date they
13 paid themselves the \$32 million until the time of the award.
14 Right? And the award, was it March of 2018 or September 2018?

15 MR. MORRIS: The partial final award was March.

16 THE COURT: Yes.

17 MR. MORRIS: The final award was May.

18 THE COURT: Okay. So I assume, then, we keep
19 calculating interest post --

20 MR. MORRIS: Until the petition date.

21 THE COURT: Until the petition date.

22 MR. MORRIS: Yeah.

23 THE COURT: So we're at -- and it was a high interest
24 rate, right? Nine percent? High these days, right? Nine
25 percent?

1 MR. MORRIS: Well, just to be clear, Your Honor,
2 you're absolutely right, you have a great memory, it is nine
3 percent. But that's statutory interest in New York.

4 THE COURT: Right.

5 MR. MORRIS: Those of us who live in New York always
6 call it the absolute best investment you could make if you
7 actually have a liquid defendant. I mean, nine percent
8 guaranteed.

9 THE COURT: I'd rather have that --

10 MR. MORRIS: No doubt --

11 THE COURT: I'd rather have that than my mutual fund
12 right now. So, --

13 MR. MORRIS: Yeah.

14 THE COURT: So we're talking close to \$50 million.

15 But that's not even the whole story, right? Because they,
16 they'll get it -- not only would they maybe never have to pay
17 it back because of this Faithless Servant award, but even if
18 they did have to pay it back, it wouldn't be until the
19 Crusader Fund was liquidated, --

20 MR. MORRIS: Correct.

21 THE COURT: -- and litigation?

22 MR. MORRIS: Which can't happen until this -- which
23 can't happen until this case is completed, --

24 THE COURT: So, --

25 MR. MORRIS: -- which means the estate claims that

1 are going to be prosecuted by the UCC and any of its
2 successors against Mr. Dondero and his affiliates, all of that
3 has to play out. And UBS, more than anybody in this
4 courtroom, should know how long it takes to litigate with Mr.
5 Dondero. Maybe he'll have a change of heart. Maybe something
6 different will happen. But based on prior experience, I don't
7 think this Court or anybody should make any assumptions as to
8 this case being ended quickly.

9 THE COURT: Okay.

10 MR. MORRIS: Just based on history.

11 THE COURT: All right. Thank you. I'll go to
12 friendly parties next.

13 Ms. Mascherin, anything you wanted to say as far as
14 closing argument?

15 MS. MASCHERIN: Yes, Your Honor. Thank you.

16 CLOSING ARGUMENT ON BEHALF OF THE REDEEMER COMMITTEE

17 MS. MASCHERIN: First of all, with regard to the
18 deferred fees, I think Your Honor has already made all the
19 points that I would have made had I argued that. Suffice it
20 to say that I think any reasonable person would conclude that
21 it is a reasonable compromise for the Debtor to retain two-
22 thirds of the \$32.3 million that the Debtor, as the panel
23 found, as Mr. Seery testified, helped itself to in early 2016.
24 That amount -- there's no assurance that that amount would
25 ever come back to the estate upon complete liquidation of the

1 Fund, and the Redeemer Committee at least is quite confident
2 that, whether or not a settlement here, the factual findings
3 that were made in that arbitration certainly were replete with
4 findings of breaches of fiduciary duty, of willful misconduct,
5 and of other misconduct which would provide a firm basis for
6 showing that Highland was, in fact, a faithless servant.

7 I would submit that's why the Redeemer Committee fired
8 them as manager of the Fund when it -- when the Committee
9 learned that they had taken the \$32.3 million without the
10 right to take it.

11 With regard to the likelihood of success assessment, Your
12 Honor, I would submit that the record is likewise clear. The
13 only issue that UBS raises with regard to the litigation, the
14 compromise of the litigation, has to do with two procedural
15 challenges that the Debtor had raised when -- in the
16 proceedings to confirm the award in Delaware. As Your Honor
17 knows, arbitration awards under the Federal Arbitration Act
18 are pretty close to sacrosanct. The grounds on which an
19 arbitration award can be challenged are quite limited.

20 The two procedural arguments that the Debtor made, one
21 having to do with whether pre-judgment interest should
22 continue to run after the date of partial final award, and the
23 other dealing with the relief that the panel, as Mr. Seery
24 testified, inadvertently omitted due to a scrivener's error
25 with respect to what was referred to in the arbitration as the

1 Barclay's claim, both of those procedural issues were raised
2 by the Debtor and were ruled upon by the arbitration panel.
3 And the panel found that it -- that because its first award
4 was specifically denominated as a partial award and not a
5 final award, that the panel had jurisdiction to award
6 additional pre-judgment interest for the small period between
7 March and May, which is all that was at issue with respect to
8 that disputed pre-judgment interest amount.

9 And likewise, the panel found that it had the power under
10 the AAA rules to correct the scrivener's error, the clerical
11 error that resulted in the omission -- the inadvertent
12 omission from the partial final award of the damages amount
13 that the panel was awarding for the finding it made in the
14 partial final award that Highland Capital Management had taken
15 -- had improperly taken for its own account any of the
16 partnership's interest that had belonged to Barclay's, and
17 Highland had done that despite the Committee's express
18 disapproval of the terms of a settlement with Barclay's.

19 Importantly, Your Honor, the AAA rules specifically
20 allocate to the panel the jurisdiction to interpret the AAA
21 rules. And the Fifth Circuit has held that in circumstances
22 like this, where the applicable arbitration awards -- or
23 arbitration rules give the arbitrator the jurisdiction to
24 interpret the rules, the arbitrator's findings bind the
25 parties to the arbitrator's interpretation, so long as it is

1 within reasonable limits, even where reasonable judges and
2 arbitrators could interpret the AAA rules differently.

3 That's coming from the *Communication Workers of America, AFL-*
4 *CIO v. Southwestern Bell Telephone Company* case, 953 F.3d 822,
5 a Fifth Circuit decision from this year, 2020, Your Honor.

6 And that's cited in our -- in the Debtor's motion to approve
7 the settlement.

8 So I think it certainly is the case that the Debtor made a
9 reasonable assessment that it would be unlikely to succeed if
10 it continued to prosecute in Delaware that motion to vacate
11 those two small parts of the arbitration award.

12 Finally, Your Honor, with regard to the Cornerstone asset,
13 let me review what the current state of facts is with regard
14 to that asset. And I feel that I must need to -- I must do
15 this this because Ms. Tomkowiak, if I said that correctly, Ms.
16 Tomkowiak suggested a couple of times that the Cornerstone
17 asset somehow is an asset of the Debtor's estate. She made
18 reference to the Debtor forfeiting the Cornerstone asset or
19 giving up the Cornerstone asset. That is, simply put, Your
20 Honor, a fallacy.

21 As things stand right now, the Crusader Fund owns
22 approximately 42 percent of the shares of Cornerstone. The
23 Debtor and its managed fund, Restoration Capital Partners,
24 owns the rest. The panel ordered the Debtor, as part of its
25 award, to pay the Crusader Fund \$48 million in principal plus

1 approximately \$24 million in pre-judgment interest on that
2 amount, for a total of \$72 million. And the award
3 specifically provides that, upon payment of that amount to the
4 Crusader Fund, the Crusader Fund should transfer its 42
5 percent interest in Cornerstone to the Debtor.

6 Your Honor, it is undisputed that the Debtor doesn't have
7 \$72 million to pay to purchase those shares. We heard Mr.
8 Seery today testify that the Debtor doesn't want to acquire
9 those shares. The Debtor is in liquidation. So what the
10 parties did here was reach a compromise.

11 In addition to the substantial offset of the arbitration
12 award relating to the two-thirds of the deferred fees that I
13 already spoke about, the parties also agreed to offset a
14 negotiated amount for a fair market value of Crusader's
15 minority 42 percent shares in Cornerstone as of the time of
16 the negotiations, as Mr. Seery testified, in the spring, late
17 spring of 2020. That offset that the parties agreed to as a
18 compromise was \$30.5 million.

19 Now, to be clear, Crusader and the Redeemer Committee
20 would have the right not to enter into any settlement and to
21 ask Your Honor to confirm the arbitration award or to go back
22 to Delaware and seek to lift the stay to have the award
23 confirmed there. And if we did that, then we would continue
24 to hold a claim for seventy -- you know, a portion of which
25 \$72 million would be for, for sale of that -- of those

1 Cornerstone shares to the Debtor.

2 But Your Honor, that's a fantasy. We much prefer to enter
3 into a settlement here. We think that the -- I would submit
4 that the compromise that my clients and the Debtor reached to
5 allow the Debtor not to have to purchase those shares, to
6 allow for what the parties agreed to as a reasonable offset to
7 the claim amount to account for the fact that the Debtor will
8 not be purchasing their shares, is eminently fair. And it's
9 of great value to the estate. The estate doesn't have to pay
10 to buy those shares and the Debtor gets, in addition, the
11 benefit of the Redeemer Committee and the Crusader Fund
12 agreeing to compromise to try to monetize its minority
13 position in Cornerstone, along with the majority position
14 that's held by Highland Capital Management and its managed
15 fund, Restoration Capital Partners.

16 And as Mr. Seery testified, there are -- Restoration
17 Capital Partners is majority-owned by a number of independent
18 investors. They're entitled to the best value for their
19 shares in Cornerstone. My clients are entitled to the best
20 value for its shares in Cornerstone. And Highland is entitled
21 to the best value for the shares it owns in Cornerstone. And
22 that value can only be maximized, Your Honor, if the company
23 is available to be monetized as a whole.

24 So I would submit, Your Honor, the compromise is eminently
25 reasonable. The Debtor, I believe, has met its burden of,

1 under the applicable Fifth Circuit case law, of demonstrating
2 that the compromise is reasonable and is fair to the estate
3 and to the creditors of the estate. And we would ask that
4 Your Honor approve the settlement. Thank you.

5 THE COURT: Thank you. Ms. Tomkowiak, you're next.

6 MS. TOMKOWIAK: Thank you, Your Honor.

7 CLOSING ARGUMENT ON BEHALF OF UBS SECURITIES, LLC

8 MS. TOMKOWIAK: I'll try to keep (garbled) I'm
9 responding to two.

10 Your Honor, the -- this settlement is not fair, equitable,
11 or (garbled). We don't think it's a close call, either.
12 Whether you look at each component or you evaluate it as a
13 whole, as Mr. Seery purports to do, we think that the Debtor
14 did in fact roll over. The bottom line there is that the
15 compromises made by the Debtor result in Redeemer getting more
16 than a hundred percent recovery on their claim, in real
17 hundred-dollars, even using the very lowest possible value
18 that anybody has calculated for Crusader's Cornerstone shares,
19 as the Debtor did.

20 It's the Debtor's burden to show that it exercised
21 business judgment here within a range of reasonableness. They
22 haven't submitted any evidence to meet that burden or to allow
23 this Court to conduct the independent analysis that it's
24 supposed to do before approving this deal.

25 Again, the analysis of problems with it -- including with

1 respect to the way that the parties have allocated litigation
2 risk, giving a lot of value to claims which have not even
3 begun to be litigated and giving zero value to claims which,
4 in fact, are at the very late stages of litigation in Delaware
5 and could be dealt with in short order.

6 But the biggest problem, again, with the settlement is
7 that instead of the estate getting a meaningful asset that
8 could be worth up to \$80 million, Redeemer effectively gets to
9 keep it and -- for \$30 million.

10 We believe that the Debtor has grossly undervalued those
11 shares. Their fair market value calculation, or whatever they
12 want to call it -- they called it in their motion their fair
13 market value calculation -- is based on the very lowest end of
14 a valuation range prepared by Houlihan Lokey back in the
15 spring, despite the availability of much more recent
16 information.

17 Mr. Seery has provided no basis for using a valuation
18 back in March, and particularly in the midst of the
19 uncertainty caused by the developing pandemic at the time.
20 The testimony was, so that's when we started to negotiate this
21 deal. But the settlement was not finalized until six months
22 later. And so if there was a lot of back and forth, as Mr.
23 Morris just said in his closing, well, I guess that happened,
24 you know, six months ago, when apparently the Debtor has
25 chosen to freeze inexplicably the value of this asset.

1 Again, there is no evidence that that \$30.5 million is
2 fair or within any range of reasonableness. Not only did the
3 Debtor not put in any evidence, it was successful in excluding
4 evidence that went directly to the valuation of this asset.

5 Despite succeeding on that, Mr. Seery did not quibble with
6 my colleague Mr. Clubok's questioning. He agreed with the
7 general proposition that the current value of Cornerstone is
8 higher today than what's been taken account into the
9 settlement.

10 This is a settlement of a, you know, a \$190 million claim,
11 and UBS notes that the Debtor has scores of financial advisors
12 who are being paid tens of millions of dollars every month to
13 analyze claims and assets. We see their fee statements. And
14 not a single one of them, including Houlihan Lokey, anyone at
15 the premier firm of Houlihan Lokey whose names Mr. Seery did
16 not even know, are here to testify today. Or any of the other
17 financial advisors.

18 According to our expert, who is, you know, the only
19 evidence that is before this Court, Mr. Moentmann -- he does
20 this for a living; he values healthcare companies in the real
21 world, unlike Mr. Seery, who does not -- the value assigned to
22 Cornerstone in the settlement falls below any reasonable range
23 of what Cornerstone is worth today or even what it was worth
24 back in June, let alone back in March.

25 And yes, he prepared his opinion for purposes of this

1 litigation, but he's not a professional testifier. This is
2 what he does for a living. He testifies once every couple of
3 years. And he did a valuation analysis exactly like what he
4 would do in the real world for a healthcare company, as he's
5 done for the past 30 years.

6 And when he corrects for the significant flaws in the
7 assumptions used by Houlihan Lokey, the true value of the
8 asset that the Debtor is giving up -- they're giving up the
9 right to receive it. I understand that they don't have it,
10 but they -- the arbitration award explicitly said that they
11 have the right to get it. It is -- it should be theirs. And
12 they're giving up that asset. And according to Mr. Moentmann,
13 when he accounts for all of the significant flaws in the
14 assumptions used, that asset is worth double or triple what
15 the Debtor has assigned to it for settlement purposes.

16 Now, again, Mr. Seery testified today that he expects
17 Redeemer will recover one hundred percent of its allowed \$137
18 million claim in real dollars. I don't -- based on those
19 numbers alone, I don't understand, respectfully, Ms.
20 Mascherin's argument that the Debtor somehow doesn't have the
21 ability to purchase the shares for \$48 million.

22 I also, frankly, don't understand the argument that the
23 value can only be maximized when monetizing this asset as a
24 whole. And to be clear, I understand that argument, but I
25 don't get why that can only happen in a settlement where

1 Redeemer and the Debtor agree to work together to do that, as
2 opposed to the Debtor getting Crusader's portion of the
3 Cornerstone shares, as it was required to, and then working to
4 monetize that asset as a whole.

5 My final few points, Your Honor. I think the value of
6 Cornerstone -- it's been said a lot today that this is not a
7 valuation case, but it matters when you are looking at an
8 asset with potentially a \$50 million swing in the true value
9 of it. That matters in the context of a case where the Debtor
10 has said that they expect to distribute \$195 million to
11 creditors. So giving -- giving up the right to this asset
12 matters. And yes, it hurts the remaining major creditor,
13 which is UBS.

14 Now, Mr. Morris talked about, you know, UBS's motive and
15 our supposed prejudice and bias. And we have no longstanding
16 dispute with the Redeemer Committee. Ironically, it's
17 actually the Debtor and Redeemer who have had their
18 longstanding dispute. But now they've teamed up to object to
19 our claim and to, you know, strike this deal that we believe
20 provides Redeemer with a more than one hundred percent
21 recovery windfall.

22 So, Your Honor, we think the settlement should not be
23 approved, and we only -- don't think it should be approved
24 without holding the Debtor to its burden to provide actual
25 evidence, including evidence of the value of the Cornerstone

1 shares that are forfeited in this settlement.

2 And alternatively, I would just reiterate what I said in
3 my opening, that if you are inclined to approve the settlement
4 anyways, in the event that a sale of Cornerstone does occur in
5 the future and the purchase price is well above the value that
6 that asset has been assigned here, then we request that the
7 Court take the proceeds of that sale into consideration at the
8 time of plan confirmation when the distributions are to be
9 made. And it should -- the outcome of that sale should be
10 taken into account when calculating Redeemer's recovery.

11 THE COURT: Okay.

12 MS. TOMKOWIAK: Thank you, Your Honor.

13 THE COURT: Thank you.

14 Well, I thank you all for your hard work in the pleadings
15 as well as the presentations here today. I assure you that
16 we've read the paperwork very carefully and considered all
17 your evidence carefully today.

18 As we know, with regard to this motion to approve
19 compromise of controversy, the Court is guided by Bankruptcy
20 Rule 9019. And that rule does not say a heck of a lot, but
21 we've got lots of jurisprudence to guide the Court. Cases
22 such as the *AWECO* case, the *Jackson Brewing* case, the *TMT*
23 *Trailer Ferry* case, *Cajun Electric*, *Foster Mortgage*, all of
24 these were cited in the papers. And the legal standards that
25 those cases instruct this Court to use are the Court has to

1 evaluate whether the compromise and settlement is fair and
2 equitable and in the best interest of creditors when
3 considering three things: One, the probability of success on
4 the merits in future litigation, with due consideration for
5 uncertainty of law and fact; two, the complexity and likely
6 duration of litigation and any attendant inconvenience and
7 delay; and three, all other factors bearing on the wisdom of
8 the compromise.

9 The Court is also supposed to consider the paramount
10 interests of the creditors.

11 So I will back up and find that we have had all required
12 notice of this motion. And when applying those legal
13 standards I just outlined, the Court finds that this
14 settlement is eminently reasonable, fair and equitable, in the
15 best interest of creditors, and so therefore I am approving
16 it.

17 I will note a couple of pieces of evidence, or more than a
18 couple, a few pieces of evidence that were especially
19 persuasive to me. First, I will say that Mr. Seery's
20 testimony was very credible to me. And I do believe that he
21 did not consider this a laydown by any means, and I don't
22 think it was by any means. The facts are that this settles
23 many, many years of litigation, as someone said, in five
24 different fora, in three different countries. And there was a
25 nine-day trial in front of a very respected arbitration panel.

1 And I agree with the verbiage of Ms. Mascherin that the
2 arbitration award is very much sacrosanct. This isn't a
3 situation where, you know, if I lifted the stay and allowed
4 things to go forward in the Delaware Court to see if they
5 would confirm the arbitration award, it's not a situation
6 where there would be a heck of a lot of arguments the Debtor
7 could make to refute the \$190 million award or knock it down
8 very much. Things like fraud, misconduct, a very narrow set
9 of circumstances would have to be demonstrated. It certainly
10 wouldn't sit in the shoes of an appellate court.

11 So I think that is a very relevant factor that certainly
12 shows the Debtor didn't lay down here. The Debtor's options
13 were narrow with regard to challenging very many aspects of
14 the arbitration award.

15 I believe that Mr. Seery and the board did a lot of due
16 diligence as far as evaluating their options here. I believe
17 that there were good-faith arm's-length negotiations. And
18 specifically, the reductions, if you will, seem extremely
19 reasonable to this Court.

20 With regard to the \$20 million credit on the \$190 million
21 award for the deferred fees, it appears to me the Debtor got a
22 pretty good deal on that one. You know, it looks like to me
23 we really started at a number around \$43 million that would
24 have gone up with time in interest. And there was a strong
25 argument that, once the Debtor paid that back, that there

1 would be no obligation to ever kick in under the Faithful
2 Servant Doctrine for the Redeemer Committee/Crusader to ever
3 have to pay it back again to the Debtor. So I think that \$20
4 million number settled on is a very fair number.

5 With regard to the \$30.5 million number for the
6 Cornerstone credit that has been so contentious today, I
7 respect the arguments, but ultimately it bears emphasizing
8 this was a negotiated amount, not a situation where there was
9 a precise valuation that was even required.

10 And I think it is very significant that we're talking
11 about a minority interest, a 42 percent minority interest that
12 Highland was required to buy back. And one could almost take
13 judicial notice that minority interests in private companies
14 are darn hard to value, and some might say should be
15 discounted.

16 And while I found Mr. Moentmann to certainly be well
17 qualified and explained well his different views, at bottom, I
18 don't find them to be as persuasive as Mr. Seery, in that he
19 has spent two weeks on the assignment and 20 to 30 hours. You
20 know, certainly, I think reasonable minds can differ, but at
21 bottom the \$30.5 million number was within the range of
22 reasonableness for a compromise on this amount.

23 I'll just emphasize further that, with regard to
24 Cornerstone, I felt like the \$30 million CARES Act loan should
25 be regarded as a huge question mark, uncertainty, as far as

1 affected value. The fact that no one knows if it's forgivable
2 or not, well, that's a pretty big deal. And it's just one of
3 many reasons I think there's a big range of possibilities
4 here, so that the number that the Debtor settled on is
5 certainly within the range of reasonableness.

6 All right. So, with that, I approve the compromise and
7 will look to Debtor's counsel to submit a form of order. All
8 right. Thank you again.

9 We now are going to turn to Acis, and let's talk about
10 timing. Mr. Morris, are you the key presenter on this one or
11 is Mr. Demo going to be?

12 MR. MORRIS: No, I will be the presenter on this one,
13 though Mr. Demo will address the Court certainly with respect
14 to two of the legal issues on the Daugherty objection. But
15 otherwise this one is all mine as well.

16 THE COURT: All right. So, shall we roll to
17 extremely brief opening statements? I guess one thing I'll
18 need you to tell me is, do we really have five objections, or
19 do we have two? Have the sort of limited objections been
20 resolved, or no?

21 MR. MORRIS: Your Honor, that is an excellent
22 question. They haven't been resolved consensually, but they
23 ought to be, based on the testimony from Saturday's
24 deposition. And if I can, I'd be happy to just start with
25 that issue first, if you'll just give me a moment.

1 (Pause.)

2 THE COURT: Okay.

3 OPENING STATEMENT ON BEHALF OF THE DEBTOR

4 MR. MORRIS: Okay. Putting aside Mr. Dondero and Mr.

5 Daugherty for the moment, there are three other objections:

6 One by CLO (garbled). That was filed at Docket No. 1177. One

7 by Highland CLO Funding Limited, filed at Docket No. 1191.

8 And one filed by HarbourVest at Docket No. 1195.

9 I believe all three of these objections or responses
10 either objected to or reserved their right to object to one
11 provision of the settlement agreement pursuant to which the
12 Debtor would have the obligation to transfer its rights in an
13 entity called Highland HCF Advisors Limited to Acis if the
14 Debtor had received written advice from nationally-recognized
15 external counsel that it is even permissive -- permissible to
16 make that transfer.

17 That can be found, Your Honor -- the settlement agreement
18 is Exhibit 1 to my declaration, and I believe when I offer
19 that into evidence it'll be Exhibit #3. But that's where the
20 settlement can be found, and this is Paragraph 1(c). And that
21 matter really, from the Debtor's perspective, has been
22 resolved. Mr. Seery testified on Saturday and he will testify
23 again today that the Debtor has obtained the advice of the
24 WilmerHale firm, I believe, and that advice is that it is --
25 they cannot give the comfort that if they transferred that

1 asset that it would be legally permissible and that the Debtor
2 would bear no risk.

3 So, from my perspective, that objection or reservation of
4 rights, depending on the party, should be resolved.

5 There were two other issues, I think, raised. I know it
6 was HarbourVest. I'm not sure who the other one was. But
7 they're both related to whether or not the release applied to
8 them. HarbourVest in particular objected on the ground that
9 the release -- to make sure that the release doesn't release
10 any claims that HarbourVest may have. It does not, Your
11 Honor. I think a plain reading of the release shows that
12 HarbourVest is not implicated.

13 In addition, HCLOF also -- HarbourVest is an investor in
14 HCLOF. And HarbourVest -- HCLOF, rather, Your Honor, is
15 specifically excluded from the release. So HarbourVest is not
16 included, and HCLOF, the entity in which HarbourVest invested,
17 is actually specifically carved out of the release, so that
18 there's no ambiguity.

19 So I think, on that basis, Your Honor, perhaps it would be
20 most efficient to hear from those three particular parties.
21 You know, Mr. Seery will testify, and if you want to take him
22 out of turn and do that now on the issue of the advisors and
23 the advice that he's received, I'd be happy to do that.

24 THE COURT: All right. Well, maybe we should first
25 hear from our objectors.

1 Let me start with HarbourVest. I have misplaced for a
2 minute my appearance. I think it was Ms. Weisgerber. Was it
3 Ms. Weisgerber who was appearing for HarbourVest?

4 MS. WEISGERBER: Yes.

5 THE COURT: Okay.

6 MS. WEISGERBER: Yes, Your Honor.

7 THE COURT: Do you -- have you heard what you need to
8 hear to withdraw your limited objection, or no?

9 MS. WEISGERBER: Your Honor, I think we're -- we're
10 pleased to hear those updates from the Debtor. I think, from
11 our perspective, we'd just look to a couple of housekeeping
12 matters regarding documentation of this. Specifically with
13 respect to the release point, in the settlement itself there
14 are certain entities that are explicitly carved out of the
15 release, and we would ask that HarbourVest be included as an
16 explicitly carved-out party, for the avoidance of doubt,
17 whether that appears in the settlement agreement or in the
18 order approving the settlement.

19 So, I'll pause on that, and then I'll just turn to the
20 second issue, to confirm if the Debtors are amenable to that.

21 MR. MORRIS: Well, we don't have the exclusive right
22 in this regard. If you'll give me one moment, I'm going to
23 just confer --

24 (Pause.)

25 MR. MORRIS: -- the Court to the next issue, if you

1 may, while I'm trying to resolve this. Because that is
2 certainly our intent. We never intended HarbourVest to be
3 part of this. And we would have no objection if the Court,
4 either through an order or otherwise, made it clear that
5 HarbourVest is not subject to the release.

6 MS. PATEL: Well, let me chime in. Mr. Morris, if
7 it's me that you're looking to confer with, I'm not sure, or
8 if it's Mr. Seery, but I think I can go ahead and address
9 this.

10 And, Your Honor, just to back up for a quick second on
11 this issue, I wanted to just, of course, remind not only the
12 Court but the other parties of the overall structure here.
13 And as Your Honor may remember, Acis is the portfolio manager
14 for certain CLOs in which Highland CLO Funding owns the --
15 either the majority or all of the equity strip and equity
16 piece.

17 Separate and apart from that, Highland CLO Funding's
18 investors, conversely, are an entity by the name of CLO
19 Holdco, who has filed a limited reservation of rights, solely,
20 frankly, on the HCF Advisor transfer piece. More on that in a
21 minute, if you care to hear it. But, and also HarbourVest.
22 And HarbourVest, just to refresh the Court's recollection and
23 the other parties, was the secret third-party investor that
24 you heard oodles and oodles and oodles of testimony regarding
25 during the Acis bankruptcy case.

1 And then Highland and certain Highland employees'
2 retirement funds own the other remaining two percent equity
3 interest in Highland CLO Funding.

4 So what we're really talking about here, Your Honor, in
5 connection with HarbourVest, is something that is one step
6 removed from even the equity piece. So I just want to be on
7 record as saying, number one, Acis would dispute very hotly
8 that any duties -- and whether any duties are owed to entities
9 such as CLO Holdco or HarbourVest or HCLOF. There is -- it's
10 frankly beyond the scope of the hearing today. And our
11 position is that, certainly as it relates to HarbourVest or
12 CLO Holdco, Acis owes no duties by virtue of its role as
13 portfolio manager to the Acis CLOs.

14 Secondly, Your Honor, let's go to the issue of whether
15 there are even any potential claims. And with respect to
16 that, you know, there's at least, if not by implication, and
17 perhaps not in connection directly with HarbourVest, but
18 others that are objecting, so I'll just go ahead and address
19 the issue now: There are implications of some sort of
20 mismanagement. And I and Acis want to be clear on record as
21 saying those are obviously hotly-disputed issues as well.
22 Your Honor, frankly, those types of implications or claims are
23 unfounded and specious with respect to any mismanagement
24 allegations, and are frankly offensive, given the facts here.
25 Many are based by certain of the objectors and have -- on

1 prior -- testimony provided prior to the confirmation and have
2 been soundly rejected by this Bankruptcy Court.

3 Second, these Acis CLOs, frankly, Your Honor, have
4 performed either as well or better than the broad CLO market
5 since Brigade took over from Highland. And as you may recall,
6 Your Honor, Brigade started behind a \$300 million eight-ball
7 created by former Highland Capital Management leadership. So
8 to argue that there is some form of Acis mismanagement is
9 frankly just jaw-dropping.

10 All of this, Your Honor, is particularly remarkable in
11 light of the fact that these deals are some of the only deals
12 now -- and by deals, I mean, the Acis CLOs -- passed through
13 the investment period. They haven't been reset. Acis has
14 tried to engage in reset discussions, and Your Honor heard
15 about this in the Acis status conference and in the Acis
16 bankruptcy, but I want to make sure it's on the record here:
17 Acis tried to engage in reset discussions with HCLOF -- again,
18 the entity in which HarbourVest, et al. have the investments
19 -- but they've been rebuffed, and in fact have been sued by
20 HCLOF's investor once removed, CLO Holdco, and then ultimately
21 the DAF (phonetic), and been named in all the scorched-earth
22 litigation that HCLOF has brought against Acis and Mr. Terry
23 in this Court and all around the world.

24 So, this allegation that there is some form of
25 mismanagement and that there are claims that need to be

1 reserved, again, I think are angels on the heads of pins.

2 Nevertheless, I think, to the extent it makes somebody
3 feel better to include that language in there, I think
4 HarbourVest's rights -- and I'll be specific to HarbourVest
5 here, since they're the party raising the issue -- to the
6 extent that they are concerned that the release somehow
7 impacts them, to the extent that they flow through HCLOF, I
8 think that they're already covered. But if you want some
9 belt-and-suspenders language that they're not included either,
10 that their rights that flow through HCLOF are also excluded
11 from release, then I suppose that's okay.

12 THE COURT: All right. So, we got the agreement of
13 Acis that, for belts and suspenders, they are agreeable to
14 language in any order approving this settlement, if there
15 should be one, they're agreeable to clarification that
16 HarbourVest claims are not released pursuant to this
17 settlement.

18 So, Mr. Morris, back to you.

19 Mr. Seery, you all would be good with that extra language?

20 MR. MORRIS: Yes, Your Honor.

21 THE COURT: All right. So, with that assurance, Ms.
22 -- I'm sorry, Ms. Weisgerber, you are withdrawing the
23 HarbourVest objection. Is that correct?

24 MS. WEISGERBER: I just wanted to address briefly the
25 other issue regarding the transfer of Highland HCF Advisor and

1 confirm, so it will not go forward, whether it will either be
2 carved out of the settlement agreement or whether the Court
3 will not be approving that transfer as part of the settlement
4 order. Again, just confirm that it's been excepted, it's not
5 going forward, but we just want to be -- it to be confirmed
6 that, with our concerns if later the Debtors got subsequent
7 legal advice and attempted to engage in a transfer. I think,
8 again, we always say belts and suspenders, Your Honor, but,
9 you know, my client has a history here that we'd like to be
10 certain about what we're getting when dealing with all the
11 parties here.

12 THE COURT: Well, Mr. Morris, --

13 MR. MORRIS: Your Honor?

14 THE COURT: -- we heard you say that you didn't get
15 the legal advice you needed and so you aren't going to be
16 transferring direct or indirect interests in HHCF pursuant to
17 the settlement agreement. Is there something you can add to
18 -- I don't know. This is it. There's --

19 MR. MORRIS: Your Honor?

20 THE COURT: Go ahead.

21 MR. MORRIS: If you want to put it in an order,
22 that's fine, but I don't see any reason to go and tinker over
23 language in the settlement agreement. If Your Honor, you'll
24 make a finding based on Mr. Seery's testimony that the Debtor
25 has received advice, and based on that advice, the asset will

1 not be transferred. And that'll be part of the order, it
2 seems to me. We don't need to do this.

3 THE COURT: All right. So, Ms. Patel, you agree?
4 It's not happening?

5 MS. PATEL: That's -- that is correct, Your Honor.
6 We understand that the Debtor attempted to and has otherwise
7 complied with the terms of the settlement agreement. They had
8 -- they did not get that opinion from nationally-recognized
9 counsel. And Acis understands where that ended up.

10 THE COURT: Okay.

11 MS. PATEL: So, no. No problem.

12 THE COURT: All right. So there, there's your
13 answer, Ms. Weisgerber, on both of your points.

14 So I'll move on, I guess, to Highland CLO Funding now.
15 Are you in a position to say if your objections are resolved
16 by these announcements? Ms. Matsumura, are you there?

17 MS. MATSUMURA: Your Honor, my colleague, Mr.
18 Maloney, had joined the call, but perhaps he's having
19 technical difficulties.

20 Our -- based on what's been said here, our reservation or
21 rights has been resolved.

22 Of course, the other issue that we had that I don't think
23 Mr. Morris addressed was the business of the appeal. I don't
24 think we need anything else said on that. We just wanted to
25 note for the record that we don't consent to dismissing our

1 portion of that appeal.

2 THE COURT: Okay. Well, let's turn, then, to Mr.
3 Kane, CLO Holdco. Have you heard what you needed to hear to
4 get comfortable?

5 MR. KANE: Yes, Your Honor. John Kane for CLO
6 Holdco. The discussion about the satisfaction of our concerns
7 on Section 1(c) of the settlement agreement has resolved our
8 concerns.

9 THE COURT: Okay. Very good.

10 All right. So we're down, I guess, to Mr. Dondero and Mr.
11 Daugherty. All right. Mr. Morris, did you want to make
12 anything further as far as an opening statement, or call your
13 witness?

14 MR. MORRIS: Yes. You know what, I'm happy to call
15 the witness, and then I'll reserve my time for closing
16 argument, if Your Honor (garbled).

17 MR. DEMO: Mr. Morris, this is Greg Demo. Just as
18 one more brief item before we do that, certain of the
19 employees are also being released by this agreement. We've
20 had conversations with their counsel. They didn't file a
21 formal reservation, but they asked a few clarifying questions,
22 which I believe that we and Ms. Patel are in agreement with.
23 And so those employees who are being released by the
24 settlement with Acis, we did want to clarify on the record
25 that the release does not affect any of their rights against

1 -- to assert a claim against the estate. Some of these
2 employees have filed proofs of claim. Others may have
3 administrative claims. And the settlement does not affect
4 their rights under those claims.

5 The settlement also does not affect their rights under the
6 -- to vote for or against the plan.

7 And then, finally, if any of those employees are
8 subpoenaed or subject to discovery requests, it does not
9 affect their right to truthfully respond to those.

10 THE COURT: All right. Anyone disagree with that
11 announcement? (No response.) All right.

12 MS. PATEL: Acis confirms, confirms the agreement,
13 Your Honor.

14 THE COURT: Okay. Thank you.

15 All right. So I promised people you will get ample time
16 to do closing arguments, but I think, given how late in the
17 day it is, we need to just go to the evidence. And so, Mr.
18 Morris, you call Mr. Seery?

19 MR. MORRIS: Yes, Your Honor. The Debtor calls James
20 Seery.

21 THE COURT: All right. Mr. Seery, are you there?
22 Can you hear me?

23 MR. SEERY: I am, Your Honor. Can you hear me?

24 THE COURT: We can hear you. We can't see you yet,
25 but if you'll say "Testing 1, 2" it'll pick you up.

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1 MR. SEERY: Testing 1, 2.

2 THE COURT: All right. There you are. All right.

3 Well, I've sworn you in once today. Do you understand you're
4 still under oath?

5 MR. SEERY: I do, Your Honor.

6 THE COURT: All right. You may proceed.

7 MR. MORRIS: All right. Thank you very much, Your
8 Honor.

9 I don't know if anybody else has had the issue, but there
10 were a couple of times when the screen froze for a second or
11 three. So we'll just see how it goes.

12 THE COURT: Okay.

13 JAMES P. SEERY, DEBTOR'S WITNESS, PREVIOUSLY SWORN

14 DIRECT EXAMINATION

15 BY MR. MORRIS:

16 Q Good afternoon, Mr. Seery. We're here on the 9019 motion
17 for Acis. Can you describe for the Court generally the
18 diligence that you and the independent board members did to
19 educate yourself about the claims that the Debtor had against
20 Acis and the claims that Acis had against the Debtor?

21 A Yes. Recognizing that we're making a separate record, I
22 will -- I'll do all the points, but I'll try to do them
23 slightly more quickly, since it's very similar to what I
24 testified with respect to Redeemer.

25 When we were appointed as directors, we initially did a

1 lot of work around various claimants and what claims they had,
2 particularly those who were on the Creditors' Committee. And
3 that necessarily led us to dig into the Acis bankruptcy case
4 and the issues surrounding both Mr. Terry and Acis, of which
5 the Court is very familiar.

6 Starting on the very first day of the case, when -- first
7 day that we were appointed, we actually met with Mr. Terry and
8 his counsel, discussed the issues that they raised with
9 respect to their claims and what they thought were substantial
10 claims coming out of the Acis bankruptcy against the Highland
11 estate.

12 After that, we engaged our counsel to research the claims,
13 to do significant work around the legal issues.

14 Early on, as those -- as that work was going on, Mr. Nelms
15 and I ended up going to a meeting with Mr. Terry and Ms.
16 Patel, extensive debriefing on their claims and challenging a
17 number of the positions that they had. We took that back and
18 did extensive work with the team, which is the team at both
19 Highland, in terms of the underlying factual issues related to
20 the Acis case, as well as the legal issues both from Acis and
21 as were articulated by Ms. Patel and Mr. Terry.

22 When they filed their claim, we dug into that completely
23 and analyzed it both with respect to the legal and factual
24 issues, and had numerous meetings with the board and with
25 counsel with respect to each and every section of the

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1 complaint, as well as the -- how that would dovetail into our
2 case.

3 Q Did you have an opportunity to review any of the Court's
4 decisions in the Acis bankruptcy case?

5 A Yes, we did. We -- I did, and I know that each Mr. Nelms
6 and Mr. Dubel did as well.

7 There were numerous decisions, including the confirmation
8 of orders and the (inaudible) that started, you know, back in
9 the arbitration decision, which we also all read, and then
10 right into the case, into the plan of reorganization, and the
11 specifics with respect to the various transfers that were
12 articulated or laid out in the Acis complaint.

13 Q Did you receive advice and review yourself the advice on
14 issues, on legal issues such as those arising out of the
15 *Mirant* decision, and did you read that case?

16 A I read -- I read *Mirant*. I read all of the cases cited in
17 *Mirant*. I think I read most of its progeny, although it's got
18 a lot of different avenues that courts have taken. I was
19 familiar with the case as an investor because we invested in
20 the *Mirant* debt back in -- when *Mirant* had filed, and so I was
21 familiar and aware of it.

22 I think the issues with respect to *Mirant* are some of the
23 things that I was already familiar with, but we dug in again,
24 and I certainly reread the cases.

25 Q And did the board request and did (inaudible) extensive

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1 analyses, written memorandum covering the issues surrounding
2 the Acis claims?

3 A Like the Redeemer case, the Redeemer issues, we requested
4 memoranda from the Debtor's counsel. Debtor's counsel did
5 extensive work on the issues, both with respect to the Acis
6 case as well as the complaint coming out of the case. We had
7 extensive meetings regarding that memoranda, and then sent
8 counsel back to work harder and to come back, challenging
9 their assumptions and some of their conclusions. So it was --
10 it was an aggressive effort by the team.

11 In addition, we incorporated the Highland team because
12 they had the factual underpinnings. We had our own analysis,
13 but we wanted to see if there was something we were missing to
14 really challenge some of the assumptions that we were making
15 with respect to the claims.

16 Q Thank you.

17 MR. MORRIS: Your Honor, a lot of the factual
18 background is really contained in the Court's own rulings from
19 the Acis case, so we're not going to spend any time on that.
20 I would ask the Court to take judicial notice of its own
21 decisions, including the decisions not of this Court but of
22 the District Court on appeal with respect to the matters that
23 were handled in the Acis bankruptcy.

24 THE COURT: Okay. I'll do that.

25 MR. MORRIS: Is that --

1 THE COURT: I'll do that.

2 MR. MORRIS: Okay. Thank you.

3 BY MR. MORRIS:

4 Q Mr. Seery, during the course of your diligence, did you
5 learn that Acis and the Debtor and related parties were
6 litigating in different forums?

7 A It didn't -- yeah, the answer is yes. We understood that.
8 We also, you know, received copies of litigation, and even
9 from related-party litigation, from my lawyer, Ms. Patel, the
10 lawyer for Mr. Terry, with respect to various litigations,
11 including the Guernsey litigation and litigation initiated in
12 New York. Obviously, the underlying pleadings from the
13 bankruptcy adversary proceeding in Acis that became the basis
14 of the proof of claim in this case.

15 Q And did you learn that there were also proceedings that
16 were pending, or frankly, that were commenced after you were
17 appointed, in the Texas state court system related to certain
18 of Highland's employees?

19 A Yes, and those, those we learned from the employees.
20 Basically, I think coming out of the Acis case and the
21 positions that Mr. Terry had, litigation was initiated against
22 certain employees that we thought was pretty aggressive
23 litigation, frankly. And it was certainly disturbing, even if
24 -- even if one is indemnified as an employee and there is some
25 insurance, it's unsettling to be sued. So it's certainly sent

1 a ripple through the organization.

2 Q And under the proposed settlement that the Debtor has
3 negotiated with Acis and (garbled), is the litigation that
4 you've just described going to end, at least for the Debtor,
5 the employees that signed the releases, and the affiliates
6 that are specifically identified in the release?

7 A Yes. As a management team and a board of directors, but
8 also as a CEO, it's critical to us to try to get as much of
9 this litigation resolved as possible.

10 As the Court is aware, this is some other litigation
11 that's gone on for a really long time. It's multi-front. It
12 involves multiple parties. It has collateral damage like the
13 employees. And we wanted to try to resolve all of that
14 litigation, to the extent that we could. We can't bind this,
15 as the Court heard earlier some of the -- those who had
16 reservation of rights. We can't bind entities that we don't
17 own or control. And if it's an entity that we manage, it
18 would have to be in the best interests of that entity in order
19 for us to bind that entity.

20 So we wanted it to be as full as possible. We wanted it
21 to be -- if we were going to have a settlement, that it had to
22 be obviously fair and beneficial to the estate. And if we
23 weren't, we were going to take a pretty aggressive litigation
24 posture vis-à-vis the claims.

25 Q All right. Let's shift from -- well, before I shift, is

1 there anything that you think the Court wants to hear in
2 regard to the diligence that you and the board did to educate
3 yourself about the nature, scope, and value of the Acis
4 claims, Mr. and Mrs. Terry's claims, and the Debtor's claims
5 against Acis?

6 A I think the one additional factor that we have in this
7 claim as opposed to Redeemer -- because Redeemer, although it
8 wasn't completely done before the mediation, and there were
9 certainly hard negotiations after the mediation started, it
10 was outside of mediation. In addition to all the work that we
11 did leading up to our objection to claim, our initial
12 negotiations with Ms. Patel as counsel for Acis, and then Mr.
13 Terry and his own counsel, we also prepared for the mediation.
14 And that was an incredible amount of work, to really examine
15 our own positions, understanding the failings, the weaknesses,
16 and also the strengths, set up what we thought was the most
17 appropriate way to proceed in a mediation there. We hoped to
18 come out with a settlement, if possible, but knowing
19 (inaudible). So we had an additional step with respect to the
20 Acis claim that we didn't have in the Redeemer.

21 Q Well, let's talk about the period prior to the mediation,
22 because obviously you weren't able to, as in your testimony,
23 you weren't able to reach an agreement prior to that. But can
24 you describe for the Court in general terms how the
25 negotiations went, who took part in the negotiations, so the

1 Court has a good mindset as to the level of arm's length of
2 discussions that took place?

3 A Well, in the pre-mediation negotiations, we, as I said,
4 had had extensive dealings with and among counsel, and the
5 board was kept regularly informed of any of those discussions.
6 In addition, each of the board members -- Mr. Dubel, Mr.
7 Nelms, and myself -- had direct negotiations with Mr. Terry
8 regarding the very specific pieces of his complaint or of the
9 Acis complaint. And those were numerous, and they went on for
10 a considerable amount of time.

11 We initially made settlement offers to Acis and to Mr.
12 Terry, really, around the -- around the crucible of what this
13 -- monetization plan. As I mentioned earlier this morning, we
14 still hoped to have a more grand bargain, and maybe that will
15 get rid of more litigation. As I mentioned further, Mr.
16 Dondero' has made a proposal that I think is -- certainly
17 merits additional work. But we, we set up the plan that is on
18 file that will in front of the Court on Thursday, and it's the
19 alternative plan, but it sets up a crucible that if you are --
20 if we're unable to settle, we're going to litigate claims.
21 And we're still going to be open to settling. I think that --
22 that sort of fostered some early pre-mediation dialogue with
23 Acis and Mr. Terry to set up a possibility that something
24 could get done.

25 Q Is it fair to say that at certain points during these

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1 negotiations frustration set in? Did they -- were they
2 difficult negotiations? Were they -- how would you
3 characterize them?

4 A I would say, to be perfectly fair, and not at all
5 aggrandizing to anybody or flattering, they were arm's length
6 and they were hard negotiations, but they were extremely
7 professional. So I don't think there was, you know, ever any
8 particular difficulty, animus, you know, pre-mediation. The
9 mediation might have gotten a little hot, but at the
10 mediation, we don't want to go into details, but it was very
11 -- it was very professional. It was very arm's-length but it
12 was very professional. It was -- it was slow going.

13 Q I do want to spend just a moment talking about the
14 objection that the Debtor filed to the Acis claim. Do you
15 recall that the Debtor filed an objection to the Acis claim?

16 A Yes.

17 Q Do you recall the arguments? You know, in general, what
18 was the position that the Debtor took with respect to the Acis
19 claim in its objection?

20 A I think our objection had three main components. Number
21 one, and maybe it had good merit, it's legally valid, but some
22 very technical objections. So, we objected to some specific
23 allegations regarding either constructive fraudulent
24 conveyances or fraudulent conveyances, whereas the Acis
25 complaint alleges that the Debtor got them, and some of our

1 objections were things like no, we didn't get them, a
2 subsidiary got it. And so that would be a technical
3 objection, which I think has merit. You know, as an equitable
4 argument, it could certainly be argued that, well, you control
5 that a hundred percent or 99-1/2 percent, so how do you say
6 you didn't get the benefit? So there were those types of
7 issues.

8 Some of them were, I think, what I would call (inaudible),
9 that they were excellent arguments and they would have been
10 very difficult for Acis and Mr. Terry to ever overcome.

11 The other big overriding objection that we had was that we
12 -- we wanted to get around the *Mirant* holding and really lean
13 on the equities of the case. And so our position was that,
14 while -- while Acis and Mr. Terry had gone through a difficult
15 time, they had a plan of reorganization, and ultimately --
16 ultimately, Mr. Terry would receive the full amount of his
17 original arbitration award, less the amount he paid for the
18 equity, and that that should probably be enough from an
19 equitable perspective to satisfy him, as opposed to having
20 claims against our estate. Our estate.

21 And the third, which ties into this, was an interesting
22 Supreme Court case, and it just -- *Punta* -- it'll come back to
23 me. Which was an argument, I think it's a good argument,
24 hasn't been really applied in bankruptcy often, but that the
25 buyer of an estate doesn't get to get the benefit of claims

1 because -- against the former owners of the estate or the
2 company because that was factored into the price.

3 I think the challenge with that is, in the bankruptcy
4 context, these claims are often preserved and always pursued.
5 Or often pursued. So there was a challenge to that part of
6 it. But I think we were -- you know, we had solid technical
7 grounds on many of the objections, and we had, I think, a
8 good, creative argument on merit -- on *Mirant* that really was
9 dependent, though, on the perception of the equities of the
10 case.

11 Q Okay. There is a mediation privilege here, so I don't
12 want to divulge anything about the mediation or the end -- the
13 following. Just some very specific questions. Did the -- was
14 -- did the Court enter an order pursuant to which the Debtor,
15 Acis, and others participated in the mediation?

16 A Yes.

17 Q Did the Debtor submit a mediation statement in connection
18 with the mediation?

19 A Yes, an extensive one.

20 Q And was the agreement -- I think it's already been
21 revealed to the Court, but we'll do it again -- was the
22 settlement -- were the settlement terms agreed upon during the
23 mediation?

24 A Yes. And the -- just to be clear and not to reveal the
25 specifics, that part of mediation was very hard-fought. And

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1 then in order to get the actual terms of the deal done, which
2 was exceedingly difficult -- were just good negotiations on
3 each side, I think -- that was done just directly between the
4 parties without the mediators. The actual drafting of the
5 provisions, the structuring of the releases, the limitations
6 on those releases, those were negotiated by the parties
7 without the mediators. The product -- the settlement is a
8 product of the mediation, but those specific pieces were
9 actually done between the parties directly, without the
10 mediators.

11 Q Thank you for the clarification. So, at some point early
12 in the summer, the Debtor files an objection, pursuant to
13 which it claims it has no liability. Is that fair?

14 A I -- I think that's fair, yeah. I think we -- we believed
15 we had a defense to -- at least some defense to every one of
16 their points.

17 Q And then you come out of the mediation and you have this
18 agreement that we're now asking the Court to approve; is that
19 right?

20 A That's correct.

21 Q Okay. Can you just explain to the Court the factors that
22 you and your fellow board members took into account,
23 considered, debated, in deciding that this was a fair and
24 reasonable deal?

25 A Sure. We -- we did believe we had good, meritorious

1 defenses, and certainly defenses that we put up in good faith,
2 but we had a lot of risk. And so when we went through each
3 count, we thought about the risks that the prior rulings of
4 the Court were in the Acis case and how that might affect our
5 own attempt to deflect our liability.

6 Some of them, we looked at and we thought those were
7 actually, if we could get that settlement as part of it, it
8 would be a pretty straightforward trade. So with respect to
9 an intercompany note that's about \$10 million, it was arguably
10 (inaudible) transferred from -- from Acis, it was transferred
11 -- its claim was it was transferred to Highland. Highland
12 paid on the note. It was actually transferred to an entity
13 that Highland owns and controls. That transfer was done
14 without consideration, was about \$10 million. We would have
15 been liable on that note.

16 We now believe that, for example, that one, we had very
17 little defense on other than a technical defense, and that we
18 would have -- we'd have -- not going to have any liability on
19 it because we effectively owe it to ourself, and now we
20 believe it can be recharacterized or should have been
21 recharacterized as equity in the first instance.

22 So, there are a number of provisions like that. And it's
23 a long complaint. There are a number of allegations that are
24 duplicative, but things like changing the fees. We thought
25 that you could argue that the fee change was a market change

1 and made sense in the context of what Highland was doing, and
2 I think that's a good, valid defense. The problem with it was
3 the timing. And like a lot of the things in the Acis case,
4 the timing did not help with respect to the equities tilting
5 in favor of Highland. They tilted more towards Acis and Mr.
6 Terry.

7 So when we went through count by count, we put risk
8 probabilities and thought about whether we would be able to
9 prevail or whether there was an opportunity to settle.

10 In addition, you know, just like Redeemer, if this case is
11 going to get resolved, we're going to have to reach
12 settlements. They're not going to be our opportune -- not
13 going to be the best outcome that we would hope. Our best
14 outcome was zero. Our best outcome with Redeemer would have
15 been to deduct everything. But these are settlements that we
16 think are fair and reasonable based upon the risks of -- the
17 likelihood of success, the risks and the rewards of the -- the
18 timing, and the cost.

19 Q And the cost that we're referring to is the cost of
20 litigation; do I have that right?

21 A That's correct.

22 Q Okay.

23 A But by the way, just the cost on these settlements is not
24 just the cost of the two sides' litigation. It's we have a
25 bankruptcy case that, you know, as I've testified before,

1 Highland's employees do a really good job doing the job they
2 do. The company has a small operating burn. The case is just
3 chewing up the value of the assets. And if everything
4 litigates until the end, we're not going to be in a position
5 to make very good distributions at all.

6 So there's a compelling argument that we should be trying
7 to settle any claims that are meritorious. We have no reason
8 to settle claims that are not meritorious, but claims that are
9 meritorious, we should try to settle if we can.

10 Q Okay. Let's talk for a moment about some of the claims
11 other than the main Acis claims, because there's a few, and I
12 just -- quickly. Claim No. 156 is characterized in our -- as
13 the Terry claim. That's the claim that relates to the taking
14 of the retirement funds. Can you just explain to the Court
15 the board's rationale and their reasoning in deciding to treat
16 the claim in the manner that is being proposed under the
17 settlement?

18 A Yeah, I think this one is again pretty straightforward,
19 that Highland, you know, had arguable justification for the
20 treatment of that account. We went through it pretty closely.
21 It ended up with Mr. Terry and Mrs. Terry receiving no value
22 from the -- the value from his -- from his 401(k). And we
23 thought that this was a claim that was pretty straightforward
24 that should have been settled years ago. And that -- and it's
25 not a large amount of money, but it's, we think, in the

1 context of the case, the right answer was to simply settle
2 that one for the full value of the claim.

3 Q Thank you. And Claim #155 is defined as the Acis, LP
4 claim. I think that's the claim arising out of the NWCC
5 litigation in New York. Can you just describe briefly for the
6 Court what that -- your understanding of what that claim is
7 and why the Debtor has chosen to enter into the agreement for
8 the settlement of that claim?

9 A Yeah. And this is another one. It's not as personal and
10 difficult in terms of settling it, but it is one that's
11 nettlesome. Highland -- it's a long saga, but Highland had
12 retained a party to assist with some (inaudible) kind of
13 financing. It turned out it didn't either want or need it.
14 It turned over the contract. It owed a small amount of money
15 under the contract. And then it just didn't pay. And that
16 party sued in New York Supreme Court, and then Highland was
17 deleterious. Its counsel just failed to respond.

18 Ultimately, after getting an extension, its counsel
19 responded. Its counsel responded, including with respect to
20 Acis. Unfortunately, Acis was controlled by a trustee, so
21 Acis then never -- never got the proper notices. And the case
22 proceeded to Acis's detriment, and this is the cost of the
23 fees to try to undo that, which ultimately Acis was able to
24 do. It's still, I believe, a defendant in the case, but was
25 able to -- to separate from default-type judgments and risks

1 it had incurred because Highland's counsel had not properly
2 dealt with the case.

3 Ultimately, the case went against Highland. I think it's
4 one that should not have gone against it. And what was a very
5 small amount that was owed is now a few hundred grand.

6 Q Hmm. And then the last piece of the puzzle, I believe, is
7 the satisfaction of the fees incurred in connection with
8 Guernsey. Can you describe for the Court your understanding
9 of what that provision of the settlement pertains to and why
10 the Debtor believes it's in the best interests of creditors to
11 do that?

12 A Yes. The Guernsey litigation was brought by HCLOF in
13 Guernsey. The Debtor was not part of it. However, the Debtor
14 has an advisory agreement through HCF that we talked about
15 earlier. And Acis and Mr. Terry took the view that we had the
16 ability to stop that litigation. We actually went out and had
17 outside counsel tell us we did not have that ability. And
18 after doing -- doing work on it. But it was one of those
19 issues, again, a nettlesome one, where HCLOF lost in Guernsey.
20 Guernsey is a loser-pays jurisdiction. And this is one of
21 those items that I suspect that, because of our case as a
22 manager, it was something that was really important to Mr.
23 Terry. And for the amount of the settlement, in order to get
24 the overall deal done, we agreed that we would compromise that
25 amount, his statutory amount, and then he could litigate for

1 his full fees.

2 So, rather than have either HCLOF or Acis go and spend
3 additional dollars to litigate in Guernsey to determine the
4 fees -- which we don't really know how that would have come
5 out, but there's at least a minimum, the statutory amount --
6 we compromised it.

7 Q Last question, as I did with the earlier settlement:
8 We've touched, I think, on all of the factors at play under a
9 9019 analysis, but can you just explain to the Court in your
10 own words why you and the Debtor and the independent board
11 members believe that this settlement is in the paramount
12 interests of creditors?

13 A Well, we, again, we went through a rigorous examination of
14 the risks and rewards of the litigation. The timing, the
15 costs overall to the estate, and the claims that Acis and Mr.
16 Terry had. The challenge that we had is that, where we are in
17 the case, it's not just creditors that are at -- potentially
18 on the other side, the creditors of Highland on the other
19 side. And that means that there's a risk that a finder of
20 fact, looking at the totality here, based upon *Mirant* and the
21 subsequent cases, when you balance the equities, they may not
22 always find that they tilt in Highland's favor. So the risks
23 that they would tilt against us was material, and that left us
24 open to potentially a significant award.

25 In addition, as I mentioned, of the total amount, we think

1 that the note was one that we actually owe, and we owe it to
2 somebody, but now we owe it to ourselves. So of the total
3 settlement amount, \$10 million really is self-funding because
4 we're not going to have to pay that obligation.

5 So our view is that, overall, this is a -- like the
6 Redeemer. It's a fair total settlement that we can reach with
7 Acis and Mr. Terry. We can wrap up a number of litigations,
8 including litigations against the employees, and that is --
9 even though I think it's got good, meritorious defenses,
10 having that over one settlement, harder to bring this case to
11 a close, and we'd be -- we'd be relying every day on those
12 very employees. And I can tell you for certain that it was
13 important to them to eliminate that risk from their day-to-day
14 lives.

15 Q You know, I apologize, there was one other question I
16 wanted to ask with respect to the probability of success on
17 the merits. Did you and the independent board take into
18 account the credibility findings that this Court made in prior
19 decisions and the equities that the Court might interpret
20 based on the Court's prior findings in assessing the
21 likelihood of success on the merits?

22 A Yes. And the risk that we saw, frankly, is that if we
23 were just dealing in the pure world of constructive fraudulent
24 conveyance and we were dealing in a pure world where equities
25 were balanced and didn't tilt against us, then we would be

1 more likely to push the litigation angle of it. I think this
2 case still should settle, but it would give us more likelihood
3 that we would have a probability of winning.

4 With the prior decisions, it puts a significant amount of
5 risk on the *Mirant* equities argument. And once we -- if we
6 were to lose that, or if it was to be found that these were
7 actual fraudulent conveyances, and based upon some of the
8 prior testimony, one might assess that there were some risks
9 there, that certainly leads us to believe that this is a fair
10 settlement.

11 MR. MORRIS: Your Honor, I have no further questions
12 and no further witnesses. But I would like at this time to
13 move for the introduction -- for the admission into evidence
14 of certain exhibits.

15 THE COURT: All right. Point me to where those
16 appear on the docket again.

17 MR. MORRIS: Yeah. I really apologize. That's the
18 one docket number I don't have. I think we filed it on Friday
19 evening, if that helps.

20 THE COURT: Okay. Just a moment. Okay. Let me back
21 up. Your witness and exhibit list is at Docket 1202.

22 MR. MORRIS: Okay.

23 THE COURT: And I'm sorry, you're wanting to move
24 into evidence all of the items on here, or no?

25 MR. MORRIS: The four items, the first four items on

1 there.

2 THE COURT: All right. So the three proofs of claim
3 at issue and then the declaration of Mr. Demo that I think was
4 just attaching the settlement agreement and related items,
5 correct?

6 MR. MORRIS: That's exactly right, Your Honor. Mr.
7 Demo's declaration can be found at Docket No. 1088.

8 THE COURT: All right.

9 MR. MORRIS: And there was just the two exhibits, the
10 settlement agreement and the release. And the Debtor
11 respectfully moves for the admission into evidence of those
12 documents.

13 THE COURT: All right. Any objection? (No
14 response.) All right. Those four exhibits are admitted.
15 Again, they are found at Docket Entry 1202.

16 (Debtor's Exhibits are received into evidence.)

17 THE COURT: All right. So you have the passed the
18 witness. First, any friendly examination that is not
19 duplicative? Ms. Patel, anything from you?

20 MS. PATEL: No, Your Honor. We'd reserve anything
21 for redirect, if at all.

22 THE COURT: All right. So I'll turn now to counsel,
23 I guess, for Mr. Dondero first. Any cross-examination?

24 MR. WILSON: Yes, Your Honor. This is John Wilson
25 for Mr. Dondero.

Seery - Cross

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1 THE COURT: Mr. Wilson, you have cross?

2 MR. WILSON: Yes, ma'am.

3 THE COURT: All right. Go ahead.

4 CROSS-EXAMINATION

5 BY MR. WILSON:

6 Q Good afternoon, Mr. Seery. Can you hear me?

7 A I can, yes.

8 Q All right. And we met over Zoom on Saturday, but again,
9 I'm John Wilson and I represent James Dondero. I just wanted
10 to ask you a few questions. And we -- Mr. Dondero and I don't
11 want to re-plow a lot of ground, but you described earlier
12 about how, when you were appointed to the independent board,
13 you began meeting with members of the Official Committee of
14 Unsecured Creditors and then to try to determine what their
15 claims were and began to undertake an analysis of those.

16 Would that be fair?

17 A Yes.

18 Q And in the process of doing so, the board instructed the
19 Pachulski firm to undertake specific legal analysis of the
20 Acis claims and all the causes of action asserted therein; is
21 that correct?

22 A That's correct.

23 Q And in fact, the board worked closely with counsel to
24 analyze the Acis proof of claim, correct?

25 A I -- you broke up. Did we work closely?

1 Q Yes.

2 A Yes, we did.

3 Q All right. And you described that you requested memoranda
4 and conducted meetings with counsel, instructed counsel to go
5 back and work harder. Is that a fair characterization of what
6 you testified to a minute ago?

7 A I think that is part of it, yes.

8 Q Okay. So, through this process, when you were analyzing
9 the Acis proof of claim and becoming familiar with the
10 particular claims asserted therein, you became aware that this
11 was the subject of an adversary proceeding in the Acis
12 bankruptcy, correct?

13 A Yes.

14 Q And in fact, that there is -- the Acis proof of claim
15 attaches the second amended claim from the Acis versus
16 Highland adversary proceeding; is that correct?

17 A You broke up at the end, but I think the answer is yes, if
18 it was that it attaches the second amended complaint. I
19 believe that's correct.

20 Q Right. And that Acis v. Highland adversary proceeding had
21 been the subject of litigation at the time the Highland
22 bankruptcy was filed, right?

23 A I believe yes, it had commenced.

24 Q And that litigation had been proceeding for actually many
25 months, correct?

1 A Yeah. The Acis case and the adversary had been initiated
2 well before our filing.

3 Q Right. And you became aware through your analysis and
4 attempts to discover information about this claim that
5 discovery was being conducted in that adversary proceeding;
6 that's correct?

7 A I don't know that I ever saw any of the specifics of
8 discovery. I assume there was discovery.

9 Q Well, and I think you testified on Saturday that you were
10 aware that discovery was being conducted in the adversary
11 proceeding.

12 A I mean, I'm sure -- I'm sure I knew that there was
13 discovery in the adversary, but I don't -- I don't have a
14 specific recollection of what the discovery was. That's not
15 something --

16 Q Right. And my question wasn't whether you reviewed all
17 the discovery. It was just that you were aware that it was
18 being conducted, correct?

19 A I was aware that it had. I don't know that it was current
20 at the time that we got involved.

21 Q Now, I think that -- I think you've offered testimony that
22 you worked with the Pachulski firm in developing the written
23 objection that was ultimately filed to the Acis proof of
24 claim?

25 A That's correct.

1 Q And before that objection was filed, you and the other
2 members of the board reviewed it, right?

3 A Yes.

4 Q And the other members -- you and the other members of the
5 board took the position or agreed with the position taken in
6 the written objection, correct?

7 A Yes.

8 Q And the board approved the written objection before it was
9 filed?

10 A That's correct.

11 Q And so ultimately the Pachulski firm filed Highland's
12 objection to Acis' proof of claim on June 23rd, 2020?

13 A I believe that's correct. I don't know the date off the
14 top of my head.

15 Q And would you agree with me that the Highland objection
16 took a pretty aggressive stance with regard to the Acis proof
17 of claim?

18 A I agree, yes.

19 Q And in fact, the Highland objection took the position that
20 the Acis claim should be disallowed in its entirety; is that
21 right?

22 A That's correct.

23 Q I've got Bryan Assink from my firm here with me, and he's,
24 excuse me, going to try to share a document on -- on the
25 webcam. What we're going to look at is Exhibit G, which is

1 actually -- it's Dondero Exhibit G, which is actually the
2 Highland objection to the Acis proof of claim. Can you see
3 that on your screen?

4 A I can, yes.

5 Q All right. And if you look at the top of that, the very
6 top where it has the file stamp that shows that -- it shows
7 that it was indeed filed on 6/23/20, and it's Docker No. 771.
8 Can you go to Page 3 now? And I don't want to work through
9 the entire 65 pages of this document, but I'd like to kind of
10 work through some of the -- some of the statements made in the
11 preliminary statement that I think are intended as a --
12 somewhat of a summary of the positions taken in the document.

13 But if you look on Page -- if you look on Page 3, about
14 halfway down, the beginning of that Paragraph No. 2, where it
15 says, (inaudible) Terry keeps a \$75 million windfall, which
16 would come not at Dondero's expense but from the pockets of
17 the Debtor's innocent creditors, including unsecured trade
18 creditors, the Redeemer Committee, the Highland Crusader Fund,
19 with an arbitration award of \$191,824,557, and UBS Securities
20 (inaudible).

21 And so Highland took the position on June 23rd that Mr.
22 Terry was seeking a \$75 million windfall, correct?

23 A That's correct.

24 Q And they took the position that that windfall was not
25 going to come at Mr. Dondero's expense but instead at the

1 expense of Debtor's innocent creditors, correct?

2 A That's what we said, yes.

3 MR. WILSON: All right. Can you go to Page --

4 BY MR. WILSON:

5 Q Now, this is the next page of the document, Page 4, where
6 it says that James Dondero and Mark Okada were Acis's sole
7 owners, and it's hornbook law that sole owners do not owe
8 fiduciary duties to their company.

9 MR. WILSON: Can we go to the top of Page 5?

10 (Pause.)

11 MR. WILSON: Sorry. Having technical difficulties.

12 BY MR. WILSON:

13 Q And starting at the bottom of that paragraph, it says that
14 Delaware law does not permit creditors of a limited
15 partnership to sue third parties for breach of fiduciary
16 duties, nor does it permit a trustee to sue on their behalf.
17 These claims are not and cannot as a matter of law be brought
18 for the benefit of Acis's foreign creditors.

19 And so on June 23rd, 2020, Highland was thinking that the
20 breach of the -- the breach of fiduciary duty claims could not
21 be brought as valid claims in the Highland bankruptcy,
22 correct?

23 A Yes.

24 MR. WILSON: And then go to the bottom of Paragraph

25 B.

1 BY MR. WILSON:

2 Q It says -- the last sentence of Paragraph B says that even
3 if the equities are applied as this Court once held they may,
4 there is no equity in permitting a new owner to sue persons
5 for conspiring with the old owner in order to parlay a \$1
6 million investment into \$75 million, at the expense of this
7 Debtor's creditors.

8 And once again, you're taking the -- I'm sorry -- Highland
9 is taking the position that there is no equity in Acis's claim
10 because they're parlaying a \$1 million investment into \$75
11 million at the expense of Debtor's creditors. And that was
12 Highland's position on June 23rd, 2020, correct?

13 A That's correct.

14 MR. WILSON: Go to Page -- actually, just go down a
15 little bit.

16 BY MR. WILSON:

17 Q And then with respect to the fraudulent transfer claims,
18 Highland took the position that, third, the fraudulent
19 transfer claims fail and may be summarily resolved because the
20 Debtor did not receive the benefit of the alleged fraudulent
21 transfers since, with one exception, it was not the transferee
22 of the transferred rights.

23 So Highland had taken the position on June 23rd, 2020 that
24 the fraudulent transfer claims must be fail and can be
25 summarily resolved, correct?

1 A That's correct.

2 MR. WILSON: All right. Go to D on the next page.

3 BY MR. WILSON:

4 Q And here in Paragraph D, it says there is nothing left of
5 the former Acis estate. Creditors were paid, Old Equity was
6 cancelled, and New Equity is held by a purchaser who paid \$1
7 million, no different than if he had done so at an auction.
8 There is no estate to benefit.

9 So, and then it continues on, authorities before and after
10 *Mirant* hold that the (inaudible) recovery should be limited
11 based on equitable considerations. Unlike *Mirant*, in this
12 Court's *Texas Rangers* decision, this is not a case in which
13 the recovery will enable the debtor to satisfy outstanding
14 claims, obligations, or one in which creditors are forced to
15 take equity instead of cash and are depending on its value for
16 recovery on their claims. There is no estate and no equity to
17 support Mr. Terry's windfall.

18 So, Highland, on June 23rd, 2020, was taking the position
19 that there was no estate to benefit because all the creditors
20 have been paid and Old Equity was transferred and New Equity
21 was held by Josh Terry; is that correct?

22 A That's correct.

23 Q In Paragraph E, that's where Highland discusses how the
24 (inaudible) Doctrine holds that the purchase of controlling
25 equity in a company may not be used to control through

1 corporate machinery to turn around and assert claims against
2 the prior owners if the claims arose prior to the date when
3 the purchaser took control.

4 So Highland was saying on June 23rd, 2020 that the
5 (inaudible) Doctrine prohibited many of Terry's claims? Or
6 Acis's claims, I'm sorry. Is that correct?

7 A That's correct.

8 Q All right. Now, on Paragraph F. Acis (inaudible) seeking
9 \$7 million in so-called overpayments have no legal basis and
10 should be summarily disallowed.

11 So Highland took the position on June 23rd, 2020 that the
12 overpayment claims can be summarily disposed and had no legal
13 basis, correct?

14 A That's correct, sir.

15 Q And 11G says that Acis's civil conspiracy claim also fails
16 as a matter of law because that claim is not recognized. So
17 now -- H. Acis's tortious interference claim fails as a
18 matter of law because it does not apply to at-will contracts.
19 I, Acis's breach of contract claim, like its claim for breach
20 of fiduciary duty, rests on the fallacy that Acis had legal
21 interests that were distinct from those of its sole owners.
22 J, alter ego liability was inadequately pled (inaudible)
23 claim, and moreover, is unavailable on the alleged grounds.

24 MR. WILSON: The top of the next page.

25 BY MR. WILSON:

1 Q And then K, you talk about Debtor's defenses that are
2 meritorious but may not be able to be decided summarily.

3 So, on these 55 pages of this claim, there's a lot of
4 legal argument and briefing over the objections, but I think
5 you would have to agree with me that Highland asserted the
6 position that every single one of the 34 Acis claims could be
7 resolved by summary disposition, correct?

8 A I don't -- I don't think that's correct. I think we said
9 that numerous of the claims could be dealt with by summary
10 disposition, and certain other ones we had meritorious
11 defenses that would have to be litigated because they were
12 fact-based.

13 Q But in any event, you would agree with me that the bulk of
14 this claim was argued could be disposed by summary
15 disposition, correct?

16 A That's correct.

17 MR. WILSON: All right. Now --

18 BY MR. WILSON:

19 Q And I think you told me on Saturday that, with respect to
20 your -- Highland's claim that there's no estate to benefit in
21 Acis, that if there was an estate it would be Josh Terry; is
22 that correct?

23 A I don't believe that's correct, no.

24 Q You don't believe that that's correct or you don't believe
25 that you testified to that?

1 A I'd probably say both.

2 Q Well, maybe I can refresh your recollection as to that.

3 MR. WILSON: Page --

4 BY MR. WILSON:

5 Q We've produced the infamous video. I'm going to try to
6 pull up Page 38 of the deposition that you gave on October 17,
7 2020.

8 MR. WILSON: It's at the top.

9 BY MR. WILSON:

10 Q So starting at Line 3, where it says, I don't think that
11 will be necessary, but in practical terms it's Acis's estate,
12 now just Terry. Mr. Morris asserted an objection. And the
13 answer was, Yeah, I think we would certainly from a litigation
14 perspective try to cabin it that way. And there are a bunch
15 of technical reasons for that, but it's certainly a bit
16 broader than that. There's not a big creditor body, but there
17 are still a few creditors. He is, in my understanding, the
18 only shareholder -- there are, you know, in fact, customers,
19 albeit the management of the investment outsourced some of the
20 funds, so we would -- you know, we tried and attempted to
21 draft it in a way that cabined it to a couple different
22 creditors that could be paid off in --

23 MR. MORRIS: And Your Honor? Your Honor, if I may,
24 just in the future I would respectfully request that if my
25 witness or my client is going to be cross-examined with

1 deposition testimony, and I've lodged an objection
2 specifically to preserve the objection, that the Court rule on
3 the objection before the answer is read into the record.

4 Thank you.

5 THE COURT: All right. So, I'm sorry, you had --

6 MR. MORRIS: Yeah.

7 THE COURT: Let me be clear if you have a pending
8 objection at the moment.

9 MR. MORRIS: If it's not -- if the Court doesn't deem
10 it too late, since it's already been read into the record,
11 yes, I would just ask the Court to rule on the objection that
12 I made during the deposition. That's why we do that.

13 THE COURT: Okay. Well, I got lost, I suppose, on
14 what the objection was that was lodged during the deposition.

15 MR. MORRIS: I objected to the form of the question
16 to the extent it calls for a legal conclusion.

17 THE COURT: All right.

18 MR. WILSON: And Your Honor, I'm --

19 MR. MORRIS: I just want it to be clear that if the
20 Court sustains the objection, that whatever Mr. Seery
21 testified to is not going to be somehow binding as some kind
22 of legal conclusion. That's all.

23 THE COURT: All right.

24 MR. WILSON: Your Honor, my response to that --

25 THE COURT: Response, Mr. Wilson?

1 MR. WILSON: Yes. My response to that objection will
2 be that I did not ask him for a legal conclusion. I asked him
3 a question in practical terms, if Acis's estate now is just
4 Terry.

5 THE COURT: Okay. I overrule the objection.

6 MR. MORRIS: All right. Thank you, Your Honor.

7 THE WITNESS: So I think I answered it correctly.
8 You asked me what I thought, and I said, from a -- this answer
9 is from a litigation perspective. That's the position we
10 took, yes. I think a moment ago you asked me what I thought
11 now from a factual perspective. Most of the issues are laid
12 out in my answer.

13 BY MR. WILSON:

14 Q Turn with me to -- on Page 9. I'm now going to direct
15 your attention to Paragraph 4 of the Highland objection on
16 Page 9, which says, The rights of creditors to be paid were
17 the legal basis of the Acis plan injunction, which is why the
18 injunction terminates once those creditors are paid in full.
19 Mr. Terry elected to acquire new equity for \$1 million. He is
20 not entitled to receive another \$75 million by claiming that
21 Acis was damaged by those transfers, much less from the
22 pockets of the Debtor's unpaid creditors. To impose on the
23 former partners and third parties such as the Debtor a duty to
24 restore \$75 million to the former business, not to pay its
25 creditors but for the sole benefit of successor owner who

1 bought the diminished entity for \$1 million, would be a
2 legally groundbreaking windfall, to say the least. The Acis
3 claim can and should summarily be disallowed in its entirety
4 on the record before the Court.

5 And so does that paragraph to you pretty much sum up
6 Highland's position on the Acis claim as of June 23rd, 2020?

7 A Yes. That's the position we took.

8 Q And the board believed in good faith that these arguments
9 it was making were meritorious, correct?

10 A That's correct.

11 Q And the board had a good faith belief that the legal
12 contentions made in Highland's objection were warranted by
13 existing law, correct?

14 A The legal what?

15 Q The legal contentions were warranted by existing law.

16 A Yes.

17 Q And the board had a good faith belief that the factual
18 contentions in Highland's objection had evidentiary support,
19 correct?

20 A That's correct.

21 Q And so Highland had a good faith belief that Acis's claim
22 could be disposed of, disposed of in its entirety on summary
23 judgment. Correct?

24 A Largely, yes.

25 Q And you agree with me that if claims can be disposed of

1 summarily, that would be a shorter and less expensive legal
2 process than a trial on those issues?

3 A If they are summarily dismissed, that is correct.

4 Q And in fact, an agreement was reached by the parties in
5 this case that Highland and Acis would file motions for
6 summary judgment regarding the Highland objection to the Acis
7 claim by September 16th, 2020, and that those motions would be
8 heard on October 20th, which is today. Do you recall that?

9 MR. MORRIS: Objection, --

10 MR. WILSON: I'm sorry, go ahead.

11 THE WITNESS: That's fine. We don't need to agree.
12 We took a very aggressive position that we wanted to get to
13 court as quickly as we could to put pressure on the Acis side.

14 BY MR. WILSON:

15 Q But my point in asking you these questions is -- so they
16 took the position that there was summary adjudication
17 available for these claims in the -- in the Bankruptcy Court.
18 Is that correct? Would you agree with that?

19 A We were definitely scheduled to have that, yes.

20 Q Okay. Because I read the Debtor's omnibus reply that came
21 in yesterday. And on Page 7, it says there was no indication
22 that summary adjudication is available in this Court. And I
23 just wanted to make that clear, that there was actually an
24 agreed-upon procedure that was approved by the Court. So
25 Highland's initial position was that if Highland paid the Acis

1 claim they were going to give a \$75 million windfall to Terry,
2 correct? And we've just gone through reading a few times in
3 the objection. Can you agree with that?

4 A Yes.

5 Q But I think that you have previously described how there's
6 a counterargument to that windfall from Terry's perspective.
7 Is that right?

8 A There is a counterargument, yes.

9 Q And what would that counterargument be?

10 A In sum, when you look at *Mirant* and the related cases,
11 they do talk about restoring the estate. And so while we --
12 we believed an argument was I think strong that the initial
13 injunction in *Acis* quote/unquote made Mr. Terry whole, there's
14 a strong argument to be made that the estate has claims and
15 that the owner of an estate who buys it through a plan open to
16 everybody is entitled to try to benefit from those claims. So
17 the recovery for the benefit of that enterprise is permitted,
18 and that just happens to be what the law is.

19 Moreover, while we said it was inequitable, there's a
20 counterargument that Mr. Terry would make, which is that he's
21 been -- he had a claim that could have been settled easily and
22 could have been paid off and it wasn't. Instead, there was a
23 long litigation. And it came about because assets from *Acis*
24 were pulled out of *Acis*. It's a pretty straightforward
25 factual recitation that we get from the prior decisions of

1 this Court. And there's a strong equitable argument that Mr.
2 Terry makes that his life has been turned upside down and
3 there's a lot of damage that comes from that. Now, we have,
4 as we lay out, what we thought were meritorious defenses, but
5 they do rely a lot on the equities.

6 Q Right. And we'll get to it now. In your deposition on
7 Saturday, I think you described this with a little more color.

8 (Pause.)

9 BY MR. WILSON:

10 Q On Lines 7 through 13, you were discussing the Highland
11 position related to the windfall, but starting I think and you
12 said equally on the other side, we could say that the man's
13 life was ripped out from him, that his position was taken
14 away, that he got an arbitration award that arguably the
15 Debtor and the Debtor's management at the time stripped away
16 all the assets (inaudible) to try to leave him with no
17 recovery. And then when he sought a recovery, they sought to
18 sue him in every jurisdiction in the world to make sure to
19 ruin the guy's life and put him in a position where, while for
20 some it might seem a windfall, to him it might seem just.

21 MR. WILSON: And skip down toward -- go on to that
22 next answer.

23 BY MR. WILSON:

24 Q Where it says, that it took a bunch of years of his life
25 and destroyed his career is not really our issue.

1 So these are the equities that you were considering when
2 you -- when the board decided to settle this claim, this Acis
3 claim?

4 A Overall. This is my summation. I wouldn't want to
5 engraft it necessarily on Mr. Dubel and Mr. Nelms. But
6 certainly this general position. I'm not quite sure why you
7 read it out. But yes, that's the other side, in a nutshell.

8 MR. MORRIS: Your Honor, this is -- this is John
9 Morris. Mr. Seery made a point, frankly, that I was thinking
10 of, but it is an important point. There's really, in my
11 experience, no need to go to a deposition transcript unless
12 it's being used for impeachment purposes. If Counsel has a
13 question of my witness, I would -- I would respectfully
14 request that he simply ask it.

15 THE COURT: All right.

16 MR. MORRIS: Thank you.

17 THE COURT: Mr. Wilson, what do you have to say about
18 that?

19 MR. WILSON: Yes, Your Honor.

20 THE COURT: I think he's correct. Anything you want
21 to challenge about that point?

22 MR. WILSON: Well, not really, Your Honor. I could
23 -- I could ask the questions, but I just, in that instance, I
24 thought it was easier to get the exact testimony on the
25 record. I don't think it's inadmissible for any purpose. And

1 he's, you know, he's welcome to comment on it if he needs to
2 or put it in context or -- I mean, if there's a (inaudible) or
3 something else, you know, I'll live with that. I was just
4 doing it for ease, instead of having to ask him a bunch of
5 individual pointed questions.

6 THE COURT: Okay. Well, we've got him here, so let's
7 just -- you know, we've got him here so we don't need to use
8 the deposition unless, you know, there's some impeachment
9 purpose.

10 So let me just ask you. You have -- you've been going 27
11 minutes on cross. I really want to break tonight at a point
12 that makes sense, which to me suggests we should finish this
13 witness. How much longer do you feel like you need?

14 MR. WILSON: I believe I'm at least halfway done, if
15 not further along, Your Honor.

16 THE COURT: All right. Well, hmm. I'm going to ask
17 you to just speed it up. I'm going to stop -- well, here's
18 the deal. We have maybe two more witnesses, right? You all
19 have named Professor Rappaport, and Mr. Daugherty is named as
20 a witness. And I said I would come back tomorrow, but I'm
21 trying to respect the fact that Acis's counsel, their lead
22 counsel is not available tomorrow. So add to this
23 complication that, as we have been conducting this hearing
24 this afternoon, four objections to the disclosure statement
25 have been filed that at some point -- that at some I need to

1 read and a lot of other lawyers in the room need to read. And
2 I'm -- what is our hearing? It's Thursday. Is it 9:30 in the
3 morning Thursday? Yes. My law clerk is saying yes. So we're
4 running --

5 MS. MASCHERIN: I believe that's right.

6 THE COURT: We're running out of available hours
7 here. So, with respect, Mr. Wilson, I'm going to give you 15
8 more minutes. So we're going to pass the witness --

9 MR. KATHMAN: Your Honor, this is --

10 THE COURT: Yes?

11 MR. KATHMAN: Your Honor, this is Jason Kathman. And
12 I don't know if this helps or makes things more difficult, but
13 I think my cross of Mr. Seery is at least probably 20 or 30
14 minutes, and so I'm just telling you now, if the Court's
15 thinking about breaking now, and to give Mr. Wilson another 15
16 minutes, I'm not a five-minute cross-examination. I don't
17 think I'm an hour, but it's certainly more than five minutes.
18 So, again, I say that. I don't know if that helps or hurts,
19 but I wanted to pass that information if it affects the
20 Court's decision-making.

21 THE COURT: Okay. Mr. Wilson, continue. You've got
22 15 minutes to wrap it up.

23 MR. WILSON: Thank you, Your Honor.

24 BY MR. WILSON:

25 Q Now, Mr. Seery, is it true that prior to filing that

1 Highland objection that we just reviewed that Highland made an
2 offer to settle the Acis claim for \$4 million?

3 A We did. We made an initial settlement offer to Acis for
4 \$4 million plus withdrawing our claims in the Acis case.

5 Q Okay. And around that same time, did Highland make an
6 offer to settle UBS's \$1 billion proof of claim for
7 approximately \$20 million?

8 A I think that's about the right amount, yes.

9 Q Okay. And you believe the Debtor in this case is solvent,
10 correct?

11 A Yeah. I believe, and I think I testified earlier, and
12 also on Saturday, that I believe that we have projections
13 that, if we are able to hit them, we have to improve on them,
14 and we have to keep our costs down, and if we have a claim
15 amount for UBS which we think is zero, and we do believe
16 that's the case, as well as zero for HarbourVest, which I
17 argue is the same, and Mr. Daugherty I believe it's 3.7, that
18 we would be very close to paying claims in full, yes.

19 Q So, based on those assumptions, you believe there'll be
20 room for equity to participate under the currently-filed plan?

21 A It would be -- it would be close, yeah, but there's a
22 potential, certainly. It would be close. But again, to --
23 again, there's -- again, there's -- these are not -- it's not
24 a matter of distributing a sack of cash. These are assets
25 that we have to manage and then sell into the market. And as

1 we had testimony earlier on Cornerstone, these are not big,
2 giant high-grade companies. These are private, smaller
3 companies with issues and risks.

4 Q Okay. And it's your information that the allowed amount
5 of the UBS claims should be zero, right?

6 A Yes.

7 Q And I won't ask you again to give your reasons for that.
8 And can you -- there's been lots of argument and talk about
9 this all day today, but I think it's a pretty simple question.
10 But you would agree with me that, in the Fifth Circuit, and
11 that's based on U.S. Supreme Court precedent, that a
12 bankruptcy court should not approve a settlement unless it's
13 fair and equitable and in the best interest of the estate,
14 correct?

15 A I think that's generally the standard, yes.

16 Q Right. And you believe that, although Highland's 9019
17 motion to approve the Acis settlement doesn't actually use the
18 phrase "fair and equitable," I believe you testified that you
19 believe the Acis settlement is fair and equitable; is that
20 correct?

21 A Yes, I do believe that.

22 Q And can you briefly describe for me why that is that you
23 have that belief?

24 A Yeah. I believe I testified earlier that a lot of our
25 defenses were, you know, technical defenses, or that we have

1 the -- we had some straight legal defenses which we think are
2 very good, and then a lot of them rested on *Mirant* and the
3 equities. And that we felt strongly about the legal defenses.
4 The technicals are more difficult because I think a court of
5 equity could look through them. And the *Mirant* was really a
6 question of the -- of the equities and how they tilt.

7 And so you have to think your way through those based upon
8 the prior experience of this Court and Acis's prior
9 litigation, and there's, frankly, prior rulings talking about
10 certain of the valuations and the transfers. And the risks on
11 those were significant.

12 If we could win on *Mirant* and argue that there is no real
13 estate, I think that would be -- would have been an
14 interesting argument, and in a different circuit we may have
15 had a stronger argument. I think that *Mirant* in particular,
16 which, although I guess not for me to say, but I don't think
17 it's the right law, but it's the law. And so we have to -- we
18 have to adhere to the legal framework that we have, as well as
19 the factual underpinnings of the case, including the history
20 in Acis.

21 And so we think that, in the context of this case,
22 settling this multi-year litigation that involves a myriad of
23 different parties, a myriad of different courts, is a fair and
24 equitable settlement for this estate to try to move it
25 forward.

1 Q And you believe that the equities in this case tilt
2 heavily in favor of Terry and heavily against Highland,
3 correct?

4 A I wouldn't -- I wouldn't -- I wouldn't want to say that
5 directly. I don't think that that's necessarily the case. I
6 think that they tilt -- they tilt in Mr. -- in Acis's favor
7 and Mr. Terry's favor on a lot of the key issues. And I think
8 one could argue that they're heavily -- they heavily tilt on
9 -- you know, I think that there's a lot of -- there are
10 certainly equities in Highland's favor in terms of the
11 Highland team and what they do and how they perform, and the
12 creditors in the Highland estate and their claims against
13 Highland, but there are certainly -- certain of the equities
14 tilt very favorably towards Mr. Terry and Acis.

15 Q And in applying those standards that the Fifth Circuit
16 sets for approving a 9019 motion, do you understand that the
17 Fifth Circuit has instructed courts to consider certain
18 factors such as the probability of success on the litigation?
19 Is that correct?

20 A Yes.

21 Q And did you consider that factor in reaching a settlement
22 with Acis?

23 A We did, yes.

24 Q And we've talked about how Highland maintained the
25 position as of June 23rd, 2020 that the Acis claims should be

1 disallowed in its entirety, correct?

2 A That's correct.

3 Q All right. And the next factor that the Court is supposed
4 to consider is the expected duration and expense of
5 litigation. Did you consider that factor?

6 A We did.

7 Q And we talked about how it was Highland's position on June
8 23rd, 2020 that all of Acis's claims were amenable to summary
9 disposition, which is, as you agree, substantially less
10 expensive and time-consuming than a full trial, correct?

11 A Yes. If you are successful, it's much more efficient,
12 yes.

13 Q And did the board conduct a specific analysis as to the
14 time and expense that the litigation -- of the litigation
15 anticipated to resolve the Acis claim would require?

16 A I'm not sure what you mean by a specific analysis. It was
17 certainly part of our analysis that if we went forward with
18 summary judgment, we felt strongly that we had a real
19 opportunity to prevail on a certain number of the claims.
20 However, if we lost, we were going to be at a significant
21 disadvantage because that would have meant most likely then
22 showing that there were factual issues and most likely would
23 have hinted that there were some equitable issues. And that
24 would have put us in a very difficult position both in
25 litigating those claims and pushing the case forward.

1 Q Did the board come up with a specific number or a range of
2 numbers that it considered?

3 A I don't recall a specific number. I think at the
4 deposition you asked me what I thought it would cost to try
5 these claims. And from probably just one side I could come up
6 with that number. But as I testified before, there's multiple
7 sides here. And the case also continues to burn, from a legal
8 and professional fee perspective, additional overhead as that
9 trial would go on.

10 Q Okay. And even if the Acis settlement is approved, and we
11 know now that the Redeemer settlement is approved, the UBS
12 claim remains outstanding, which will require lengthy
13 litigation, correct?

14 A I disagree with that. The UBS claim does remain
15 outstanding, but we have summary judgment papers in front of
16 the Court, and they're very narrow issues. We think that the
17 vast majority of UBS's claims, which are against foreign
18 subsidiaries with no recourse to the Debtor whatsoever, are
19 going to be disposed of. So we're going to be down to what we
20 think are equally weak or unfortunately factual claims on
21 fraudulent conveyances. And -- but they're minimal dollar
22 amounts.

23 Q And did the board conduct an analysis of how long that
24 litigation is going to take?

25 A A specific analysis to how long a fraudulent conveyance

1 litigation would take? We haven't done a specific one, but
2 we've thought about it. This one's pretty straightforward
3 because it's not going to be real complicated in order to
4 value the assets because the assets that were returned by HFP
5 -- there's a much more difficult process for UBS because they
6 don't have a claim against HFP, which is the transferor. They
7 have a -- they have to get an alter ego first. So it is -- it
8 is -- there's a number of steps. But the defenses and the
9 valuation is very easy because these are assets that were,
10 just prior to the -- in the same year as the fraudulent
11 conveyance, I think, or maybe 14 months after, had been
12 purchased by Multi Strat, which was a firm that had third-
13 party investors as well.

14 Q Okay. And I just want to ask a handful more questions,
15 because I think I'm running out of time. But one of the other
16 factors that the Fifth Circuit looks at is whether the
17 settlement was reached by an arm's-length transaction. And I
18 would ask what you believe arm's-length bargaining means.

19 A What I think arm's-length bargaining means?

20 Q Yes.

21 A I think it's two parties that are on opposite sides, that
22 do not have undue influence on each other, that do not have --
23 there's no collusion. There's no side deals. That they're
24 negotiating fairly and they're negotiating in their own
25 interests. That is the typical definition of arm's length.

1 Q And I believe that Highland has maintained a mediation
2 privilege as to the specific negotiations that were undertaken
3 in this case, but it's your position that this settlement was
4 conducted pursuant to an arm's-length bargaining?

5 A Absolutely. With or without the mediation. We have no --
6 no interests in -- nor does anyone else -- with Acis or with
7 Mr. Terry or his counsel. These were hard-fought. They were
8 multifaceted. They involved a lot of analysis. They did
9 involve the mediators and their -- their leaning on one side
10 or the other. We don't what they said specifically to Acis.
11 I only know what they said to our side. But it was the
12 product of a mediation.

13 But even without the mediation, this was -- this would
14 have been arm's length because it's folks without undue
15 influence on each other and no interests in each other's
16 sides.

17 Q Okay. If this settlement is approved, will it end all the
18 litigation regarding Acis's claims?

19 A Unfortunately, I don't think so. And we had a little bit
20 of a preview of that earlier. And frankly, unfortunately for
21 our cases, is limited by what we can do in our own case. But
22 it will end all litigation with respect to Acis and Mr. Terry
23 and Highland and the entities owned by Highland more than 51
24 percent, or more than 50 -- 50 or more percent, I think it is.
25 Anyone that we directly manage. And all of the employees at

1 Highland. So, in retrospect, it does solve all the
2 litigations related to Highland vis-à-vis Acis, Highland
3 employees, Mr. Terry and Mrs. Terry.

4 Q All right. But you'd agree with me that the substance of
5 many of these claims have been asserted against other parties
6 and they're pending in other places, including an adversary
7 proceeding in the Acis bankruptcy case?

8 A There are some. And to be fair, you know, we considered
9 whether we should try to involve third parties. There's
10 lawsuits against law firms that Acis and Mr. Terry have
11 brought. I don't know who brought each one. There's against
12 individual lawyers. We just -- we can only solve the problems
13 that we have control over and we can solve. I would love to
14 have been more expansive, but we didn't have, you know, the
15 facility or the legal right to do those, and we didn't want to
16 try to bring in more parties than we could or we would never
17 get this done.

18 Q Okay. Is it your position that we need the -- that any
19 two of the three large unsecured creditors who are members of
20 the Creditors' Committee, which you probably know them,
21 referring to Acis, UBS, and Redeemer, that you need the
22 support of two of those three to support the plan?

23 A I would say to do -- to do any kind of grand bargain, we
24 would need at least two of those three. And to have the
25 Committee not object, because it's a four-person Committee, we

1 would need two of four.

2 But I do think that, you know, with respect to the plan
3 that we have, we're going to need probably two of those
4 creditors, at least two of those creditors to support it. And
5 those negotiations are equally hard-fought, and the positions
6 that we're taking, you know, we're -- we feel very confident
7 in and we intend to pursue them.

8 THE COURT: All right.

9 BY MR. WILSON:

10 Q And so was that one of the motives --

11 THE COURT: Last question.

12 BY MR. WILSON:

13 Q -- for settling the Acis claim?

14 THE COURT: Last question, Mr. Wilson. It's been 15
15 minutes.

16 MR. WILSON: Okay. Thank you, Your Honor.

17 THE COURT: Last question.

18 BY MR. WILSON:

19 Q Yes. So my question was: Was that part of your motive
20 for settling with Acis?

21 A Certainly, settling with Acis, settling with everybody,
22 you know, to try to resolve the case, if they're fair
23 settlements and in the best interest of the estate, we would
24 do it. We obviously are not settling with everybody. There
25 are claims that we think are (inaudible) and don't merit real

1 dollars, and we've been unable to settle those claims because
2 of that.

3 But yes, settling -- settling with Acis, settling with,
4 you know, any of the creditors, we think is critical to try
5 and move this case forward. You know, we would love to have
6 everybody settle. As I said, there are some claims we think
7 are worth zero and we would love to settle them at a dollar.
8 That may require some judicial intervention.

9 Q All right. Thank you, Mr. Seery.

10 MR. WILSON: That was my last question.

11 THE COURT: All right. Let's talk about whether
12 we're going to break or not.

13 Mr. Morris, is there any way you can predict how long your
14 redirect might take, not knowing what Mr. Kathman is going to
15 ask?

16 MR. MORRIS: At the moment, I have none, Your Honor.

17 THE COURT: Okay. Then I'm going to ask -- Mr.
18 Seery, I'm going to put your opinion above all others because
19 you have been testifying --

20 THE WITNESS: Sure.

21 THE COURT: -- a long time. If I cut -- if I limit
22 Mr. Daugherty's cross to 20 minutes, would you rather do that
23 and be done tonight or do you need to break? It's late,
24 obviously.

25 THE WITNESS: Your Honor, I'm open. I do most of my

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1 work for the estate, and so it's really your call and your
2 staff's call. If you want to do it tomorrow, I'm certainly
3 ready to do that. If you want to do it tonight, we'll just
4 keep going. Either way.

5 THE COURT: All right.

6 THE WITNESS: I'm completely open. And I didn't mean
7 to throw it back at you like that, but, you know, you have a
8 staff and I -- I just have a small abode here.

9 THE COURT: Okay. Mr. Kathman, you've got 20 minutes
10 for your cross. And, you know, I'm sorry. We've just been
11 going a long time today and we just had a very extensive cross
12 by Mr. Wilson, so I'm hoping you can give some non-duplicative
13 cross for us. All right.

14 CROSS-EXAMINATION

15 BY MR. KATHMAN:

16 Q Mr. Seery, like Mr. Wilson, we met on Saturday at your
17 deposition, correct?

18 A That's correct.

19 MR. KATHMAN: And for the record, Jason Kathman for
20 Patrick Daugherty.

21 BY MR. KATHMAN:

22 Q Mr. Seery, Acis makes its money from managing CLOs,
23 correct?

24 A That's my understanding, yes.

25 Q Okay. And Acis was essentially Highland's CLO business;

1 isn't that right?

2 A I think that's fair, yes.

3 Q Okay. In fact, I think your words were Acis was just a
4 shell for Highland; isn't that right?

5 A I don't know if I said -- I think Acis as a corp was a
6 shell. I don't -- so I want to make sure we're not saying
7 shill. But having a shell corporation, there's nothing wrong
8 with it, that's where the Acis -- that's where the Highland
9 business was moved to, into the Acis corporate loan, and Acis
10 then took off from there. But it's the Highland -- it was the
11 Highland business, my understanding.

12 Q Highland's CLO business was moved to Acis and Acis ran
13 Highland's CLO business, correct?

14 A That's correct.

15 Q Okay. In fact, I think your testimony on Saturday was
16 Acis was Highland, right?

17 A Well, they're two -- they're two separate corporations.
18 There's nothing -- there's nothing wrong with being two
19 separate corporations. But Acis was Highland in that Highland
20 provided the employees. I don't believe at the time -- there
21 were partners in Acis, but I don't think there were employees
22 in Acis. I think they were all from -- from the Highland
23 business. And the payroll, everybody who worked there I
24 believe was on the Highland payroll.

25 Q Acis is the manager of certain CLOs, right?

1 A That's correct.

2 Q Okay. And as the manager of those CLOs, it owes certain
3 fiduciary duties to its client, the CLOs, correct?

4 A Yes. I think that's a fair assessment.

5 Q Okay. Under the Advisors Act, right?

6 A Yeah. That's correct.

7 Q And not just the CLOs, but also the investors in those
8 CLOs, correct?

9 A Well, I think it's actually more (garbled). I think it's
10 actually more the investors. The CLO is just a thing, so it's
11 sort of hard to owe a fiduciary duty to just a thing which is
12 just an investment vehicle.

13 Q Understood. So you would agree with me, then, Acis, as
14 the manager of the CLOs, owed fiduciary duties to the
15 investors in those CLOs.

16 A That's my understanding, yes.

17 Q Okay. And in exercising those duties, the manager, under
18 the Advisors Act, has a duty to subordinate its interest to
19 the interests of those investors in the CLOs, correct?

20 A I think, I think generally when you think about the
21 fiduciary duty, and I think that we -- I want to make sure I'm
22 very specific about this -- is that the manager has a duty --
23 fiduciary duties -- there's a whole bunch of legal analysis of
24 what they are -- but they are significant, serious (inaudible)
25 that the manager owes to the investors. And to the extent

1 that the manager's interests would somehow be -- somehow
2 interfere with the investors in the CLO, he's supposed to --
3 he or she is supposed to subordinate those to the benefit of
4 the investors.

5 Q Okay. So I think your answer, I think the answer to my
6 question was yes, the manager has to subordinate its interests
7 to the interests of the investors in the CLO, correct?

8 A Yeah. But your problem -- words was pretty loaded.
9 That's why I had to -- no self-interest. Not fees. There's a
10 whole bunch of different analysis. So I think it's fair to
11 say yes. I don't want to quibble with you about your
12 presentation. But we had a long discussion about this on
13 Saturday.

14 MR. MORRIS: Your Honor, if I may, I don't want to
15 interrupt Counsel's flow, but I'm not sure what the purpose of
16 this is, but I just want to make it clear that Mr. Seery is
17 not being offered as an expert on fiduciary duties, and to the
18 extent any of these questions are designed to elicit some type
19 of binding result on the Debtor, I would object.

20 THE COURT: What about that, Mr. Kathman?

21 MR. KATHMAN: Your Honor, may I respond?

22 THE COURT: Please.

23 MR. KATHMAN: I would like to respond to that, Your
24 Honor. There was a hearing held on March 4th in this hearing
25 where the Debtor put Mr. Seery on the stand and he testified

1 pretty extensively about what his duties are under the
2 Advisors Act. They were trying to pay people. Ms. Hayward
3 had him under direct examination and Mr. Seery testified there
4 about what the duties are under the Advisors Act.

5 So to the extent that Mr. Seery has already been asked
6 questions in this case about what an advisor's duties are
7 under the Advisors Act, I think that that has opened the door
8 and he can answer questions on what his understanding and
9 belief is under the Advisors Act.

10 MR. MORRIS: Your Honor?

11 MS. MASCHERIN: Your Honor, I'm going to also join in
12 with a relevance objection, and I fail to see how testimony at
13 a March hearing that was not a 9019 motion, what possible
14 relevance that has here.

15 THE COURT: Okay. How about the relevance objection,
16 Mr. Kathman? I'm a little concerned.

17 MR. KATHMAN: Sure, I'll answer the relevance
18 objection, Your Honor. The main thrust of one of our
19 objections is that the Acis releases are too -- are
20 essentially premature at this point. And the testimony I
21 think you're going to hear from Mr. Seery is that he didn't
22 consider at all whether Acis had violated its own Advisors Act
23 obligation to any of its investors. He's going to testify he
24 doesn't know who the investors are in the Acis CLOs and
25 whether Acis may have liability for violation of the Advisors

1 Act. That just purely wasn't something that he considered in
2 determining whether to grant these releases that are -- or
3 agree to these releases that were included in the settlement
4 agreement.

5 And so what I want to know, Your Honor, is, is there
6 potential liability that's there? And I'm getting at the
7 question, I'm asking Mr. Seery, did he consider those things?
8 His answer is going to be no. I took his deposition on
9 Saturday. And that's relevant, Your Honor, because as Mr.
10 Clemente -- and I'm almost done, Your Honor. As Mr. Clemente
11 said a couple of months ago, these things all looked at
12 individually can a lot of time be justified, but when you put
13 it in context and you look at the broader scope of things, you
14 have to examine all of these settlements and all of these
15 motions in the broader context.

16 And our argument, Your Honor, is that there's a whole lot
17 of litigation pending right now. We have the Committee that
18 has a deadline to potentially bring causes of action against
19 Highland CLO Funding. There's a HarbourVest objection on file
20 right now that involves stuff going on with Highland CLO
21 Funding. And all of those facts relate to potential
22 obligations that Acis has to Highland CLO Funding. You heard
23 Ms. Patel talk about that relation earlier when she was
24 speaking.

25 And so, Your Honor, part of our argument is that until we

1 know what the result of all of that litigation is, that these
2 releases are just a little premature. And Mr. Seery's
3 testimony is going to be he didn't consider any of that in
4 determining whether to approve the settlement.

5 MR. MORRIS: Your Honor, may --

6 THE COURT: You say these releases, plural. I mean,
7 we've already heard that HCLOF and Holdco and HarbourVest are
8 carved out.

9 MR. KATHMAN: I understand.

10 THE COURT: So it's all about the Highland release,
11 right? Or no? I mean, I don't know who you're talking about.

12 MR. KATHMAN: The answer to that question, Your
13 Honor, is the Committee, again, has specifically said in this
14 Court that they investigated the quote/unquote Byzantine
15 empire. They're undertaking an investigation right now of
16 whether to bring alter ego causes of action and fraudulent
17 transfer causes of action.

18 So the concern that I have and the concern my client has
19 is if at some point Highland CLO Funding and all of these
20 entities that are in the Highland Byzantine get collapsed back
21 into Highland, Highland has no ability to go back and point
22 the finger at Acis because it's given that release away, it's
23 given that release away in the settlement agreement.

24 THE COURT: I'm not understanding. Okay. Let's
25 start with this fundamental. Acis went through its own

1 bankruptcy. So I guess you're talking about post-confirmation
2 Acis.

3 MR. KATHMAN: Correct.

4 THE COURT: January 2018 --

5 MR. KATHMAN: Correct.

6 THE COURT: -- is the only Acis that claims can be
7 asserted against, okay?

8 MR. KATHMAN: Correct. Yes.

9 THE COURT: Post-January --

10 MS. PATEL: 2019, Your Honor, to be clear.

11 THE COURT: Oh, 2019? Okay.

12 MS. PATEL: Yes, Your Honor.

13 THE COURT: Time flies.

14 MS. PATEL: Our plan went effective actually February
15 of 2019.

16 THE COURT: Time flies. So, can we agree that nobody
17 has any ability -- well, I say nobody. I mean, there are --
18 there's the proof of claim of Highland. There's the
19 administrative expense claim in Acis's case that are being --
20 that's been compromised. But if anyone is going to say Acis
21 is part of an alter ego type theory, it's too late, right?
22 It's too late because --

23 A VOICE: Not the --

24 MR. MORRIS: Exactly.

25 THE COURT: That's not your argument? Then --

1 MR. KATHMAN: No, Your Honor.

2 THE COURT: -- I'm confused what, what the argument
3 is.

4 MR. KATHMAN: Your Honor, my argument is that
5 Highland CLO Funding or CLO Holdco or any of the entities that
6 the Committee is targeting, okay, --

7 THE COURT: Uh-huh.

8 MR. KATHMAN: -- there are -- there are entities.
9 Back in July, remember Mr. Clemente came before this Court and
10 you put a 90-day deadline --

11 THE COURT: Right. Right.

12 MR. KATHMAN: -- on him to investigate those claims
13 and causes of action.

14 THE COURT: Uh-huh. Uh-huh.

15 MR. KATHMAN: Okay? That was just recently extended,
16 I think, last week. If any of those entitles, CLO Holdco,
17 Highland CLO Funding, or any other of those entities that the
18 Committee might target for alter ego, not Acis, --

19 THE COURT: Uh-huh.

20 MR. KATHMAN: -- if any of those entities are
21 ultimately determined to be the alter ego and are collapsed
22 back into Highland, and those entities, like Highland CLO
23 Funding, which the Debtor is carving out of this release, --

24 THE COURT: Uh-huh.

25 MR. KATHMAN: -- or CLO Holdco, which it's carving

1 out of the release, --

2 THE COURT: Uh-huh.

3 MR. KATHMAN: -- if those entities end up getting
4 clawed back, or even fraudulent transfers for the CLOs that
5 were transferred to those entities get brought back into
6 Highland, --

7 THE COURT: Uh-huh.

8 MR. KATHMAN: -- Highland can't sue for anything that
9 Acis did post-confirmation because it's giving those releases
10 away in the settlement. I see I lost you.

11 THE COURT: Well, I -- I mean yes, that's the point
12 of the settlement.

13 A VOICE: Yeah.

14 THE COURT: But I'm not sure -- I'm not sure where
15 the questioning about fiduciary duties, where it ties into
16 this.

17 MR. KATHMAN: It's really, Your Honor -- and I can
18 probably skip a lot of this by asking Mr. Seery a penultimate
19 question: Did he consider any of this in determining whether
20 to approve the settlement or not? That will shortcut it.
21 That will shortcut it because his answer is going to be no,
22 that wasn't considered as a part of this settlement.

23 MR. MORRIS: Your Honor?

24 MS. PATEL: I still don't --

25 MR. MORRIS: Yeah. I would just -- I would just

1 point out that his reliance on the UCC, which hasn't even
2 filed an objection to this motion, is misplaced for that very
3 reason. I don't see how he gets to piggyback on something Mr.
4 Clemente said a couple months ago in a different context in a
5 motion today in which the UCC doesn't take a position. It's -
6 - this is just so far afield, Your Honor.

7 THE COURT: All right. Mr. Kathman, I'm going to
8 sustain what is essentially a relevance objection. I'm not
9 connecting the dots on -- since we established at the
10 beginning of this hearing that there would be no release of
11 HCLO Funding or CLO Holdco or HarbourVest, no mutual releases,
12 I feel like the scenario you have defined as being your
13 concern, what if the Committee decides to bring causes of
14 action against them or seek alter ego remedies, I don't know
15 how that's impacted by this proposed settlement. I just don't
16 get it.

17 MR. KATHMAN: Yeah. Can I answer that, Your Honor,

18 THE COURT: Please.

19 MR. KATHMAN: -- and address that concern?

20 THE COURT: Please.

21 MR. KATHMAN: Okay. This really isn't the crux of
22 what our objection is, Your Honor. Is that if you -- and I'm
23 not asking the Court to, I'm just -- to agree with me. What
24 I'm proposing is that, in the event Highland CLO Funding has
25 some cause of action against Acis for breach of the Advisors

1 Act, okay, under the settlement as it is sitting right now
2 carved out, no problems. Correct? But if --

3 THE COURT: So, for post-January 2019, yeah.

4 MR. KATHMAN: Right. All I'm saying -- and I'm
5 talking about --

6 THE COURT: The others are barred by the confirmation
7 order, okay?

8 MR. KATHMAN: I'm talking about post -- post-
9 confirmation Acis causes of action, Your Honor.

10 THE COURT: Uh-huh. Uh-huh.

11 MR. KATHMAN: If Highland CLO Funding were to have
12 causes of action for that, as currently proposed, yes, it's
13 carved out in the settlement agreement. But in the event
14 Highland CLO Funding is collapsed into the Debtor, okay, those
15 are causes of action that the Debtor would then have. Because
16 if Highland CLO Funding is collapsed into the Debtor, the
17 Debtor then possesses those causes of action against Acis for
18 violations of the Investors Act. But the Debtor would not be
19 able to bring those causes of action for violations of the
20 Investors Act because of these releases in the settlement
21 agreement. My point is it's premature.

22 THE COURT: I'm not sure I agree with you legally. I
23 mean, can you give me some authority for that?

24 MR. KATHMAN: I don't, Your Honor. To be honest with
25 you, no, off the top of your head, I do not have authority

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1 that if it's collapsed back in there the -- if Highland --
2 well, I --

3 THE COURT: I disagree with the premise so I'm going
4 to find the line of questioning irrelevant, okay? So please
5 move on.

6 MR. MORRIS: Thank you.

7 MR. KATHMAN: Can I ask my penultimate question?

8 THE COURT: Go ahead.

9 BY MR. KATHMAN:

10 Q The penultimate question being: Mr. Seery, in determining
11 whether to approve this settlement, did you consider whether
12 Acis might have violated its Investors -- its Advisors Act
13 duties to the investors in the Acis CLO?

14 MR. MORRIS: Objection.

15 MS. MATSUMURA: Objection, relevance.

16 THE COURT: Sustained.

17 MS. MATSUMURA: Sorry. This is Rebecca Matsumura
18 from Highland CLO Funding. I just want to state on the record
19 that we also object to the premise of this line of questioning
20 and don't understand why he would be raising these on behalf
21 of our client, and we would object to whatever alter ego
22 argument he seems to be suggesting.

23 THE COURT: All right.

24 MS. MATSUMURA: Thank you.

25 THE COURT: All right.

1 MR. KATHMAN: Your Honor, I don't have any further
2 questions.

3 THE COURT: Okay. All right. Any redirect, Mr.
4 Morris?

5 MR. MORRIS: No, Your Honor.

6 THE COURT: All right. Well, Mr. Seery, thank you.
7 That concludes your testimony, unless someone recalls you for
8 rebuttal tomorrow.

9 All right. So we're going to recess, and we'll start back
10 at 9:30 in the morning.

11 Do we want to talk a little bit about -- well, Mr. Morris,
12 are you resting? I shouldn't have assumed you're resting. I
13 think this was your only witness, correct?

14 MR. MORRIS: He was. We -- exhibits -- rebuttal.
15 And so we -- we went through the --

16 THE COURT: We did.

17 MR. MORRIS: -- Exhibits 1 through 4.

18 THE COURT: We did.

19 MR. MORRIS: So the Debtor does rest, Your Honor.
20 And I think it'll be up to Mr. Daugherty and Mr. Dondero as to
21 whether Mr. Daugherty is going to testify. He was on a
22 witness list. And whether Professor Rappaport is going to
23 testify. I think those are the only two potential witnesses,
24 if they're still planning on doing it.

25 THE COURT: All right. Well, let me double-check

1 with Ms. Patel. I can't remember if you filed a witness and
2 exhibit list. Did you have any separate evidence on this?
3 You did file a witness and exhibit -- but it didn't say, it
4 didn't designate a witness. It just said --

5 MS. PATEL: It did not, Your Honor.

6 THE COURT: Okay. So you're not going to put on any
7 evidence?

8 MS. PATEL: We are not putting on any additional
9 evidence, Your Honor. Our witness and exhibit list was
10 essentially a "Me, too" along with the Debtor.

11 THE COURT: Okay. So the Debtor has rested.

12 And Mr. Kathman, can I presume you're putting on Mr.
13 Daugherty if we reconvene tomorrow morning?

14 MR. KATHMAN: Well, that would have been a good
15 presumption before this argument here, Your Honor. I'm going
16 to talk to my client about that, because if Your Honor's not
17 going to hear any testimony about potential causes of action
18 that may exist and potential liabilities out there, that may
19 alleviate the need for Mr. Daugherty's testimony. So I'm
20 going to talk to him. And what I'd like to do is reserve my
21 right to call him tomorrow morning, but I can't tell you
22 definitively one way or the other as I sit here.

23 THE COURT: All right. And then Mr. Wilson, can you
24 tell us about witnesses you plan to call? Was there anyone
25 besides Professor Rappaport?

1 MR. WILSON: No, Your Honor. We had two witnesses on
2 our list, one of which was Mr. Seery, and I've covered
3 everything we need to cover with him, so I wasn't going to
4 recall him in our case in chief.

5 We do have potential scheduling issues with Professor
6 Rappaport. She is a practicing professor, and her teaching
7 schedule does not allow her to appear tomorrow morning. She
8 has somewhat of a limited schedule. She told us that Thursday
9 morning or Tuesday --

10 THE COURT: I'm sorry, she told you what?

11 MR. WILSON: That she was available Thursday morning
12 or Tuesday. Or next Tuesday.

13 THE COURT: All right. Well, I'm sorry. We gave
14 this hearing date quite a while back. So you're saying even
15 if I went tonight until 8:00 o'clock she wasn't available
16 tonight; is that correct?

17 MR. WILSON: Well, I do believe she has another hour
18 available today.

19 THE COURT: Well, you know, it is 6:37 Central time,
20 and we've been going a very long time today. Remember, I've
21 had two other hearings besides these.

22 Let me ask this: Is there any objection to Professor
23 Rappaport? I'm not sure what the nature of her testimony is
24 going to be. And were there any objections, or no?

25 MR. MORRIS: You know, Your Honor, I actually was

1 planning on making another motion. Can we just take two
2 minutes and let me confer with my colleagues? If -- what I'm
3 considering, if it would be okay with counsel for Mr. Dondero,
4 is to just let the report in for what it is, without
5 testimony. I don't know if that's something that they would
6 consider. And then subject to, you know, consulting with my
7 client, that would be something that I might recommend in
8 order to move this along.

9 It sets forth her opinions. I'm not sure -- you know, and
10 if I don't object to it, I'm not sure why we need to hear from
11 the witness.

12 THE COURT: All right. What about that, Mr. Wilson?

13 MR. WILSON: If you'll allow me a real quick consult
14 with my co-counsel, I'll give you an answer.

15 THE COURT: Okay.

16 MR. MORRIS: Can we just take three minutes, Your
17 Honor?

18 THE COURT: Yes.

19 MR. MORRIS: Not a long break.

20 THE COURT: But yes, please, three minutes. There
21 may be people wanting to watch the World Series, but others of
22 us are just tired. Okay.

23 MR. MORRIS: Thanks so much.

24 THE COURT: Okay. Three minutes.

25 (A recess ensued from 6:40 p.m. to 6:43 p.m.)

1 MS. PATEL: Your Honor, during the break if we could
2 also -- if Mr. Kathman wouldn't mind asking his client, I
3 believe Mr. Daugherty's on the hearing as well, if they could
4 make a decision. Assuming a couple dominoes fall into place,
5 if Mr. Daugherty's not going to testify, and assuming
6 Professor Rappaport's report is going to come in, I'm hoping
7 you close this tonight or talk about when we're going to do
8 closing those arguments if they're going to be lengthy.

9 MR. KATHMAN: Your Honor, Ms. Patel has always --
10 maybe sometimes, maybe not always, but sometimes a step ahead
11 of me. I have spoken with Mr. Daugherty and we're not going
12 to call him.

13 THE COURT: You are not going to call him? That's
14 what you said?

15 MR. KATHMAN: No.

16 THE COURT: Okay.

17 MR. KATHMAN: No, we are not going to call him, Your
18 Honor.

19 THE COURT: Okay.

20 MR. MORRIS: The Debtor is prepared to allow her
21 report to come in without testimony. And without objection.

22 THE COURT: I'm sorry, say again?

23 MR. MORRIS: Your Honor, the Debtor would consent, if
24 Mr. Dondero consents, the Debtor would consent to the
25 admission of Professor Rappaport's report into evidence

1 without objection, provided there's no testimony.

2 THE COURT: All right. So do we have Mr. Wilson
3 back?

4 MR. WILSON: Yes, Your Honor. Mr. Dondero will agree
5 to the admission of Professor Rappaport's report in lieu of
6 her testimony.

7 I would ask a couple things. Number one, that I be
8 allowed an opportunity to admit the exhibits on my exhibit
9 list, which include the report and Professor Rappaport's CV.

10 And then the second thing I would ask is that Judge Lynn
11 had prepared a closing argument and we would like sufficient
12 time to -- for him to give that before the close of this
13 hearing.

14 THE COURT: All right. Well, as far as Dondero's
15 exhibits, they are at Docket #1194. There are --

16 MR. KATHMAN: Your Honor, can I make a suggestion
17 with closing arguments, I mean, potentially?

18 THE COURT: Okay. Let me take these in steps. We
19 have Exhibits A through AA, A through Z plus AA, that I think
20 you're offering. That's --

21 MR. WILSON: Well, Your Honor, briefly, we're not
22 going to try to put in the Seery depo, the Seery video, or the
23 Nancy Rappaport depo.

24 THE COURT: Okay.

25 MR. WILSON: I guess we'll just do Dondero Exhibits A

1 through X.

2 THE COURT: A through X have been offered. Does
3 anyone object?

4 MR. MORRIS: Just one second, Your Honor.

5 THE COURT: Okay.

6 (Pause.)

7 MR. MORRIS: Only to Exhibit P as in Peter. That is
8 the expert report. And as long as it's not being offered for
9 the truth of the matter asserted, it's being offered solely
10 for the purposes of expert testimony, the Debtor has no
11 objections to any other of the proffered A through X.

12 THE COURT: All right. Any other objections?

13 All right. With that caveat -- Mr. Wilson, I assume you
14 don't have any issue with the caveat on the Rappaport report.
15 So with that, I'll --

16 MR. WILSON: No, there is none.

17 THE COURT: I'll admit these.

18 (James Dondero's Exhibits A through X are received into
19 evidence.)

20 THE COURT: If I go to the docket, the expert report
21 of Professor Rappaport is actually there on the docket at
22 1194.

23 MR. WILSON: (inaudible). Yes, Your Honor.

24 THE COURT: Okay. So I need to read that before we
25 come back tomorrow, and I guess see if there's anything else

1 on here I haven't looked at.

2 So what we will do is we'll come back tomorrow morning for
3 closing arguments. And Mr. -- well, let me ask. I was going
4 to say 9:30, but would 10:00 o'clock, by chance, be a little
5 bit better? That'll help me look at this Professor Rappaport
6 report. I don't know how long it is, but --

7 MR. MORRIS: I will be available whatever time is
8 convenient for the Court. Can you give us some guidance as to
9 how long you will tolerate closing statements?

10 THE COURT: Tolerate. Your word. I think, you know,
11 20 minutes each ought to be plenty.

12 MR. MORRIS: That's fair.

13 THE COURT: So we'll start at 10:00 o'clock Central
14 and we'll hear those closing arguments. And when we're done
15 tomorrow or with this issue, I'd love to get a preview as far
16 as the disclosure statement hearing Thursday at 9:30. I think
17 I told you four. Five objections were filed in the last, you
18 know, few hours we've been in court. Every member of the
19 Creditors' Committee plus the Creditors' Committee filed an
20 objection. And I have not looked at them to know how lengthy
21 they are. But I'd love to get a preview on whether you're
22 going to be working and trying to resolve these and maybe
23 we'll start and adjourn, or if we're going to have a knock-
24 down drag-out. Okay?

25 MR. KATHMAN: Your Honor, I would like to offer two

1 exhibits. I don't think they're controversial. It's just the
2 Debtor's plan and disclosure statement. They were our PHD 23
3 and 24. They're filed at Docket #1079 and 1080 in the case.
4 It's the Debtor's plan and disclosure statement. I can't
5 imagine there's any objection to those.

6 THE COURT: Okay.

7 MR. MORRIS: No objection.

8 THE COURT: All right. Those will be admitted.

9 (Patrick Daugherty's Exhibit 23 and 24 are received into
10 evidence.)

11 THE COURT: All right. So we'll see you at 10:00
12 o'clock in the morning.

13 MS. PATEL: Your Honor?

14 MR. ANNABLE: Your Honor?

15 MS. PATEL: If I may.

16 THE COURT: Briefly.

17 MS. PATEL: My apologies. I know I kind of started
18 off late in the hearing, but as I explained earlier today, I
19 have an in-movable conflict tomorrow morning. Mr. Shaw will
20 handle closing arguments for us. And may I be excused from
21 appearing tomorrow?

22 THE COURT: You are excused. Thank you. All right.
23 Good night.

24 MS. PATEL: Thank you, Your Honor.

25 MR. ANNABLE: Your Honor? Your Honor?

1 THE CLERK: All rise.

2 MR. ANNABLE: This is Zach Annable. Your Honor?

3 Your Honor?

4 THE COURT: This better be good, Mr. Annable.

5 MR. ANNABLE: I apologize. This is just a
6 housekeeping matter. For purposes of the continued hearing
7 tomorrow morning, I know it's too late for your staff to
8 probably set up the WebEx meeting information, but if you
9 could have Ms. Ellis distribute that to me tomorrow morning, I
10 will try to make sure to get it out to everybody. Just
11 letting you know we will need a new WebEx invitation for the
12 hearing tomorrow morning.

13 THE COURT: All right.

14 MR. MORRIS: Thank you. Thank you. Good catch.

15 THE CLERK: She's probably listening anyway. She
16 usually listens.

17 THE COURT: Yes. She -- hang on. Knowing Traci, she
18 is listening.

19 (Pause.)

20 THE COURT: Well, she surprised me. She didn't pick
21 up the phone. I promise you, she'll be all over it, so we'll

22 --

23 THE CLERK: I'll send an e-mail.

24 THE COURT: Yes. Mike's sending her an e-mail right
25 now, so you all will have it in plenty of time to get

1 connected. Okay. Thank you. Mr. Annable, that was worth it.
2 Okay?

3 MR. ANNABLE: Thank you, Your Honor.

4 THE CLERK: All rise.

5 (Proceedings concluded at 6:51 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling

10/22/2020

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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Exhibit 7

Acis CLO 2013-1 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2013-1 Ltd.
c/o Appleby Trust (Cayman) Ltd.
PO Box 1350
Grand Cayman KY1-1108, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle St., 10th Floor
Chicago, IL 60603
Attn: Corporate Trust Services – Acis CLO 2013-1
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2013-1 Ltd.


Dear Sir or Madam:


Reference is hereby made to that certain Indenture, dated as of March 18, 2013 (as amended, modified or supplemented from time to time, the “**Indenture**”), among Acis CLO 2013-1 Ltd. (the “**Issuer**”), Acis CLO 2013-1 LLC and U.S. Bank National Association (the “**Trustee**”). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018.

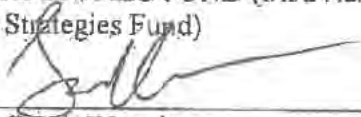
Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a
Acis Loan Funding, Ltd.)

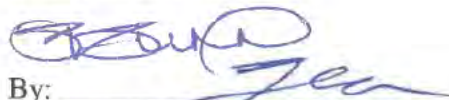
By: 
Name: William Scott
Title: Director

By: 
Name: Heather Bestwick
Title: Director

NEXPOINT STRATEGIC
OPPORTUNITIES FUND (f/k/a NexPoint
Credit Strategies Fund)

By: 
Name: Frank Waterhouse
Title: Treasurer, Principal Accounting
Officer and Principal Financial Officer

DREXEL LIMITED



By: _____

Name: S. DEAN G.P. DEAN

Title: _____

**For and on behalf of Enmyn Limited
Corporate Director**

Acis CLO 2014-3 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-3 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-3 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2014-3 Ltd.


Dear Sir or Madam:


Reference is hereby made to that certain Indenture, dated as of February 25, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-3 Ltd. (the "**Issuer**"), Acis CLO 2014-3 LLC and U.S. Bank National Association (the "**Trustee**"), Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least a Majority of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a
Acis Loan Funding, Ltd.)

By: 
Name: William Scott
Title: Director

By: 
Name: Heather Bestwick
Title: Director

Acis CLO 2014-4 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-4 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-4 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: **Acis CLO 2014-4 Ltd.**


Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of June 5, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"). among Acis CLO 2014-4 Ltd. (the "**Issuer**"), Acis CLO 2014-4 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

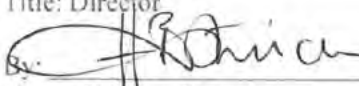
Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a
Acis Loan Funding, Ltd.)

By: 

Name: William Scott

Title: Director



Name: Heather Bestwick

Title: Director

Acis CLO 2014-5 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-5 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-5 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: **Acis CLO 2014-5 Ltd.**


Dear Sir or Madam:


Reference is hereby made to that certain Indenture, dated as of November 18, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-5 Ltd. (the "**Issuer**"), Acis CLO 2014-5 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a
Acis Loan Funding, Ltd.)

By: 
Name: William Scott
Title: Director

By: 
Name: Heather Bestwick
Title: Director

Acis CLO 2015-6 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2015-6 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2015-6 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2015-6 Ltd.

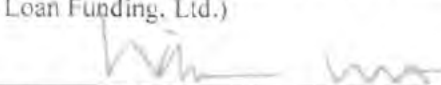
Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of April 16, 2015 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2015-6 Ltd. (the "**Issuer**"), Acis CLO 2015-6 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a
Acis Loan Funding, Ltd.)

By: 
Name: William Scott
Title: Director

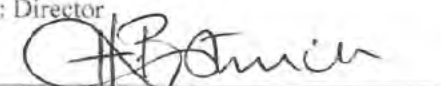
By: 
Name: Heather Bestwick
Title: Director

Exhibit 8

On the ex parte application for a Temporary Restraining Order by Robin Phelan, the Chapter 11 Trustee (the "Trustee") for Acis Capital Management, L.P., ("Acis LP") and ("Acis GP, with Acis LP, "Debtors") pursuant to Federal Rule of Civil Procedure 65, incorporated by Federal Rule of Bankruptcy Procedure 7065, after considering the facts contained in the Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction (the "Complaint")¹ and the Trustee's verification of the Complaint, the Court finds that there is compelling evidence that irreparable harm is imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"), and if the Court does not issue a temporary restraining order enjoining the actions described herein, the Parties will be irreparably injured. As the basis for this order, the Court states the following:

1. The facts set forth in the Complaint present a clear showing that immediate and irreparable injury, loss, or damage will result to the Parties before the Restrained Parties (as hereinafter defined) or any other parties can be heard in opposition to this Order.

¹ Capitalized term(s) not expressly defined herein shall have the same meaning(s) as such term(s) have in the Complaint.

2. Rakhee Patel, counsel for the Trustee, represented to this Court and certified in writing that Rakhee Patel did not attempt to give notice to the Restrained Parties. Given the facts set forth in the Complaint, the Court finds that notice is not necessary, as it appears that Highland previously disregarded this Court's earlier orders (the earlier TRO) and continued to make trades that violated this Court's orders. As evidenced by the Emails (as defined by the Motion for an Ex Parte Temporary Restraining Order, or in the Alternative, Emergency Hearing on the Application for Temporary Restraining Order), Highland, on less than 24-hours' notice, seeks to liquidate hundreds of millions of dollars of CLO collateral, arguably in violation of the PMAs and the Indentures, and also in likely violation of Sections 362 and 363 of the Bankruptcy Code. The Court is concerned that Highland will issue trades which effectively begin liquidating the CLOs in the time between when notice of the requested relief is given and when this Court sets a hearing on the temporary restraining order. The Court is also concerned in that, on June 14, 2018, counsel for Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. ("HCLOF") told the Court that HCLOF had withdrawn its earlier-issued First Optional Redemption Notices but reserved the right to reissue the notices at some future date, stating: "That process has, in fact, concluded. That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process."² Because the First Optional Redemption Notices had been withdrawn, the Trustee did not proceed with the hearing the Court had scheduled on the Trustee's Motion to Extend the TRO. The Trustee has presented evidence to the Court with its newest request for another TRO that, ***on June 15, 2018, the very next day after making these statements to the Court—and the day after the hearing on the Motion to Extend the TRO was to have taken place, and after the TRO had expired, and—despite representing to the Court through counsel that it was essentially “standing down” for some period of time to bring some “sanity” to this process—***HCLOF, without requesting relief from the stay under section 362(d) of the Bankruptcy Code or requesting authority to take such action under section 363(b) of the Bankruptcy Code, again advised the Trustee that it had directed the Issuers to effectuate the Optional Redemption on July 30, 2018. The Court finds that notice is not required as there is no less drastic means to protect the Trustee's interests.

² See Docket No. 298 at p. 7, ll. 15-22, Transcript of Hearing Held June 14, 2018.

3. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland Capital Management, L.P. ("Highland"), HCLOF, CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"), Acis CLO 2014-3 Ltd. ("CLO-3"), Acis CLO 2014-4 Ltd. ("CLO-4"), Acis CLO 2014-5 Ltd. ("CLO-5"), Acis CLO 2015-6 Ltd. ("CLO-6," and together with CLO-3, CLO-4, and CLO-5, the "Issuers"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and other parties (the Trustee, Highland, the Highland Affiliates, the Issuers, and the Co-Issuers are referred to herein as the "Restrained Parties") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. "Optional Redemption" is defined by and effectuated pursuant to Sections 9.2 of each of the following: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, CLO-1 LLC, as co-Issuer and US Bank as Trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-6 Indenture"). CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures"). The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties. For the avoidance of doubt, Optional Redemption as used herein refers to an Optional Redemption previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means.

4. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a temporary restraining order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.

5. The Trustee has a "substantial likelihood of success on the merits" of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failure of Defendants to comply with the legal requirements of implementing an optional redemption, (iii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iv) confirmation of an effective plan of reorganization.
6. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland Affiliates, is substantially outweighed by the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.
7. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

IT IS THEREFORE ORDERED that all Restrained Parties³ and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Restrained Parties' behalf are enjoined for a period of fourteen (14) days from:

- a. proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption, call, or other liquidation of the Acis CLOs previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means;
- b. trading any CLO collateral, whether in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs or otherwise, without the express and explicit written authorization of the Trustee; and
- c. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of any Optional Redemption, call, or other liquidation of the Acis CLOs.

IT IS FURTHER ORDERED that pursuant to Federal Rule of Bankruptcy Procedure 7065, the Trustee is not required to provide security or bond in connection with this Order.

IT IS FURTHER ORDERED that this Order expires on 12:00 p.m. (Central Daylight Time) on July 5, 2018, unless further extended by this Court or by agreement of the parties.

IT IS FURTHER ORDERED that a preliminary injunction hearing is set before the Honorable Stacey G.C. Jernigan on **July 5, 2018 at 9:30 am.** (Central Daylight Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242.

IT IS FURTHER ORDERED that the Court will hold as status conference on this matter before the Honorable Stacey G.C. Jernigan on **June 22, 2018 at 10:45 a.m.** (Central Standard Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242.

END OF ORDER

Exhibit 9

On June 21, 2018, on the ex parte application for a Temporary Restraining Order by Robin Phelan, the Chapter 11 Trustee (the "Trustee") for Acis Capital Management, L.P., ("Acis LP") and ("Acis GP, with Acis LP, "Debtors"), pursuant to Federal Rule of Civil Procedure 65, incorporated by Federal Rule of Bankruptcy Procedure 7065, after considering the facts contained in the Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction (the "Complaint")¹ and the Trustee's verification of the Complaint, the Court found that: (i) there was evidence that irreparable harm was imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"); and (ii) if the Court did not issue a temporary restraining order enjoining the actions described herein, the Parties will be irreparably injured, this Court entered the *Ex Parte Temporary Restraining Order* [Case No. 18-30264, Docket No. 310, Adversary No. 18-03212, Docket No. 3](the "Second TRO"). Based upon the agreement of the Trustee and the Restrained Parties to extend the Second TRO (the "Extension Agreement"), the Court states the following:

1. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland Capital Management, L.P. ("Highland"), Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. ("HCLOF"), CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"), Acis CLO 2014-3 Ltd. ("CLO-3"), Acis CLO 2014-4 Ltd. ("CLO-4"), Acis CLO 2014-5 Ltd. ("CLO-5"), Acis CLO 2015-6 Ltd. ("CLO-6," and together with CLO-3, CLO-4, and CLO-5, the "Issuers"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and other parties (the Trustee, Highland, the Highland Affiliates, the Issuers, and the Co-Issuers are referred to herein as the "Restrained Parties") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. "Optional Redemption" is defined by and effectuated pursuant to Sections 9.2 of each of the following: (i) that certain Indenture, dated as of March 18,

¹ Capitalized term(s) not expressly defined herein shall have the same meaning(s) as such term(s) have in the Complaint.

2013, issued by CLO-1, as issuer, CLO-1 LLC, as co-Issuer and US Bank as Trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-6 Indenture"). CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures". The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties. For the avoidance of doubt, Optional Redemption as used herein refers to an Optional Redemption previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means.

2. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a temporary restraining order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.
3. The Trustee has a "substantial likelihood of success on the merits" of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failure of Defendants to comply with the legal requirements of implementing an optional redemption, (iii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iv) confirmation of an effective plan of reorganization.
4. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland Affiliates, is substantially outweighed by the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.
5. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing,

sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

IT IS THEREFORE ORDERED, pursuant to Federal Rule of Civil Procedure 65(b)(2), made applicable herein by Federal Rule of Bankruptcy Procedure Rule 65, based on the Extension Agreement between the Trustee and the Restrained Parties, that all Restrained Parties² and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Restrained Parties' behalf are enjoined from:

a. proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption, call, or other liquidation of the Acis CLOs previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means;

b. trading any CLO collateral, whether in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs or otherwise, without the express and explicit written authorization of the Trustee; and

c. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of any Optional Redemption, call, or other liquidation of the Acis CLOs.

IT IS FURTHER ORDERED that pursuant to Federal Rule of Bankruptcy Procedure 7065, the Trustee is not required to provide security or bond in connection with this Order.

IT IS FURTHER ORDERED that based on the Extension Agreement of the Restrained Parties, this Order expires on 12:01 p.m. (Central Daylight Time) on July 9, 2018, unless further extended by this Court or by agreement of the parties.

IT IS FURTHER ORDERED that based on the Extension Agreement, the preliminary injunction hearing set before the Honorable Stacey G.C. Jernigan on July 5, 2018, at 9:30 a.m. (Central Standard Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242 is reset to **July 6, 2018, at 9:30 a.m.** (Central Standard Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242. No further notice of the preliminary injunction hearing prosecuted by the Trustee is needed.

END OF ORDER

Agreed to and accepted:

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ACIS CLO 2014-3 LLC, ACIS CLO
2014-4 LLC, ACIS CLO 2014-5 LLC,
AND ACIS CLO 2015-6 LLC**

Exhibit 10



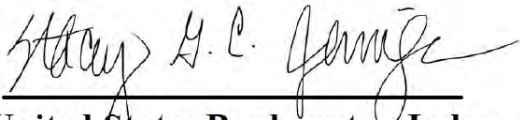
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 31, 2019


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: §
§
ACIS CAPITAL MANAGEMENT, L.P., § CASE NO. 18-30264-SGJ-11
§ (Chapter 11)
Debtor. §

IN RE: §
§
ACIS CAPITAL MANAGEMENT GP, § CASE NO. 18-30265-SGJ-11
L.L.C., § (Chapter 11)
§
Debtor. §

**BENCH RULING AND MEMORANDUM OF LAW IN SUPPORT OF:
(A) FINAL APPROVAL OF DISCLOSURE STATEMENT; AND (B)
CONFIRMATION OF CHAPTER 11 TRUSTEE'S THIRD AMENDED JOINT PLAN**

Before this court is a request by the Chapter 11 Trustee (herein so called) for final approval of the adequacy of a disclosure statement and for confirmation of his Third Amended

Joint Plan of Reorganization,¹ as amended, modified or supplemented (the “Plan”), for the two above-referenced debtors: (1) Acis Capital Management, L.P. (the “Debtor-Acis”), a Delaware limited partnership, and (2) Acis Capital Management GP, LLC, a Delaware limited liability company (the general partner of the Debtor-Acis; collectively, the “Debtors”). The two chapter 11 cases have been administratively consolidated.²

The hearing on these matters transpired over multiple days in December 2018, and the court considered the testimony of more than a dozen witnesses, more than 700 exhibits, and hundreds of pages of legal briefing. Based on the foregoing, the court *overrules all objections* and will confirm the Plan, including all proposed modifications to it. The Chapter 11 Trustee has demonstrated, by a preponderance of the evidence, that the Plan, as modified, satisfies the applicable provisions of the Bankruptcy Code including but not limited to Sections 1122, 1123, 1127, and 1129 of the Bankruptcy Code.³ The court also approves on a final basis the adequacy of the accompanying disclosure statement to the Plan, determining that it meets the requirements set forth in Section 1125 of the Bankruptcy Code. Notice and solicitation with respect to the

¹ Exhs. 508 & 509; *see also* DE ## 660, 661, 693, 702, & 769. References to “DE # __” from time to time in this ruling relate to the docket number at which a pleading or other item appears in the docket maintained in these administratively consolidated Bankruptcy Cases, in Case # 18-30264.

² Note that the Debtor-Acis is, essentially, the debtor that is the operating company. As a general partner, Acis Capital Management GP, LLC is legally obligated on all of the operating company’s debt. *See* 6 Del. C. § 17-403(b) (“Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners.”); *see also* 6 Del. C. § 15-306(a) (“(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law”). The Plan jointly addresses both of the Debtors’ debts.

³ *Heartland Fed. Sav. & Loan Ass’n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993); *In re Sears Methodist Ret. Sys.*, No. 14-32821-11, 2015 Bankr. LEXIS 709, at *8 (Bankr. N.D. Tex. Mar. 5, 2015); *In re Couture Hotel Corp.*, 536 B.R. 712, 732 (Bankr. N.D. Tex. 2015); *In re Mirant Corp.*, No. 03-46590, 2007 Bankr. LEXIS 4951, at *19-20 (Bankr. N.D. Tex. Apr. 27, 2007).

Plan is determined to have complied with the applicable Bankruptcy Rules and due process. The court provides reasoning for its ruling below. The court directs the Chapter 11 Trustee to submit to the court for signing the proposed Findings of Fact and Conclusions of Law and Order that were filed at DE # 814. This Bench Ruling supplements those Findings of Fact and Conclusions of Law and Order and, where appropriate, should be considered additional findings and conclusions as contemplated by Fed. R. Bankr. Proc. 7052.

I. Background.⁴

The above-referenced bankruptcy cases (the “Bankruptcy Cases”) have been pending since January 30, 2018 and have been astonishingly contentious. The Chapter 11 Trustee has been in place since on or about May 14, 2018. The Plan (which is the fourth one proposed by the Chapter 11 Trustee) has been objected to by three related entities: (a) Highland Capital Management, L.P. (“Highland”), (b) Highland CLO Funding Ltd. (“HCLOF Guernsey”), and (c) Neutra, Ltd. (“Neutra Cayman”). The Chapter 11 Trustee loosely refers to these three objectors (the “Objectors”) as “the Highlands” because they are not only related to each other (*i.e.*, they are all, directly or indirectly, part of the Highland 2,000-member corporate organizational structure), but they also have been in “lockstep” with one another in objecting to virtually every position taken by the Chapter 11 Trustee during the Bankruptcy Cases.⁵ These Objectors’ parties-in-interest status will be explained below.

⁴ For a complete set of background facts, the court incorporates herein by reference its Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Petitions, entered April 13, 2018. DE # 118. Exh. 243.

⁵ It is also undisputed that, prior to the appointment of the Chapter 11 Trustee, *the Debtors* and Highland were affiliated and had a close relationship. Exhs. 17, 18, 22-27, 251, 619 & 649.

In simplest terms, the Debtor-Acis, which was formed in the year 2011, is primarily a CLO portfolio manager.⁶ It manages hundreds of millions of dollars' worth of CLOs (which is an acronym for "collateralized loan obligations"). Specifically, it provides fund management services to various special purpose entities that hold CLOs. The Debtor-Acis was providing management services for five such special purpose entities (the "Acis CLOs") as of the time that it and its general partner were put into the involuntary Bankruptcy Cases. The parties have informally referred to the special purpose entities themselves as the "CLO Issuers" or "CLO Co-Issuers" but, to be clear, these special purpose entities (hereinafter, the "CLO SPEs") are structured as follows: (a) on the asset side of their balance sheets, the entities own pieces of senior debt owed by large corporations and, therefore, earn revenue from the variable interest payments made by those corporations on such senior debt; and (b) on the liability side of their balance sheets, the entities have obligations in the form of notes (*i.e.*, tranches of fixed interest rate notes) on which the CLO SPEs themselves are obligated—the holders of which notes are mostly institutions and pension funds (these tranches of notes are usually rated anywhere from Triple A to Single B, depending upon things such as their interest rate and perceived risk). The CLO SPEs make a profit, based on the spread or "delta" between: (a) the variable rates of interest paid on the assets that the CLO SPEs own (*i.e.*, the basket of senior notes); and (b) the fixed rates of interest that the CLO SPEs must pay on their own tranches of debt. At the bottom of the CLO SPEs' capital structure is their equity (sometimes referred to as "subordinated notes," but these "notes" are genuinely equity). As portfolio manager, the Debtor-Acis manages the CLO SPEs' pools of assets (by buying and selling senior loans to hold in the CLO SPEs'

⁶ The Debtor-Acis has managed other funds, from time to time, besides CLOs.

portfolios) and communicates with investors in the CLO SPEs. The CLO SPEs' tranches of notes are traded on the Over-the-Counter market.

To be perfectly clear, none of the CLO SPEs themselves are in bankruptcy. This has never been threatened or a concern. Only the Debtor-Acis which *manages* the CLO business is in bankruptcy. For the most part, the CLO SPEs have continued somewhat “business as usual” during the Chapter 11 Bankruptcy Cases (*i.e.*, they have continued to receive interest payments on their baskets of loans; the usual interest payments on their tranches of debt have been paid;⁷ and baskets of loans have been bought and sold from time to time). The CLO SPEs have retained their own separate counsel during the Chapter 11 cases, have appeared from time-to-time on matters, and are not currently objecting to the Plan. There is also an indenture trustee (U.S. Bank National Association) for the CLO SPEs' debt, that has seemingly faithfully carried on its role during the Chapter 11 Bankruptcy Cases without many objections to the bankruptcy process—only making occasional statements aimed at ensuring that the indentures for the CLOs are not interfered with or disrespected. The indenture trustee has retained and appeared through its own separate counsel during the Chapter 11 Bankruptcy Cases and is not currently objecting to the Plan.

Historically, the Debtor-Acis has had four main sets of contracts that were at the heart of its business and allowed it to function. The Chapter 11 Trustee has from time-to-time credibly

⁷ The evidence reflected that there have been a couple of occasions recently when there were insufficient funds to make distributions to the equity. *E.g.*, Transcript 12/11/18 (PM) [DE # 790], at p. 15 (line 2) through p. 16 (line 18). But it appears to this court that these missed distributions were due to actions of Highland—as later explained herein—in improperly, surreptitiously attempting to liquidate the Acis CLOs, from the time period after the Chapter 11 Trustee was appointed, until the bankruptcy court issued an injunction to temporarily halt Highland's actions. *E.g.*, Transcript 12/11/18 (AM) [DE # 789], p. 67 (line 14) through p. 68 (line 6).

testified that these agreements essentially created an “eco-system” that allowed the Acis CLOs to be effectively and efficiently managed by the Debtor-Acis.

1. The PMAs with the CLO SPEs.⁸

First, the Debtor-Acis has various portfolio management agreements (the “PMAs”) *with the CLO SPEs*, pursuant to which the Debtor-Acis earns management fees. The PMAs have been the primary “assets” (loosely speaking) of the Debtor-Acis (to be more precise, the PMAs are executory contracts pursuant to section 365 of the Bankruptcy Code). They are what generate revenue for the Debtor-Acis.

2. The Sub-Advisory Agreement with Highland.⁹

Second, the Debtor-Acis had a Sub-Advisory Agreement (herein so called) with an insider, *Highland* (*i.e.*, one of the Objectors). Highland’s “insider” status will be further explained below. Pursuant to this agreement, the Debtor-Acis essentially sub-contracted for the use of Highland front-office personnel/advisors to perform management services for the Debtor-Acis (*i.e.*, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). The Debtor-Acis paid handsome fees to Highland pursuant to this agreement. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was rejected (with bankruptcy court approval)¹⁰ by the Chapter 11 Trustee during the Bankruptcy Cases, when the Chapter 11 Trustee credibly represented that he had not only found resources to provide these services at a much lower cost to the estate, but he also had begun to

⁸ Exhs. 6-10.

⁹ Exh. 17.

¹⁰ *See* 11 U.S.C. § 365(a).

believe that Highland was engaging in stealth efforts to liquidate the Acis CLOs, to the detriment of the Debtor-Acis's creditors.¹¹

3. The Shared Services Agreement with Highland.¹²

Third, the Debtor-Acis also had a Shared Services Agreement (herein so called) with Highland, pursuant to which the Debtor-Acis essentially sub-contracted for the use of Highland's back-office services (again, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). To be clear, the Debtor-Acis had no employees of its own—only a couple of officers and members. The Debtor-Acis paid handsome fees to Highland for the personnel and back-office services that Highland provided to the Debtor-Acis. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was also rejected by the Chapter 11 Trustee during the Bankruptcy Cases (with bankruptcy court approval) for the same reasons that the Sub-Advisory Agreement with Highland was rejected.

4. The Equity PMA.¹³

Fourth, until a few weeks before the Bankruptcy Cases were filed, the Debtor-Acis also had yet another portfolio management agreement (distinct from its PMAs with the CLO SPEs) whereby the Debtor-Acis provided services not just to the CLO SPEs themselves, but separately to the equity holder in the CLO SPEs. This portfolio management agreement with the equity holder in the CLO SPEs is sometimes referred to by the parties as the "ALF PMA," but it would probably be easier to refer to it as the "Equity PMA" (for ease of reference, the court will refer to

¹¹ See Transcript 12/11/18 (AM) [DE # 789], at p. 48 (line 15) through p. 49 (line 16); p. 50 (line 12) through p. 52 (line 7).

¹² Exh. 18.

¹³ Exh. 11.

it as the “Equity/ALF PMA”).¹⁴ The Debtor-Acis did not earn a specific fee pursuant to the Equity/ALF PMA, but the Chapter 11 Trustee and certain of his witnesses credibly testified that the Debtor-Acis considered the agreement valuable and very important, because it essentially gave the Debtor-Acis the ability to control the whole Acis CLO eco-system—in other words, gave the Debtor-Acis the ability to make substantial decisions on behalf of the CLO SPEs’ *equity*—distinct from making decisions for the CLO SPEs themselves pursuant to the PMAs. The more credible evidence before the court suggests that the Equity/ALF PMA delegated to the portfolio manager (*i.e.*, the Debtor-Acis) the right to control the terms of any liquidation of collateral in an optional redemption under the terms of the CLO indentures.¹⁵ In any event, shortly before the Bankruptcy Cases were filed, agents of Highland and/or others controlling the Debtor-Acis (including but not limited to Mr. James Dondero—the chief executive officer of both the Debtor-Acis and of Highland): (a) caused the Debtor-Acis to terminate this Equity/ALF PMA (notably, the counter-party to this agreement, the equity owner, would have only been able to terminate it “for cause”¹⁶); and (b) then caused the equity owner to enter into a new Equity PMA with a newly formed offshore entity called Highland HCF Advisor, Ltd. (“Highland HCF”).¹⁷ Mr. Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland HCF.¹⁸ The Equity/ALF PMA

¹⁴ There were actually different iterations of the Equity/ALF PMA including one dated August 10, 2015, and another dated December 22, 2016.

¹⁵ Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 11 at §§ 5 and 6.

¹⁶ The Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager “for cause” at § 14(a)-(e). Exh. 11. On the contrary, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11.

¹⁷ Exh. 23 (testimony of Scott Ellington), p. 175 (lines 6-25); *see also* Transcript 12/11/18 (AM) [DE # 789], at p. 54 (line 11) through p. 55 (line 5).

¹⁸ *Id.* at p. 266 (lines 1-4).

would have been an executory contract of the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if it had not been terminated shortly before the Bankruptcy Cases. The court has heard credible testimony that leads it to conclude that the Equity/ALF PMA would have been assumed by the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if not terminated by agents of Highland on the eve of bankruptcy. The court has heard credible testimony that it is important for a portfolio manager to have not only the PMAs with the CLO SPEs themselves, but also with the equity owners of the CLO SPEs.

II. A Few More Basics About CLOs.

In the world of CLOs (like other public debt instruments) there are occasionally redemptions, refinancings, and resets. A redemption is essentially when the equity in the CLO, before maturity, calls for the liquidation of the collateral in the CLO and the repayment of the tranches of notes, so that the CLO comes to an end. A refinancing is when a lower interest rate can be accomplished in the market place on the tranches of debt of the CLO, but the maturity date and other terms remain in place (similar to a refinancing on a home mortgage). This can happen typically after a two-year non-call period. A reset is when the maturity date, the reinvestment period, or other changes in the terms of a CLO (beyond simply interest rate) are accomplished.¹⁹

It should be noted that the top tranche of notes in the CLO SPEs (AAA-rated) is considered the “controlling” class, and a majority of holders in this class can terminate the CLO manager (*i.e.*, the Debtor-Acis LP) for cause on 45 days’ notice, but these folks have apparently been content to ignore the Bankruptcy Cases and the fighting between the Debtor-Acis and

¹⁹ See generally Transcript 2/9/2018 [DE # 26], at p. 74-75.

Highland (as further described below)—no doubt because they are earning their fixed income stream without a hitch. And the bottom tranche of “notes” in the CLO SPEs (the equity) has voting rights and is a capital provider and, in certain ways, controls the CLO SPEs, by virtue of having the ability to make a redemption call after a certain “no-call” period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A’s. But, by virtue of the Equity/ALF PMA, the Debtor-Acis was really acting for the equity. It seems substantially likely to the court that this is why Highland and its agents caused the Debtor-Acis to terminate the Equity/ALF PMA (which, as mentioned above, was an agreement that the equity could have only terminated “for cause”—and it appears there would have been no “cause”).

III. The Non-Insider Creditors.

The Debtor-Acis does not have many creditors. The non-insider creditors are, for the most part, Joshua Terry (“Mr. Terry”) and a few vendors (most of which are law firms).

Mr. Terry commenced the Bankruptcy Cases with the filing of involuntary bankruptcy petitions. Mr. Terry was the human being who formerly, quite successfully served as the portfolio manager for the Debtor-Acis for many years. Mr. Terry was terminated under contentious circumstances on June 9, 2016, after getting into disagreements with Mr. Dondero. Mr. Terry was technically an employee of Highland itself (like all employees are, in the Highland family of companies—no matter which subsidiary or affiliate they work for). After his employment termination, Highland sued Mr. Terry in September 2016. Mr. Terry asserted claims back against Highland and both of the above-referenced Debtors. The litigation was referred to arbitration, and, after a ten-day arbitration trial in September 2017 before “JAMS,” Mr. Terry obtained an Arbitration Award (herein so called), on October 20, 2017, jointly and

severally, against both of the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. A Final Judgment (the “Terry Judgment”) confirming the Arbitration Award was entered on December 18, 2017, in the same amount as that contained in the Arbitration Award—\$7,949,749.15.

Mr. Terry commenced the Bankruptcy Cases when he became concerned that the Debtor-Acis was being rendered insolvent and unable to pay creditors including himself, due to actions undertaken by Highland and its agents immediately after entry of the Arbitration Award (*e.g.*, transfers of assets, contracts, and business away from the Debtor-Acis).

The Debtor-Acis also is obligated on large administrative expense claims, since: (a) a Chapter 11 Trustee was appointed very early—due to what the bankruptcy court perceived to be massive conflicts of interest with regard to the Debtors’ management; and (b) the Objectors have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.

IV. The Objectors (all of which are “Insiders”).

There are no non-insider creditors objecting to the Plan. Mr. Terry supports the Plan. The CLO SPEs and Indenture Trustee do not oppose the Plan. None of the vendors oppose the Plan. The U.S. Trustee is not opposing the Plan. As a technical matter, two impaired classes of creditors voted to accept the Plan.²⁰ *So who are the Objectors to the Plan (which Plan will be further described below) and what is their party-in-interest status here?*

As earlier mentioned, the Objectors are: (a) Highland, (b) HCLOF Guernsey, and (c) Neutra Cayman. As noted earlier, the Chapter 11 Trustee frequently refers to them collectively as “The Highlands”—but the Objectors do not like this conflation. At one time Highland and

²⁰ Classes 2 and 3. *See* Exh. 613.

HCLOF Guernsey had the same lawyers. They do not anymore. However, they frequently file joint pleadings and take the same positions. Highland and Neutra Cayman do still have the same lawyers.

1. Highland.

Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 by Mr. Dondero, originally with a 75% ownership interest, and Mark K. Akada (“Mr. Akada”), originally with a 25% ownership interest. As mentioned earlier, Mr. Dondero is the chief executive of Highland. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately \$14-\$15 billion of investor capital in vehicles including CLOs, private equity funds, and mutual funds. Highland provides employees to entities in the organizational structure, such as it did with the Debtor-Acis, through the mechanism of shared services agreements and sub-advisory agreements (as mentioned above). ***Notably, Highland’s chief executive, Mr. Dondero, served as the President of the Debtor-Acis at all relevant times prepetition.***²¹ Highland claims to be a large creditor of the Debtor-Acis for services provided to the Debtor-Acis under the Shared Services Agreement and the Sub-Advisory Agreement. The Chapter 11 Trustee disputes these claims and has asserted numerous claims back against Highland in an adversary proceeding (the “Highland Entities Adversary Proceeding”).

In any event, Highland is a ***disputed insider creditor***. It is an “insider,” as contemplated by Bankruptcy Code section 101(31)(C), because it, beyond any shadow of a doubt, controlled the Debtor-Acis until these Bankruptcy Cases developed to the point of having a Chapter 11

²¹ One witness, Hunter Covitz, referred to the Debtor-Acis as the “structured credit arm of Highland.” Transcript 12/13/18 (AM) [DE # 793], at p. 57.

Trustee take charge of the Debtor-Acis. Highland does not seem to dispute that it is an insider.²² But, for the avoidance of doubt, Highland should be considered an insider of the Debtor-Acis for at least the following reasons: (a) the same human being (Mr. Dondero) was president of the Debtor-Acis and was the chief executive of Highland; (b) Highland's General Counsel, Scott Ellington, testified that Mr. Dondero controlled them both;²³ and (c) Highland provided the Debtor-Acis with employees and management services pursuant to the Sub-Advisory Agreement and Shared Services Agreement.²⁴

Additionally, the court believes that the Chapter 11 Trustee made a convincing argument in connection with Plan confirmation (and his justification for the separate classification of Highland's claim in the Plan from other general unsecured creditors) that Highland should also be regarded as a "competitor" of the Debtor-Acis at this juncture, since they are both in the fund management business and Highland's control over the Debtor-Acis has now been divested. Highland's competitor status, in addition to its insider status, warrants additional scrutiny of its

²² Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, *etc.* Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See Wilson v. Huffman (In re Missionary Baptist Foundation of Am., Inc.)*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018). The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *Browning Interests v. Allison (In re Holloway)*, 955 F.2d 1008, 1011 (5th Cir. 1992).

²³ *E.g.*, Exh. 23, at pp. 160 (line 15) through 161 (line 4); p. 196 (lines 14-19); p. 219 (lines 1-21).

²⁴ *See* 11 U.S.C. §§ 101(2)(D); (31)(C)(5). The court notes that, although Highland has, from time to time, alleged that Mr. Terry is a "non-statutory insider" of the Trustee, it has never put on any credible evidence to support this contention.

motivations in objecting to the Plan. More importantly, it provides a sound legal and business justification for separately classifying its claim in the Plan.

2. HCLOF Guernsey.

The second Objector, HCLOF Guernsey, is an entity formed in the island nation of Guernsey. It has two allegedly independent Directors from Guernsey who have provided testimony in connection with confirmation of the Plan. It was enormously clear to the court (as will be elaborated upon below) that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere “figureheads” for HCLOF Guernsey and they defer to Highland *entirely* to tell them what to do, what to say, and when. In any event, HCLOF Guernsey is the owner of the equity in the CLO SPEs (as earlier mentioned, this equity is sometimes referred to as the “subordinated notes” in the CLO SPEs). According to HCLOF Guernsey's 2017 Annual Report and Audited Financials, all of its subordinated notes issued by the Acis CLOs are physically held at and are pledged to HCLOF Guernsey's lender, NexBank, which happens to be a Dallas bank that is an affiliate of Highland.²⁵ HCLOF Guernsey was created in the year 2015 and was formerly known as “ALF.”²⁶ Its name was changed on October 30, 2017 (ten days after Mr. Terry's Arbitration Award was entered), to allegedly distance itself from the Debtor-Acis. The equity owner HCLOF Guernsey, in turn, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or “DAF”) that was seeded with contributions from *Highland*, is managed/advised by *Highland*, and whose *independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero*; (ii) 2% is owned by *Highland employees*; and (iii) a 49% equity owner that is a third-party institutional investor based in

²⁵ Exh. 647.

²⁶ “ALF” is short-hand for Acis Loan Funding, Ltd.

Boston, Massachusetts that only recently invested in HCLOF Guernsey (*i.e.*, in November 2017, just after the Terry Arbitration Award was issued), and desires to remain passive and anonymous (hereinafter, the “Passive Investor”).²⁷ Notably, the Debtor-Acis itself owned a small percentage of HCLOF Guernsey, in addition to providing management services to it, until October 24, 2017 (four days after the Terry Arbitration Award was issued).

The court has allowed HCLOF Guernsey to vigorously participate in the confirmation hearing (and other hearings during the Bankruptcy Cases), although its party-in-interest status has been questionable. So how is HCLOF Guernsey a party-in-interest? The answer is a bit of a stretch—but the court has decided it is impacted by the Plan, so it should have the right to object. Its party-in-interest status has evolved during the Bankruptcy Cases.

First, early on in these Bankruptcy Cases, HCLOF Guernsey (together with Highland) sued the Chapter 11 Trustee in the above-mentioned “Highland Entities Adversary Proceeding”—mostly, if not entirely, seeking injunctive relief. At that point, the Chapter 11 Trustee treated HCLOF Guernsey as a disputed creditor,²⁸ since it was seeking equitable relief that could arguably be monetized.²⁹ However, HCLOF Guernsey subsequently withdrew its requests for relief in that Highland Entities Adversary Proceeding. But then, the Chapter 11 Trustee subsequently filed claims *against* HCLOF Guernsey in the Highland Entities Adversary Proceeding (along with his claims against Highland and a couple of other Highland entities) asserting avoidance actions and other causes of action against HCLOF Guernsey (among other

²⁷ The testimony was that the Passive Investor committed to a \$150 million investment (\$75 million immediately and \$75 million callable over the next several years).

²⁸ In fact, on August 15, 2018, the Chapter 11 Trustee filed a proof of claim on behalf of HCLOF Guernsey. HCLOF Guernsey has since objected to the proof of claim.

²⁹ *See* 11 U.S.C. §§ 101(5)(B) & 101(10).

things, the Chapter 11 Trustee alleged that HCLOF Guernsey schemed with Highland to terminate the Equity/ALF PMA, in a step toward systematically dismantling the Debtor-Acis of its value). Thus, HCLOF Guernsey may ultimately owe money to this estate. But most importantly, HCLOF Guernsey should be deemed a party-in-interest because of a proposed temporary injunction in the Plan that essentially would enjoin (for a finite, defined period) HCLOF Guernsey from exercising certain of its rights with regard to its equity in the CLO SPEs, pending resolution of the Highland Entities Adversary Proceeding. This temporary injunction in the Plan, directed towards HCLOF Guernsey and affiliates, will be further described below.

3. Neutra Cayman.

Neutra Cayman is a Cayman island exempted company that is the equity owner *of the Debtor-Acis itself* (in contrast to HCLOF Guernsey, which only owns equity in the CLO SPEs). Neutra Cayman only acquired its equity interest in the Debtor-Acis the day after the Terry Judgment was entered (on December 18, 2017), and for no consideration, from the Dugaboy Investment Trust (a family trust on which Mr. Dondero’s sister is named trustee, that previously owned 74.9% of the Debtor-Acis) and from Mr. Akada (who previously owned 25% of the Debtor-Acis).³⁰ The court concludes that Neutra Cayman has standing to object to the Plan,

³⁰ The court is repeatedly referring to the Debtor-Acis but, to be clear, there are two consolidated Debtors: Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP/LLC”). See note 2, *supra*. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) the Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed (*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and the Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, most importantly, on the day after entry of Mr. Terry’s Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and the Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to Neutra Cayman. The Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra Cayman.

since it is an equity owner of the Debtors (albeit only having acquired its equity about a month before the bankruptcy). As with HCLOF Guernsey, the court also concludes that Neutra-Cayman is absolutely, beyond any reasonable doubt, controlled by Highland, as explained further below.

V. The Plan.

The Plan is fairly simple, considering the complexity of the business and the relationships, and the contentiousness of the Bankruptcy Cases. Again, there aren't many creditors.

The Plan proposes³¹ that the Debtor-Acis, as a "Reorganized Debtor," will continue with the business operations of the Debtors after the Effective Date³² of the Plan. Specifically, the Debtor-Acis will assume, pursuant to section 365 of the Bankruptcy Code, its CLO PMAs and continue to serve as the portfolio manager to the CLO SPEs (and as to any resets of the CLOs therein). The Reorganized Debtor will continue to earn fees and will pay claims from post-Effective Date income as provided in the Plan. The Reorganized Acis will actively pursue additional fund management contracts. Again, there is no objection by the CLO SPEs to the Plan, and the indenture trustee on the tranches of CLO notes has no objection.

Mr. Terry (again, the former human manager of the Debtor-Acis and also the largest creditor) shall receive 100% of the equity interests in the Reorganized Debtor, in exchange for a negotiated \$1 million reduction in his partially secured claim.³³ The remainder of his claim will

³¹ This is merely a high-level summary of the Plan. The Plan terms, as modified, shall in all ways govern, not this summary.

³² The "Effective Date" is defined, essentially, as the first business day which is fourteen (14) days after entry of an order confirming the Plan, if the confirmation order is not stayed.

³³ Mr. Terry has asserted partial secured status as to his claim in the proofs of claim he has filed in these cases. The Chapter 11 Trustee credibly testified that there was no other logical party to take the equity of

be treated as an unsecured claim. Each unsecured creditor will receive on the Plan Effective Date an unsecured cash flow note in the full amount of its claim, which notes will mature three years after the Effective Date of the Plan, with equal quarterly payments of principal and interest, at 5% interest per annum. These cash flow notes are expected to yield payment in full (actually 102%) to the unsecured creditors.³⁴

As for the sub-advisory and shared services agreements with Highland, as noted earlier, the Chapter 11 Trustee, with bankruptcy court approval, has already (as of August 2018) rejected these during the Bankruptcy Cases, pursuant to section 365 of the Bankruptcy Code. The Chapter 11 Trustee caused the Debtor-Acis to subsequently contract, with bankruptcy court approval, with a different entity, Brigade Capital Management, L.P. (“Brigade”), to provide the sub-advisory and shared services going forward, for a minimum two-year term (unless the Reorganized Debtor and Brigade otherwise agree), at a much cheaper cost than Highland.³⁵ Thus, Brigade will provide sub-servicing and sub-advisory services to the Reorganized Debtor.

the Reorganized Debtor, at this juncture, and that he had negotiated this reduction to Mr. Terry’s secured claim, and he thought it was justified by the circumstances of this case. While the Objectors have argued that the secured status of Mr. Terry’s claim may be subject to challenge under section 547(b) of the Bankruptcy Code, section 547(b) is discretionary (*e.g.*, a “trustee may avoid any transfer” that might be avoidable as a preference). The Chapter 11 Trustee credibly emphasized that this was negotiated treatment of an asserted secured claim, and he had no “exclusivity” on proposing a plan if someone else had wanted to propose something different. Transcript 12/11/18 (AM) [DE # 789], at p. 70 (line 3) through p. 71 (line 2).

³⁴ Insider claims—namely Highland—are separately classified from general unsecured claims under the Plan. To the extent such claims are ultimately allowed (after any allowed defenses and offsets), and to the extent such claims are not equitably subordinated by Bankruptcy Court adjudication, these claims will receive the same treatment as other general unsecured claims (cash flow notes). To the extent any of these claims are ultimately allowed but equitably subordinated, they will receive subordinated promissory notes, accruing interest at 5% per annum, that will not be payable until all non-subordinated claims have been paid in full (they will have maturity dates to occur on the earlier of: (i) the date that is two years after the date all Unsecured Cash Flow Notes have been paid in full, or (ii) five years after the Effective Date). The expected recovery under the Plan for the insider claims is from 65% to 100%.

³⁵ An entity named Cortland Capital Markets Services LLC (“Cortland”) is actually providing some of the back-office shared services agreement type functions.

As for the Equity/ALF PMA, it is not an agreement with the Debtor-Acis anymore to either be assumed or rejected, pursuant to section 365. However, in the Highland Entities Adversary Proceeding, the Chapter 11 Trustee seeks to avoid the termination of the Equity/ALF PMA. Pursuant to the Plan, the Reorganized Debtor will be vested with certain Assets of the Debtors, including Estate Claims and Estate Defenses, to be administered and liquidated by the Reorganized Debtor.

1. The Highland Entities Adversary Proceeding (Adv. Proc. No. 18-03212).

Suffice it to say that the Highland Entities Adversary Proceeding is a somewhat significant part of the Plan; it is what justifies the temporary injunction that is a critical part of the Plan. With regard to the Highland Entities Adversary Proceeding, the Defendants in it (there are five of them) are: (i) Highland; (ii) HCLOF Guernsey; (iii) Highland HCF (*i.e.*, the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA); (iv) Highland CLO Management, Ltd. (“Highland Management”) (an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry’s Arbitration Award); and (v) Highland CLO Holdings, Ltd. (yet another entity incorporated in the Cayman Island on October 27, 2017). The Highland Entities Adversary Proceeding is essentially a multi-faceted fraudulent transfer action. The statutory predicates for the relief sought are sections 502, 542, 544, 547, 548, and 550 of the Bankruptcy Code and Texas Business & Commerce Code § 24.001 et seq. (“TUFTA”).

Distilled to its essence, the Highland Entities Adversary Proceeding argues that Highland, along with its related Co-Defendants, *orchestrated a systematic transfer of value away from the Debtor-Acis to other Highland entities* (all of those transferee-entities are offshore entities—whereas the Debtor-Acis is a Delaware entity), beginning almost immediately after Mr. Terry

was terminated in June 2016, and continuing on during Mr. Terry’s litigation/arbitration with the Debtor-Acis, and then rapidly unfolding after the Arbitration Award. This was allegedly done to denude the Debtor-Acis of value and make the Debtors “judgment proof.” This was allegedly also done to ensure that the Debtor-Acis’s very valuable business as portfolio manager would be taken over by other Highland entities and remain under Highland’s and Mr. Dondero’s control.³⁶

The evidence is rather startling on this point. Among other things, pursuant to amendments made to the Debtor-Acis’s Sub-Advisory Agreement and Shared Services Agreements with Highland, starting soon after Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level. Then, in April 2017, a new CLO was issued (or actually a former Acis CLO was reset) and a new Highland-affiliated Cayman Island entity was ultimately put in place to manage it instead of the Debtor-Acis (even though the Debtor-Acis managed all other CLOs in the Highland corporate empire). Numerous other transactions were undertaken through the Fall of 2017, removing assets and agreements away from the Debtor-Acis. For example, a multi-million dollar note receivable owed to the Debtor-Acis by Highland³⁷ was transferred out of the Debtor-Acis,³⁷ and

³⁶ Exh. 627.

³⁷ On November 3, 2017, the Debtor-Acis, Highland, and Highland Management (a newly created, offshore Highland affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the “Note Assignment and Transfer Agreement”). Exh. 225. The Note Assignment and Transfer Agreement, among other things, transferred a \$9.5 million principal amount promissory note executed by Highland and payable to the Debtor-Acis (the “Note”), Exh. 218, from the Debtor-Acis to Highland Management (the “Note Transfer”). The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for the Debtor-Acis. The document recites that (i) Highland is no longer willing to continue providing support services to the Debtor-Acis, (ii) the Debtor-Acis, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland Management agrees to step into the collateral manager role if the Debtor-Acis will assign the Note to it. Notably, Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer. Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach. The Debtor-

shares in HCLOF Guernsey held by the Debtor-Acis were sold back to HCLOF Guernsey (four days after the Arbitration Award). And then the Equity/ALF PMA was terminated so that the Debtor-Acis would no longer have management-control over HCLOF Guernsey as its portfolio manager—arguably putting Highland in a position to liquidate the Acis CLOs and put the Debtor-Acis out of business. Specifically, on October 27, 2017, just seven days after Mr. Terry's Arbitration Award, the Debtor-Acis ostensibly terminated its own portfolio management rights under the Equity/ALF PMA³⁸ and transferred its authority and its valuable portfolio management rights—for no value—to Highland HCF, an affiliate of Highland. It appears that the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highland entities or their representatives.

Acis appears to have received no or insufficient consideration for the Note Transfer. The primary consideration for the Note Transfer was an alleged payable due from the Debtor-Acis to Highland in the approximate amount of \$7.5 million for participation fees, which was transferred to Highland Management shortly before the Note Assignment and Transfer Agreement was entered. The validity of the alleged “participation fees” is unknown. The remainder of the consideration for the Note Transfer is a promise to pay certain expenses of the Debtor-Acis, which has apparently never occurred. In any event, it appears highly likely that the Note Transfer took away the Note as an asset from which Mr. Terry could collect his judgment.

³⁸ As mentioned earlier, the Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager by the equity owner (now known as HCLOF Guernsey) “*for cause*” at § 14(a)-(e). Exh. 11. Meanwhile, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11. It would appear that these terms were wholly ignored by the persons orchestrating the Equity/ALF PMA termination. It appears that the Debtor-Acis was simply manipulated to consent and agree to its removal and replacement as portfolio manager of HCLOF Guernsey. This transfer of the Debtor-Acis's portfolio management rights to the offshore entity Highland HCF was accomplished by way of a new portfolio management agreement entered into by the equity owner (now known as HCLOF Guernsey) and Highland HCF on October 27, 2017, which empowered Highland HCF with the same broad authority to direct the management of HCLOF Guernsey as was previously held by the Debtor-Acis LP under the Equity/ALF PMA. See Exh. 19, October 27, 2017 PMA §§ 1 & 5(a)-(q). This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017. Exh. 215. The Debtor-Acis received no consideration for this transfer.

The Highland Defendants argue that the Equity/ALF PMA (its termination being arguably the most significant transfer referenced in the Highland Entities Adversary Proceeding) did not have value. But the evidence convinces the court that it absolutely did. A witness, Mr. Zachary Alpern, credibly testified that the portfolio manager (under the Equity/ALF PMA) made decisions regarding the underlying financial instruments including seeking an optional redemption and negotiating a reset. Mr. Alpern also credibly testified about the importance, in the CLO industry, of the portfolio manager having control of a CLO's equity to ensure an "evergreen fee stream."³⁹ Additionally, Mr. Terry also credibly testified that the portfolio manager (not the CLO equity interest holder) has the right to control the terms of the liquidation of collateral in an optional redemption under the terms of the indentures.⁴⁰ The Chapter 11 Trustee also credibly testified that the Equity/ALF PMA allowed the Debtor-Acis to have control of an optional redemption.⁴¹ Finally, a witness, Mr. Klein, credibly testified about the value of the Equity/ALF PMA and the negative impact of its transfer on the Debtor-Acis LP.⁴²

To be clear, Highland and HCLOF Guernsey have argued in opposition to the Chapter 11 Trustee's position that it is HCLOF Guernsey—the actual equity holder of the CLO SPEs—that had/has the absolute power and authority to control the CLO SPEs' destinies and it is ludicrous to suggest otherwise. However, not only does the Equity/ALF PMA appear to this court to have delegated the relevant power and authority *to the Debtor-Acis*, but Highland's own expert on this

³⁹ Exh. 404, Transcript 8/23/18 (AM) at pp. 65-67, 81-93 and Transcript 8/23/18 (PM) at pp. 34-35, 38-40, 46, and 49.

⁴⁰ Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 405, Transcript 8/27/18 (AM) at pp. 63-75.

⁴¹ Exh. 405, Transcript 8/27/18 (AM) at p. 53.

⁴² Exh. 405, Transcript 8/27/18 (PM) at pp. 143-144, 147-159 and 205-207.

topic, Mr. Castro, testified that the “actual humans” who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF).⁴³ Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the HCLOF Guernsey’s directors, issued the notices of optional redemption for HCLOF Guernsey.⁴⁴

The court concludes that the Chapter 11 Trustee has demonstrated a likelihood of success on the merits with regard to his claims set forth in the Highland Entities Adversary Proceeding. Therefore, the Temporary Injunction that is part of the Plan is supportable (as further explained below). Of course, the nature and extent of the rights ultimately recovered by the Debtor-Acis will either be determined in the Highland Entities Adversary Proceeding or, as HCLOF Guernsey’s own Guernsey expert conceded, in a binding arbitration in Dallas, Texas under the terms of the Equity/ALF PMA.⁴⁵

2. The Plan Injunction.

The most controversial aspect of the Plan—the aspect of it that seems to be the primary focus of the Objectors—is a *portion* of an injunction in the Plan (the “Temporary Injunction”). The Temporary Injunction would *temporarily* enjoin the following parties *from effectuating an optional redemption or liquidating the Acis CLOs* and related actions: (i) Highland; (ii) HCLOF

⁴³ Exh. 406, Transcript 8/28/18 (PM) at pp. 61-63.

⁴⁴ Exh. 404, Transcript 8/23/18 (AM) at pp. 85-89 and Exhs. 323-325 (Notices of Optional Redemption signed by the Debtor-Acis as portfolio manager of HCLOF).

⁴⁵ Transcript 12/13/18 (PM) [DE #794], at pp. 116, 118-19, 122, 124 (Corfield); *see also*, p. 140 (McGuffin).

Guernsey; (iii) CLO Holdco, Ltd. (the donor advised fund, seeded with Highland contributions and managed by Highland that owns 49% of HCLOF Guernsey); (iv) Neutra Cayman; (v) Highland HCF (the Cayman Island entity created shortly before the Bankruptcy Cases to replace the Debtor-Acis under the Equity/ALF PMA); (vi) Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017); and (vii) any affiliates of Highland and their respective employees, agents, representatives, transferees, assigns, and successors.⁴⁶ This Temporary Injunction is proposed to only last until the earlier of when: (a) the creditors of the Debtors are paid in full; (b) resolution of the Highland Entities Adversary Proceeding; (c) a material breach in the Plan; or (d) the bankruptcy court terminates the Temporary Injunction upon request of a party-in-interest. ***Fully consensual resets of the Acis CLOs are permissible if HCLOF Guernsey, as the equity owner in the CLO SPEs, chooses to agree to resets.*** The basis for the Temporary Injunction is as follows: The Chapter 11 Trustee has asserted numerous claims in the Highland Entities Adversary Proceeding against Highland, HCLOF Guernsey, and affiliates, including claims to recover the Debtor-Acis's rights under the Equity/ALF PMA.⁴⁷ The Temporary Plan Injunction essentially provides for the continuation, after the Effective Date, of injunctive relief that the bankruptcy court previously granted in its Preliminary Injunction Order (the "Preliminary Injunction") [DE # 21 in Adversary No. 18-03212-sgj] entered on July 10, 2018 in the Highland Entities Adversary Proceeding. The Preliminary Injunction was originally set to expire by its

⁴⁶ There is another portion of this Plan injunction that is more of a general plan injunction (*i.e.*, very typical) that would prohibit actions against the Debtors, Reorganized Debtor and the Estate Assets, based on acts occurring before the Effective Date, which would be permanent and would not expire upon the occurrence of any event that causes the Temporary Plan Injunction to expire.

⁴⁷ See Exh. 627, Trustee's Counterclaims and Claim Objection.

own terms upon confirmation of the Plan but would be extended pursuant to an order confirming the Plan, through the Effective Date of the Plan.

As the Fifth Circuit has stated, the four elements to justify a preliminary injunction are (a) substantial likelihood of success on the merits; (b) substantial threat that the plaintiff will suffer irreparable injury; (c) the threatened injury outweighs any harm the injunction might cause the defendant; and (d) the injunction is in the public interest.⁴⁸ Each element is present in these cases.

Immediate and Irreparable Harm. The court finds and concludes that the Temporary Injunction is legally permissible, necessary, and appropriate to avoid immediate and irreparable harm to the Reorganized Debtor (*i.e.*, evisceration of the Acis CLOs, by parties with unclean hands, that would have no authority to effectuate a liquidation of the CLOs, absent the prepetition wrongful termination of the Equity/ALF PMA). Mr. Scott, a director of HCLOF Guernsey, testified that, absent the Temporary Plan Injunction, HCLOF Guernsey would call for an optional redemption of the Acis CLOs.⁴⁹ The testimony of Ms. Bestwick, the other director of HCLOF Guernsey, also implied that, when the injunction expires, HCLOF Guernsey would redeem the Acis CLOs so that they could once again be managed by Highland.⁵⁰ The Chapter 11 Trustee credibly testified that if the Acis CLOs are liquidated, there is nothing for the Debtor-Acis to manage.⁵¹ The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction

⁴⁸ *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009); *Women's Med. Ctr. of N.W. Houston v. Bell*, 248 F.3d 411, 419 n.15 (5th Cir. 2001); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998).

⁴⁹ Exh. 721, Mr. Scott Depo. at pp. 204.

⁵⁰ Exh. 719, Bestwick Depo. at p. 112.

⁵¹ Exh. 405, Transcript 8/27/18 (AM) at p. 40.

is very important because it protects the revenues under the Acis PMAs, which is a source of potential recovery to creditors under the Plan.⁵² Mr. Terry credibly testified that the Temporary Plan Injunction is a critical component of the Plan and that the Debtor-Acis would have no going concern value without it. In fact, without the Plan Injunction, Mr. Terry will be precluded from reorganizing the business and paying creditors.⁵³

The Objectors have argued that the Chapter 11 Trustee cannot suffer irreparable harm because he has an adequate remedy at law. This argument misses the mark. The destruction of the Debtors' ongoing business, which has the potential to repay creditors under the Plan in two years, constitutes irreparable harm. The fact that the estate possesses a number of avoidance claims for damages against Highland and its affiliates, and could potentially obtain damages on such claims, does not render the destruction of the Debtor-Acis's ongoing business any less harmful. Indeed, according to the Fifth Circuit:

[T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.' For example, some courts have found that a remedy at law is inadequate if legal redress may be obtained only by pursuing a multiplicity of actions.⁵⁴

Likelihood of Success on the Merits. The Chapter 11 Trustee has also demonstrated a likelihood of succeeding on the merits in the Highland Entities Adversary Proceeding.

⁵² Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

⁵³ Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

⁵⁴ *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (citing *Lee v. Bickell*, 292 U.S. 415, 421 (1934) ("we are not in doubt, the multiplicity of actions necessary for redress at law [is] sufficient . . . to uphold the remedy by injunction.")).

The record contains substantial evidence of both intentional and constructive fraudulent transfers with regard to the Equity/ALF PMA and other assets.⁵⁵ The numerous prepetition transfers that occurred around the time of and after the Terry Arbitration Award appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors' creditors. Highland's only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis's brand was toxic in the market place.⁵⁶ However, these business justifications were not supported (and, in fact, were contradicted) by the evidence.

Indeed, while representatives of Highland and its affiliates said that the Passive Investor's demands were the reason for the termination (*i.e.*, essentially a "transfer") of the Equity/ALF PMA, the Passive Investor's representative testified that this was untrue and that these alleged demands were never made by the Passive Investor.⁵⁷ In fact, the Passive Investor was just that—a passive, minority investor in HCLOF Guernsey with no ability to influence or control any of

⁵⁵ *E.g.*, Exh. 22, Transcript 2/6/18 at pp. 82-109, 130, 202-244, and the exhibits discussed therein; Exh. 201, Transcript 3/21/18 at pp. 110-133 & 186-191; Exh. 24, Transcript 3/22/18 at pp. 71-75 & pp. 204-205; Transcript 12/11/18 [DE # 789], at pp. 52-56; *see also* Transcript 8/27/18 (AM) [DE # 552], at p. 52; Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98;

⁵⁶ Highland General Counsel Scott Ellington testified that the Passive Investor said it had no interest in doing business with the Debtor-Acis because the Debtor-Acis brand was purportedly toxic and, consequently, nothing associated with the Debtor-Acis could be managed or marketed as a CLO. Exh. 23, Transcript 2/7/18 at pp. 55-58. Mr. Ellington further testified that the Passive Investor demanded that the Equity/ALF PMA be transferred. Exh. 23, Transcript 2/7/18 at pp. 203-204. Mr. Ellington also testified that, because the Passive Investor would be putting in additional capital in connection with any reset CLOs, it had the ability to "start calling the shots" and dictate the terms of any reset transactions. Exh. 23, Transcript 2/7/18 at p. 226. Additionally, Highland executive Mark Okada testified that a reset transaction could not be performed by the Debtor-Acis because the market would not accept the Debtor-Acis as a portfolio manager and the Debtor-Acis was no longer risk-retention compliant. Exh. 25, Transcript 3/23/18 at p. 53. Additionally, Mr. Dondero testified that the "Boston investor" deal was contingent on getting away from the Debtor-Acis and getting a new collateral manager. Exh. 25, Transcript 3/23/18 at pp. 143-144.

⁵⁷ *See* Exh. 720 and excerpts read in to the trial record on 12/11/18 (PM) at pp. 149-157.

the actual investment decisions.⁵⁸ The only other business justification Highland and HCLOF Guernsey have suggested for the prepetition transfers was that the Debtor-Acis “was a shell” and not capable of being risk retention compliant.⁵⁹ However, Highland portfolio manager Hunter Covitz testified that in October 2017, prior to the Terry Arbitration Award, there was a structure in place that would comply with risk retention.⁶⁰ Mr. Covitz could not convincingly distinguish why the “shell” status of the Debtor-Acis was distinguishable from the “shell” status of other Highland-related entities that were the recipients of various fraudulent transfers.⁶¹ Mr. Covitz also subsequently admitted that the Passive Investor did not request that the Debtor-Acis end its involvement with HCLOF Guernsey through the Equity/ALF PMA fraudulent transfer or request that ALF change its name to HCLOF [Guernsey].⁶² Mr. Covitz’s testimony contradicted the testimony provided by Scott Ellington, General Counsel⁶³ and Mr. Dondero.⁶⁴ And, at bottom, if the Debtor-Acis was a thinly capitalized “shell,” it appears to be only because Highland systematically made it that way after the Terry Arbitration Award.

The evidence established overwhelmingly that there is a substantial likelihood that the transfers were part of an intentional scheme to keep assets away from Mr. Terry as a creditor. Highland put on an expert, Mr. Greenspan, who testified that he did not consider whether the

⁵⁸ Exh. 720, Depo. of Passive Investor representative at pp. 32-33.

⁵⁹ Transcript 12/13/18 (AM) [DE # 793], at pp. 55-58.

⁶⁰ Transcript 12/13/18 (AM) [DE # 793], at pp. 77-78.

⁶¹ Transcript 12/13/18 (AM) [DE # 793], at p. 78; Transcript 12/18/18 [DE # 804], at pp. 59-63.

⁶² Transcript 12/13/18 (AM) [DE # 793], at p. 103.

⁶³ See Exh. 23, Transcript 2/7/18 at pp. 177-178.

⁶⁴ See Ex. 25, Transcript 3/23/18 at pp. 143-44.

Equity/ALF PMA transfer was an “actual” fraudulent transfer, but only considered whether the transfer was “constructively” fraudulent.⁶⁵ While Highland has taken the position that termination of the Equity/ALF PMA was not a transfer, Mr. Greenspan testified that the termination of a contract can constitute a transfer and acknowledged that the definition of a transfer in the Bankruptcy Code does not include a value component.⁶⁶

Balance of Harms. The Chapter 11 Trustee has also shown the balance of harms weighs in his and the estates’ favor in granting the Plan’s Temporary Injunction. The Chapter 11 Trustee is entitled to the Temporary Injunction pending resolution of the claims asserted in the Highland Entities Adversary Proceeding. The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction is important to the Plan, because it allows the cash flow from the CLO management to be collected by the Reorganized Debtor, and that is the source of revenue available at this time to pay creditors.⁶⁷ Mr. Terry also credibly testified that the Temporary Plan Injunction is a critical component of the Plan necessary to preserve the Debtors’ going concern value and allow the Reorganized Debtor to generate new business and repay creditors.⁶⁸ Conversely, in this court’s view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan.⁶⁹ Mr. Scott, a director of HCLOF Guernsey, testified that

⁶⁵ Transcript 12/12/18 (PM) [DE # 792], at pp. 116-117 and 161.

⁶⁶ Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98. Section 548(a)(1)(A) of the Bankruptcy Code only requires that a transfer be made with actual intent to hinder, delay or defraud creditors. In the context of an intentionally fraudulent transfer claim, questions of value are immaterial. 11 U.S.C. § 548(a)(1)(A). The definition of “transfer” under the Texas Uniform Fraudulent Transfer Act (“TUFTA”) also does not include a value component. Tex. Bus. & Comm. Code Ann. § 24.002(12) (West, Westlaw through 2017).

⁶⁷ Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

⁶⁸ Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

⁶⁹ Transcript 12/11/18 (AM) [DE # 792], at p. 92.

HCLOF Guernsey can sell its interest in the subordinated notes in the market.⁷⁰ The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction would not impair the value of the subordinated notes because a rational investor would not want to liquidate the Acis CLOs, but rather would acquire them to do a reset under the Plan.⁷¹ Mr. Terry credibly testified that even if the Acis CLOs are not reset, it still does not make sense to redeem the Acis CLOs.⁷²

Public Interest. Finally, issuance of the Plan Injunction is consistent with public policy. Public policy favors the equitable collecting of a debtor's assets, maximizing the value of those assets, and distributing the proceeds in an orderly fashion in accordance with the priorities and safeguards set forth in the Bankruptcy Code, rather than in an uncontrolled, piecemeal, and potentially wasteful way. Public policy also supports successful reorganizations.⁷³ The public interest is furthered by confirming a plan that saves the Debtor-Acis's business operations and allows it to pay its creditors under a successful plan of reorganization. The public interest is also furthered by maintaining the status quo through the Temporary Plan Injunction so that the avoidance action relating to the Equity ALF PMA can be determined on its merits. The public interest is not furthered by allowing potential wrongdoers to complete the last step in what appears likely to have been a scheme to strip the Debtor-Acis of its assets, steal its business, and leave it unable to pay creditors. The public interest is not furthered by leaving the Debtors

⁷⁰ Exh. 721, Mr. Scott Depo. at p. 28.

⁷¹ Transcript 12/11/18 (PM) [DE # 790], at pp. 23-24.

⁷² Transcript 12/12/18 (AM) [DE #791], at p. 82.

⁷³ *Tex. Comptroller of Pub. Accounts v. Transtexas Gas Corp. (In re Transtexas Gas Corp.)*, 303 F.3d 571, 580 (5th Cir. 2002).

without sufficient resources to pursue and effectively litigate potentially valuable causes of action.

In sum, the court finds and concludes that the proposed Plan injunction (including the Temporary Injunction) is legally permissible and justified under all the circumstances. It is narrowly tailored to address the specific harm to which it is directed and comports with governing case and statutory authority and applicable rules of bankruptcy and civil procedure. The Plan Injunction is consistent with Fifth Circuit precedent.⁷⁴ Such an injunction would not violate section 524(e) of the Bankruptcy Code. That subsection provides that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.”⁷⁵ The Plan Injunction would not affect the liability of any entity, or the liability of any property. The injunction would only temporarily prohibit Highland and its Co-Defendants from exercising one form of economic recourse, thereby preserving the status quo while the Chapter 11 Trustee and/or Reorganized Debtor has a fair opportunity to prosecute the

⁷⁴ The Fifth Circuit, in an unpublished opinion, has recognized the propriety of an injunction to preserve the status quo in cases where equitable relief is sought. *See Animale Group v. Sunny’s Perfume, Inc.*, 256 F. App’x 707, 709 (5th Cir. 2007) (“Because Defendants seek equitable relief, the district court was authorized to preserve the status quo by entering a limited asset freeze.”). The Chapter 11 Trustee’s claims in the Highland Entities Adversary Proceeding to avoid fraudulent transfers seek equitable relief. *See United States ex rel. Rahmen v. Oncology Assocs., P.C.*, 198 F.3d 489, 498 (4th Cir. 1999) (“The complaint’s request to void transfers as fraudulent—a form of rescission—is also an equitable remedy.”); *Dong v. Miller*, No. 16-CV-5836 (NGG) (JO), 2018 U.S. Dist. LEXIS 48506, at *30-31 (E.D.N.Y. Mar. 23, 2018) (“The setting-aside of a fraudulent conveyance is a form of equitable relief.”). *See also Iantosca v. Step Plan Servs.*, 604 F.3d 24, 33 (1st Cir. 2010) (affirming preliminary injunction where creditors had a “colorable claim that appellants’ own supposed interest under the settlement rests upon a fraudulent conveyance”); *Seidel v. Warner (In re Atlas Fin. Mortg., Inc.)*, Adv. No. 13-03222, 2014 Bankr. LEXIS 140 at *10 (Bankr. N.D. Tex. Jan. 14, 2014) (granting preliminary injunction where complaint sought avoidance of fraudulent transfers under the Bankruptcy Code and the Texas Uniform Fraudulent Conveyance Act); *Paradigm Biodevices, Inc. v. Centinel Spine, Inc.*, No. 11 Civ. 3489 (JMF), 2013 U.S. Dist. LEXIS 66858, at *7 (S.D.N.Y. May 9, 2013) (authority to grant preliminary injunction existed because plaintiff alleged not only a legal claim for money damages, but also an equitable claim to avoid fraudulently transferred assets).

⁷⁵ 11 U.S.C. § 524(e).

Highland Entities Adversary Proceeding.⁷⁶ Likewise, the proposed injunction does not contravene any other provision of the Bankruptcy Code or the Bankruptcy Rules.⁷⁷ Finally, the Chapter 11 Trustee's avoidance claim relating to the Equity/ALF PMA transfer under TUFTA also provides a statutory basis for injunctive relief.⁷⁸

3. Feasibility of the Plan—Specific Findings and Conclusions Regarding Mr. Terry and Brigade.

The Objectors have challenged the feasibility of the Plan.⁷⁹ The court finds and concludes that the preponderance of the evidence supported the feasibility of the Plan. Among other things, the Chapter 11 Trustee credibly testified that Mr. Terry has an excellent track record as a portfolio manager, and that there is no reason why Mr. Terry will not be able to obtain new business—that is, new portfolios to manage which will provide additional revenue streams for the Reorganized Debtor.⁸⁰ The evidence was credible and compelling that Mr. Terry

⁷⁶ See *In re Seatco, Inc.*, 259 B.R. 279, 283-84 (Bankr. N.D. Tex. 2001) (approving temporary injunction of suit against nondebtor on guaranty of debt treated in plan).

⁷⁷ Compare *Omni Mfg. v. Smith (In re Smith)*, 21 F.3d 660, 666-67 (5th Cir. 1994) (disapproving injunction extending time to file proof of claim beyond limits set in Bankruptcy Rules 3003(c)(3) and 9006(b)(1)); *Chiasson v. Bingler (In re Oxford Mgmt.)*, 4 F.3d 1329, 1334 (5th Cir. 1993) (disapproving injunction ordering payment that altered distribution scheme set forth in § 726(b)); *Unites States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (disapproving injunction ordering spousal support payments contrary to § 523(a)(5)).

⁷⁸ Tex. Bus. & Comm. Code Ann. § 24.008 (West, Westlaw through 2017) (providing a creditor may obtain “an injunction against further disposition by the debtor or the transferee, or both, of the asset transferred or of other property . . . [or] any other relief the circumstances may require.”). TUFTA’s injunction provision is construed broadly and courts have found that “[a] claim for fraudulent transfer under Texas law contemplates the issuance of a preliminary injunction.” *Sargeant v. Al Saleh*, 512 S.W.3d 399, 413 (Tex. App.—Corpus Christi 2016, no pet.); accord, *Janvey v Alguire*, 647 F.3d 585, 602-03 (5th Cir. 2011).

⁷⁹ 11 U.S.C. § 1129(a)(11).

⁸⁰ Transcript 12/11/18 (AM) [DE # 789], at p. 90 (lines 5-12). Moreover, to the extent there are any gaps, recoveries from the Highland Entities Adversary Proceeding might eventually be available for ongoing operations and payment of creditors.

will be capable of fulfilling the equity owner position in the Reorganized Debtor (stepping in to essentially run the Reorganized Debtor) and will be able to ensure the feasibility of the Plan. He is well qualified to reorganize the Debtor-Acis. Mr. Terry testified that his role with the Reorganized Debtor will be similar to the role he very successfully performed for the Debtor-Acis.⁸¹ The Debtor-Acis received numerous awards during Mr. Terry's service as the portfolio manager of the Acis CLOs.⁸² The arbitration panel that issued the Arbitration Award found that Mr. Terry was terminated for essentially doing the right thing for investors.⁸³ Mr. Terry credibly testified that numerous market participants have expressed an interest in working with the Reorganized Debtor if the Plan is confirmed.⁸⁴

Moreover, the court finds and concludes that Brigade (who stepped in as sub-advisor in place of Highland during the Bankruptcy Cases and is a registered investment advisor) is qualified to serve as a sub-advisor to the Reorganized Acis. Mr. Jared Worman, a portfolio manager for Brigade,⁸⁵ credibly testified that Brigade, founded in the year 2007, currently has \$20 billion of total assets under management, \$5 billion of which consists of six U.S. CLOs, two U.S. CDOs, and three European CLOs.⁸⁶ Mr. Worman credibly testified that Brigade has issued 17 CLOs and has reset or refinanced several of them.⁸⁷ Mr. Worman and Mr. Terry credibly

⁸¹ Transcript 12/11/18 (PM) [DE # 790], at pp. 172-73.

⁸² Transcript 12/11/18 (PM) [DE # 790], at pp. 162-163 and Exh. 752.

⁸³ Transcript 12/11/18 (PM) [DE # 790], at pp. 161-62.

⁸⁴ Transcript 12/12/18 (AM) [DE # 791], at pp. 16-18.

⁸⁵ Mr. Worman has an undergraduate degree from Emory University and an MBA from Wharton.

⁸⁶ Transcript 12/11/18 (PM) [DE # 790], at p. 84.

⁸⁷ Transcript 12/11/18 (PM) [DE # 790], at p. 86.

testified that Brigade is willing to serve as sub-advisor to the Reorganized Acis for fifteen basis points.⁸⁸ Highland attempted to show with evidence and argument that Brigade had made some failed trades since stepping in as sub-advisor to the Acis CLOs and that this perhaps made them unfit to serve in this role. But Mr. Terry credibly testified that the fact that a few failed trades were made by Brigade does not make them unfit to serve as sub-advisor to Reorganized Acis, and that trades out of compliance with the applicable CLO tests occasionally happen, and Brigade has handled them appropriately.⁸⁹ In fact, the evidence suggested that at least ten failed trades occurred while Highland was acting as sub-advisor to the Debtor-Acis.⁹⁰

Highland's suggestions that Brigade is not up to the task to manage the Reorganized Debtor are specious. Likewise, HCLOF Guernsey's insistence that it will not be getting the benefit of its bargain if the Acis CLOs are not managed by Highland personnel going forward appears to be a manufactured position aimed at thwarting Mr. Terry at all costs. Not only is there no credible evidence of Brigade mismanagement but, to the contrary, it appears that Highland (prior to the Debtor-Acis's rejection of the Sub-Advisory Agreement and Shared Services Agreement), intentionally liquidated assets of the CLO SPEs and built up cash without reasonable justification. Specifically, Mr. Terry credibly testified that there were \$85 million in purchases in the Acis CLOs in the hours leading up to the entry of the orders for relief, but virtually no purchases of loans in the CLOs afterwards—only sales.⁹¹ And Mr. Worman further

⁸⁸ Transcript 12/11/18 (PM) [DE # 790], at p. 89; Transcript 12/12/18 (AM) [DE # 791], at p. 62.

⁸⁹ Transcript 12/11/18 (PM) [DE # 790], at pp. 182-83; Transcript 12/18/18 [DE # 804], at pp. 72-73.

⁹⁰ *See* Exhs. 727, 728; Transcript 12/11/18 (PM) [DE # 790], at pp. 71-74, 182-83.

⁹¹ Transcript 12/12/18 (AM) [DE # 791], at pp. 18-19, 28-31; Transcript 12/18/18 [DE # 804], at pp. 87-89; *see also*, Terry Demonstrative.

credibly testified that Highland, while acting as sub-advisor, allowed approximately \$380 million in cash to build up in the Acis CLOs. Meanwhile, Brigade has subsequently reduced that cash balance by \$280 million to approximately \$100 million.⁹² Mr. Worman also credibly testified that Brigade has purchased approximately \$300 million in loans for the Acis CLOs.⁹³ The Chapter 11 Trustee and Mr. Terry both credibly testified that the build-up of cash in the Acis CLOs while Highland was sub-advisor, rather than the loans acquired by Brigade, left the Acis CLOs without sufficient interest income to make a distribution to the equity holders.⁹⁴ Certain contradictory testimony of Hunter Covitz was not convincing that: (a) there were very few conforming loans available to be purchased for the Acis CLOs in the approximately four months that elapsed between the entry of the Order for Relief and the time when Highland was terminated as sub-advisor;⁹⁵ and (b) it made more sense to accumulate cash to pay down the AAA notes rather than invest in new loans.⁹⁶ The court found more convincing the testimony of Mr. Terry: (a) that there was \$310 billion of performing loans rated above CCC in the S&P loan index in May of 2018 available for purchase in CLO-6 that would have satisfied the weighted average life test;⁹⁷ (b) that Highland purchased loans for CLO-7 that would have satisfied the weighted average life constraints in the Debtor-Acis's CLO-4, CLO-5, and CLO-6;⁹⁸ and (c)

⁹² Transcript 12/11/18 (PM) [DE # 790], at p. 100.

⁹³ Transcript 12/11/18 (PM) [DE # 790], at pp. 70, 94.

⁹⁴ Transcript 12/11/18 (AM) [DE # 789], at pp. 67-69; Transcript 12/11/18 (PM) [DE # 790], at pp. 70-71; Transcript 12/12/18 (AM) [DE # 791] at pp. 34-37.

⁹⁵ Transcript 12/13/18 (AM) [DE # 793], at pp. 12-13.

⁹⁶ Transcript 12/13/18 (AM) [DE # 793], at pp. 13-16.

⁹⁷ Transcript 12/18/18 [DE # 804], at p. 87.

⁹⁸ Transcript 12/18/18 [DE # 804], at pp. 87-88.

that, although there was no change in market conditions, Highland essentially stopped buying collateral for the Acis CLOs⁹⁹ after the entry of the Orders for Relief.¹⁰⁰

4. Resets—Non-impairment of Anyone’s Rights.

The Plan only contemplates *consensual* resets of the Acis CLOs—in other words, only if HCLOF Guernsey requests resets.¹⁰¹ Messrs. Worman and Terry both credibly testified that they believed the Reorganized Acis and Brigade could perform a consensual reset of the Acis CLOs.¹⁰² Mr. Terry credibly testified that other asset managers have been able to issue or reset CLOs after a bankruptcy proceeding.¹⁰³ Mr. Terry also credibly testified that he wants to come to a resolution with HCLOF Guernsey and consensually reset the Acis CLOs.¹⁰⁴

HCLOF Guernsey has taken the position that it and its new Passive Investor (new as of mid-November 2017—just before the Bankruptcy Cases) only want to be involved with CLOs that are managed by Highland or Highland affiliates. Is the Plan impairing their rights—to the extent the Plan (and any subsequent re-sets) brings in Brigade as the sub-advisor to the Reorganized Debtor (whereas Highland was in that sub-advisor role before)? It appears no. The

⁹⁹ Transcript 12/18/18 [DE # 804], at pp. 88-89.

¹⁰⁰ Highland has also argued that the Plan is not feasible because the administrative expense claims are extremely high (to which the Chapter 11 Trustee responds, it is of Highland’s making, since Highland has objected to literally every action proposed by the Chapter 11 Trustee). The court does not believe there is a legitimate feasibility problem here. Not only has the court not ruled yet on final professional fee applications, but the Chapter 11 Trustee represented that certain professionals have agreed to defer their fees (beyond payment in full on the Effective Date) as necessary.

¹⁰¹ See Plan § 6.08.

¹⁰² Transcript 12/11/18 (PM) [DE # 790], at pp. 86-90, 176-178; Transcript 12/12/18 (AM) [DE # 793], at pp. 16-18.

¹⁰³ Transcript 12/11/18 (PM) [DE # 790], at pp. 179-180.

¹⁰⁴ Transcript 12/18/18 [DE # 804], at p. 74.

Offering Memorandum between HCLOF Guernsey and the Passive Investor, dated November 15, 2017, pursuant to which the Passive Investor agreed to invest in HCLOF Guernsey, provided that there may be a change in circumstances following the date of the Offering Memorandum and that any forward-looking statements in the Offering Memorandum involved risks and uncertainties “because they relate to events and depend on circumstances that may or may not occur in the future.”¹⁰⁵ Heather Bestwick, one of the HCLOF Guernsey directors, testified that the Offering Memorandum does not require HCLOF Guernsey to invest only in Highland-managed funds¹⁰⁶ and instead expressly provides that HCLOF Guernsey will invest in “CLOs managed by other asset managers.”¹⁰⁷ Another witness, Mr. McGuffin, testified that the HCLOF Guernsey directors’ fiduciary duties require them to act independently and objectively in the best interests of HCLOF Guernsey, and also require them to consider a change in circumstances.¹⁰⁸ HCLOF Guernsey’s counsel, HCLOF Guernsey’s director, and the Passive Investor have all testified that they would consider doing a reset with the Reorganized Acis in the event the Plan is confirmed.¹⁰⁹

Mr. Terry credibly testified that a reset of the Acis CLOs can occur after the expiration of the reinvestment periods of the Acis CLOs.¹¹⁰ The Plan is feasible regardless of whether a reset of the Acis CLOs is requested by HCLOF Guernsey. Messrs. Phelan and Terry both credibly

¹⁰⁵ See Exh. 90, HCLOF Guernsey Offering Memorandum, at pp. 4-5.

¹⁰⁶ See Exh. 719, Bestwick Depo., at pp. 109, 118-121.

¹⁰⁷ See Exh. 90, HCLOF Offering Memorandum, at p. 12.

¹⁰⁸ Transcript 12/13/18 (PM) [DE # 794], at pp. 142-145.

¹⁰⁹ See Exh. 602, p. 12 of 70 (statement by HCLOF Guernsey’s Counsel); Exh. 719 at pp. 166-167 (Heather Bestwick); Exh. 720, p. 72.

¹¹⁰ Transcript 12/18/18 [DE # 804], at pp. 82-83.

testified that the Reorganized Debtor will have cash flow from multiple potential sources—including the revenues from the CLO PMAs with the Acis CLOs, potential new business developed by the Reorganized Acis, and the outcome of any potential litigation claims.¹¹¹

VI. General Credibility Assessments.

In ruling in a contested matter such as confirmation, and weighing the preponderance of the evidence, the credibility of witnesses and contradictions in their testimony naturally can be significant. Here, there were some noteworthy problems and contradictions with some of the testimony provided by the Objectors' witnesses. They are summarized below.

1. Scott Ellington: A Seemingly Manufactured Narrative to Justify Prior Actions.

Scott Ellington testified on February 7, 2018 at the trial on the involuntary petitions, and the court was asked to consider his testimony again in connection with confirmation (he did not attend the confirmation hearing). He is the General Counsel, Chief Legal Officer, and a Partner at Highland. Mr. Ellington testified that the Debtor-Acis's name is "toxic" in the market place and that, due to the litigation with Mr. Terry and allegations in that litigation, "nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO."¹¹² Mr. Ellington elaborated that it had been determined in late 2016 or 2017 that re-sets or re-financings of the Acis CLOs were a prudent thing to pursue (in fact, there was indeed a trend of refinancings and resets for this vintage of CLOs in the market place) and, in connection with that, the Debtor-Acis's contracts and assets needed to be diverted to different, newly created entities because: (a) the "Acis" name was toxic and underwriters and investors were not going to

¹¹¹ Transcript 12/11/18 (AM) [DE # 789], at pp. 72, 88-90; Transcript 12/12/18 (AM) [DE # 791], at p. 53.

¹¹² Exh. 23, p. 55 (line 17) through p. 56 (line 7); p. 98 (lines 8-12).

be interested in re-financings or resets for CLOs managed by the Debtor-Acis;¹¹³ and (b) the new Passive Investor wanted the Debtor-Acis out of the picture.¹¹⁴ Mr. Ellington further elaborated: “The equity, you know, calls the tune, so to speak, in terms of the CLO . . .”¹¹⁵ In summary, an overarching theme of Mr. Ellington’s testimony was that the Debtor-Acis was tainted or toxic in the marketplace and the Passive Investor wanted the Debtor-Acis out of the picture—thus, this was the motivation for the prepetition transactions orchestrated by Highland prior to the Bankruptcy Cases. The problems with the Scott Ellington testimony were at least two-fold. First, there is no credible evidence that the Debtor-Acis is/was toxic in the market place. In fact, in April 2017 (well after the litigation with Mr. Terry commenced), the Debtor-Acis issued a new CLO (CLO-7). And in market publications as recently as August 21, 2017, Highland was touting the *Acis* structure stating “our vehicle will allow us to issue between six and 12 CLOs over the next few years.”¹¹⁶ Second, the Passive Investor denies demanding that the Debtor-Acis be removed as the CLO manager. Term sheets as recent as August 21, 2017 contemplated the Debtor-Acis as the continuing portfolio manager of CLOs, with apparently no protestations by the Passive Investor.¹¹⁷

¹¹³ *E.g.*, *Id.* at p. 177 (line 21) though p. 178 (line 12); p. 184 (lines 13-17) (“The underwriters in this case, Mizuho, Goldman, et al., the equity, they said we want every possible relation to anything that could be legacy Acis or Acis-related affiliates to be severed”).

¹¹⁴ *Id.* at p. 202 (lines 11-13) (“we have third-party investors that said we don’t want to be involved in this brand; and their equity is one of the reasons that new CLOs can be launched”); p. 203 (lines 7-8) (“It was call the deal and terminate the CMAs or transfer the CMAs”); p. 223 (lines 8-12) (“Because if the involuntary remains, and I’m just – I’m just being frank – we’ve already been told by equity holders, including the separate account, BBK, that you may have seen on some of the exhibits, they’re pulling everything.”).

¹¹⁵ *Id.* at p. 74 (lines 3-6).

¹¹⁶ Exh. 801, pp. 3 & 5.

¹¹⁷ Exh. 802, p.1.

2. Michael Pugatch: The Passive Investor Made Into a Scapegoat.

The reality is that Highland, indeed, started working on the concept of doing resets of some of the older vintage Acis CLOs in at least early 2017 (and perhaps late 2016). Highland, in fact, completed a reset of one Acis CLO in April 2017 (with the Debtor-Acis still in place as the portfolio manager for that reset in April 2017). As part of that process of implementing resets for the Acis CLOs, Highland worked on bringing in a new investor or investors to have a share of the equity tranche of the Acis CLOs. Highland finally obtained the commitment of the Passive Investor in November 2017, after starting initial discussions with them in the second quarter of 2017.¹¹⁸ A representative for the Passive Investor referred to itself as “passive” in a deposition.¹¹⁹ Concepts and documentation for the Passive Investor’s investment in the Acis CLOs were discussed for a while during 2017. As recently as August 2017, the negotiations with the Passive Investor appeared to contemplate the Debtor-Acis still as the portfolio manager for the CLOs.¹²⁰ Then the arbitration trial with Mr. Terry began in September 2017 and the Terry Arbitration Award was issued on October 20, 2017. Suddenly, it appears that the dismantling of the Debtor-Acis began with all deliberate speed. The court believes, based on the totality of the evidence, that it was Highland who did not want the Debtor-Acis as CLO manager going forward, so that Highland could keep reaping the benefits of the reset CLOs. Specifically, when deposed on the topic, a representative for the Passive Investor, Mr. Pugatch, denied the accuracy of Mr. Ellington’s testimony, stating that the Passive Investor “viewed Acis and Highland as interchangeable from the perspective of the—you know, the actual investment

¹¹⁸ See Exh. 720, Pugatch Deposition Transcript dated November 27, 2018, p. 18, lines 14-20.

¹¹⁹ *Id.* at p. 22 (lines 2-3) (“we’re you know, 49 percent sort of passive minority investor”).

¹²⁰ Exh. 802, p. 1.

opportunity.”¹²¹ When asked, “Are you aware that Scott Ellington, general counsel for HCM, testified that [the Passive Investor] said with absolute certainty that they had no interest in doing business with Acis because the Acis brand was purportedly toxic and, consequently, nothing associated with Acis could be managed or marketed as a CLO?” Mr. Pugatch testified that he had read that testimony and that the statement was not true.¹²² He further stated that “the ultimate sort of name change did not come from [the Passive Investor].”¹²³ In fact, when further asked whether the Passive Investor knew why Acis CLO Funding Limited changed its name to Highland CLO Funding Limited (*i.e.*, HCLOF Guernsey), Mr. Pugatch testified, “We were told that it was a change in the brand or the name, as requested by Highland.”¹²⁴ And when asked “Did [the Passive Investor] request that the name be changed?” he answered “No.”¹²⁵ When asked whether the Passive Investor considered “Acis toxic in the industry?” Mr. Pugatch answered: “No. What I would say is, when the suggested name change did occur, there were commercial reasons given to us as to why that would be beneficial in terms of the ongoing management of those CLOs and the intended investment thesis around the investment that we had made, which seemed to make commercial sense.”¹²⁶ When Mr. Pugatch was asked, “Those reasons were given by Highland, correct?” he replied “Correct” and confirmed that they were not demanded by the Passive Investor.¹²⁷ Mr. Pugatch was emphatic that the Passive Investor was

¹²¹ *Id.* at p. 30 (lines 19-20).

¹²² *Id.* at p. 31 (lines 6-19).

¹²³ *Id.* (lines 24-25).

¹²⁴ *Id.* at p. 27 (lines 24-25).

¹²⁵ *Id.* at p. 28 (lines 1-3).

¹²⁶ *Id.* at p. 32 (lines 1-8).

¹²⁷ *Id.* at p. 32 (lines 9-12).

just that—a passive investor—that did not have the ability to “start calling the shots” and dictate the terms of any reset transactions.¹²⁸ When asked if the Passive Investor was concerned about the Terry Arbitration Award, Mr. Pugatch replied: “The award itself, no. I think the only thing we were concerned about or focused on was that vis-à-vis our equity investment in Highland CLO Funding Limited and, in turn, the equity that that vehicle held in the various CLOs was appropriately, you know, ring-fenced or not exposed to any potential damages or economic loss in value as a result of that arbitration award.”¹²⁹

The Passive Investor further testified that Brigade has “a fine reputation in the market” but that it had no interaction with them historically.¹³⁰ The Passive Investor also testified that it was concerned about the cash buildups that had happened recently due to actions while Highland had still been the sub-advisor on the Acis CLOs.¹³¹

3. The Seemingly Rehearsed Testimony of the Two HCLOF Guernsey Witnesses.

The court was presented with video depositions of HCLOF Guernsey’s two non-executive directors (*i.e.*, its only directors): Mr. William Scott¹³² and Ms. Heather Bestwick.¹³³ It was very apparent to the court that HCLOF Guernsey is controlled by Highland in every way. Putting things in the kindest way possible, Mr. Scott and Ms. Bestwick appear to be nominal figureheads who are paid to act like they are in charge, while they are not. They are both

¹²⁸ *Id.* at p. 32 (lines 16-17); pp. 33-35.

¹²⁹ *Id.* at p. 43 (lines 3-9); p. 89.

¹³⁰ *Id.* at p. 68 (lines 11-13).

¹³¹ *Id.* at p. 82, lines 9-24.

¹³² *See* Exh. 721.

¹³³ *See* Exh. 719.

basically professional directors-for-hire, for companies that choose to form/organize in the nation of Guernsey.

Ms. Bestwick testified that she is a nonexecutive director for six companies in Guernsey (none of the others are in the CLO business).¹³⁴ She testified that she earned £35,000 per year to serve as a director of HCLOF Guernsey.¹³⁵ She testified that she was selected by Highland¹³⁶ and that Highland also made the decision to hire HCLOF Guernsey's law firm in the Bankruptcy Cases.¹³⁷ Ms. Bestwick, when questioned as to why the Equity/ALF PMA it had with the Debtor-Acis was terminated shortly after the Terry Arbitration Award was issued, testified that she was told it was "a condition precedent to the new Passive Investor" coming in and that she was told this by Highland.¹³⁸ She also testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey)¹³⁹ or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey).¹⁴⁰ She reiterated that she only talks to Highland employees. She also was under the impression that terminating the Equity/ALF PMA would improve marketability of the CLOs going forward but that it was the same people and "business as usual for us."¹⁴¹ She testified that she learned of the Terry

¹³⁴ *Id.* at pp. 7-8; p. 21 (line 5) through p. 22 (line 20); p. 26 (lines 10-12).

¹³⁵ *Id.* at p. 43 (lines 18-19).

¹³⁶ *Id.* at p. 42 (lines 17-25).

¹³⁷ *Id.* at p. 53 (lines 7-20).

¹³⁸ *Id.* at p. 16 (line 13) through p. 17 (line 23); p. 58 (line 21) through p. 60 (line 17).

¹³⁹ *Id.* at p. 188 (lines 12-15).

¹⁴⁰ *Id.* at p. 188 (line 19) through p. 189 (line 9).

¹⁴¹ *Id.* at p. 189 (lines 12-15); p. 200 (line 22).

Arbitration Award in mid-April 2018 (some six months after the fact)¹⁴² and “[y]ou’d have to ask Highland”¹⁴³ why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were “heavily reliant on our service providers, and that means Highland.”¹⁴⁴ With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott’s, idea.

Mr. Scott, the other HCLOF Guernsey director, is a “professional director” for 10-15 Guernsey companies¹⁴⁵—all of which are “paying assignments.”¹⁴⁶ He became rather incensed when testifying, at the suggestion that he and Ms. Bestwick were not in control of HCLOF Guernsey, stating that board minutes and other documents would show that they took a great level of interest in running the company.¹⁴⁷ He testified that he earned £40,000 per year to serve as a director of HCLOF Guernsey and that, due to the extra work of the Bankruptcy Cases, he also was charging another £350 per hour, after the first 35 hours¹⁴⁸ (the court notes, anecdotally, that it required participation in court hearings by a director of HCLOF Guernsey each time that HCLOF Guernsey took a position in court). Mr. Scott confirmed that he was not aware of the litigation with Mr. Terry nor the Acis Bankruptcy Cases until April 2018.¹⁴⁹ He also testified

¹⁴² *Id.* at p. 61 (lines 3-19); p. 130 (line 14) through p. 136 (line 2).

¹⁴³ *Id.* at p. 137 (line 21).

¹⁴⁴ *Id.* at p. 152 (lines 18-19).

¹⁴⁵ *See* Exh. 721 at p 8 (line 9) through p. 9 (line 5); p. 79 (lines 20-25).

¹⁴⁶ *Id.* at p. 80 (lines 3-5).

¹⁴⁷ *Id.* at p. 13 (lines 1-12); p. 22 (line 23) through p. 23 (line 12).

¹⁴⁸ *Id.* at p. 80 (lines 6-18).

¹⁴⁹ *Id.* at p. 132 (line 20) through p. 135 (line 10).

that Highland had proposed the legal counsel HCLOF Guernsey used in the Bankruptcy Cases and that he had never disagreed with Highland’s advice.¹⁵⁰ He confirmed that all investment decisions were made by Highland and that he and Ms. Bestwick’s role was to “police” service providers.¹⁵¹ Like Ms. Bestwick, Mr. Scott testified that they were told that the Passive Investor had made it a condition precedent to their investment in HCLOF Guernsey that “Acis depart.”¹⁵² But he had not talked to the Passive Investor.¹⁵³ As if all this deference to Highland were not enough, HCLOF Guernsey’s lender is NexBank (an affiliate of Highland—which is based in Dallas, not Guernsey) and HCLOF Guernsey has given its actual equity notes to NexBank as security for its loans from NexBank.¹⁵⁴ Also, interestingly, when asked about the adversary proceeding that HCLOF Guernsey filed against the Chapter 11 Trustee a few months ago in the Bankruptcy Cases (*i.e.*, the Highland Entities Adversary Proceeding—it was originally commenced by Highland and HCLOF Guernsey as Plaintiffs), Mr. Scott testified that “we haven’t sued the trustee, he has sued us” but later acknowledged his mistake when corrected by counsel.

This court is not naïve—it realizes that so-called “fiduciary services firms” are apparently a typical thing in the world of off-shore jurisdictions that are large financial centers.¹⁵⁵ Maybe

¹⁵⁰ See generally *id.* at pp. 277-280.

¹⁵¹ *Id.* at p. 106 (lines 1-7).

¹⁵² *Id.* at p. 254 (line 20) through p. 260.

¹⁵³ *Id.* at p. 155 (lines 2-25).

¹⁵⁴ See Exh. 719 at p. 213 (line 2-22); Exh. 721 at p. 129 (line 10) through p. 130 (line 13).

¹⁵⁵ During the testimony of both Ms. Bestwick and Mr. Scott, the court was reminded of an old TV commercial in which an actor states, “I am not a doctor, but I play one on TV.” The court could not help but conclude that these were not real directors but were playing them (when legally necessary).

the system works, for the most part and in many business contexts. But not when trying to convince a bankruptcy court of the bona fides of transactions that look like attempts to denude another party of value and/or to thwart creditors. And not when accusations are made that you are the alter ego of the party (Highland) who orchestrated the company's creation. The evidence was overwhelming that: (a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey's behalf.

In summary, the testimony of these two HCLOF Guernsey Directors was of little or no value in convincing the court that the Objector, HCLOF Guernsey, has valid concerns of its own (separate from Highland's) with regard to the bona fides of the Plan.

VII. Conclusion.

This Bench Ruling and Memorandum Opinion is intended to address some of the most pertinent facts and issues raised in connection with confirmation of the Plan. Among other things, the court believed it was necessary to stress, in a separate ruling: (a) *the unique status of the Objectors* (they are "insiders" as defined in the Bankruptcy Code whose prepetition actions suggest unclean hands—this seems highly relevant to consider, when there are no non-insider creditors or other relevant parties objecting to the Plan); (b) *the appropriateness and legality of the proposed Plan Injunction* that would temporarily prevent nonconsensual redemptions/liquidations (it is in all ways justified given the allegations in the Highland Entities Adversary Proceeding and under the traditional four-prong test for preliminary injunctions); and

(c) *the feasibility of the Plan* (Mr. Terry and Brigade are well qualified to perform their contemplated roles).

The court will separately sign the Findings of Fact, Conclusions of Law and Order Confirming Plan submitted by the Chapter 11 Trustee to address all other relevant issues.

End of Bench Ruling and Memorandum Opinion

Exhibit 11




CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 31, 2019


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:
ACIS CAPITAL MANAGEMENT, L.P.,
ACIS CAPITAL MANAGEMENT GP, LLC,

DEBTORS.

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§
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§

Case No. 18-30264-SGJ-11
Case No. 18-30265-SGJ-11

(Jointly Administered Under Case
No. 18-30264-SGJ-11)

Chapter 11

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING FINAL
APPROVAL OF DISCLOSURE STATEMENT AND CONFIRMING THE THIRD AMENDED
JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL
MANAGEMENT GP, LLC, AS MODIFIED**

On December 11, 12 and 13, 2018, the Court held a hearing (the “Combined Hearing”) to consider (a) final approval of the *Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the “Disclosure Statement”) [Docket No. 661] and (b) confirmation of the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the “Third Amended Plan”) [Docket No. 660], a

copy of which is attached hereto as **Exhibit “1,”** as modified by (i) the *First Modification to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the “First Modification”) [Docket No. 693], a copy of which is attached hereto as **Exhibit “2,”** and (ii) the *Second Modification to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the “Second Modification”) [Docket No. 702], a copy of which is attached hereto as **Exhibit “3,”** as supplemented by the *Supplement to Second Modification to the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 769], a copy of which is attached hereto as **Exhibit “4,”** filed by Robin Phelan (the “Chapter 11 Trustee”), as Chapter 11 Trustee for Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP,” and together with Acis LP, the “Debtors”). The Third Amended Plan, as modified by the First Modification and Second Modification (as supplemented), is hereafter referred to as the “Plan,” *provided that*, as provided in the last sentence of paragraph 13 of this Order, the schedule of assumed executory contracts attached hereto as Exhibit 5 to this Order replaces, is substituted for, and supersedes Exhibit B to the Third Amended Plan. Capitalized terms used in this Order, unless otherwise specifically defined herein, shall be given the same meaning as in the Plan and/or the Disclosure Statement.

The Combined Hearing was commenced at the time and date scheduled. Based on the testimony, evidence admitted, judicial notice of the records of the Chapter 11 Cases, and the arguments of counsel, the Court makes this *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (“Order”).

ACCORDINGLY, IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED
AND ORDERED THAT:

A. Findings and Conclusions. All findings of fact or conclusions of law made by the Court on the record at the Combined Hearing are hereby incorporated in their entirety into this Order. All findings of fact contained in the Court's *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petitions* entered on April 13, 2018 [Docket No. 118] are hereby incorporated in their entirety into this Order. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 as made applicable herein by Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction; Venue; Core Proceeding. The Court has jurisdiction over these bankruptcy cases pursuant to 28 U.S.C. sections 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. sections 1408 and 1409. Final approval of the Disclosure Statement and confirmation of the Plan are core proceedings pursuant to 28 U.S.C. section 157(b)(2)(A), (L) and (O) over which the Court has exclusive jurisdiction and full constitutional jurisdiction and authority to enter final orders with respect thereto.

C. Eligibility for Relief. The Debtors were and are eligible for relief under section 109 of the Bankruptcy Code.¹

D. Commencement and Joint Administration of the Debtors' Cases. On January 30, 2018, Joshua N. Terry ("Terry") filed involuntary petitions under chapter 7 of the Bankruptcy Code against both of the Debtors in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Acis LP's bankruptcy case was assigned Case No. 18-30264, and Acis GP's bankruptcy case was assigned Case No. 18-30265. The involuntary petitions were contested and the Court held a multi-day trial spanning March 21, 22, 23, 27 and

¹ Unless otherwise indicated, section references are to the Bankruptcy Code.

29, 2018. On April 13, 2018, the Court entered an *Order for Relief in an Involuntary Case* in both cases [Docket No. 119 in Case No. 18-30264 and Docket No. 114 in Case No. 18-30265]. Diane G. Reed (the “Chapter 7 Trustee”) was appointed Chapter 7 Trustee in both cases. On motion of the Chapter 7 Trustee, the Court entered an *Order Directing Joint Administration* [Docket No. 137],² which provides for the joint administration of the Debtors’ respective bankruptcy cases under Case No. 18-30264.

E. Conversion of the Debtors’ Cases and Appointment of the Chapter 11 Trustee.

On motion of the Chapter 7 Trustee, the Court entered an *Order Granting Trustee’s Expedited Motion to Convert Cases to Chapter 11* [Docket No. 205] on May 11, 2018, converting the Debtors’ bankruptcy cases to cases under chapter 11 of the Bankruptcy Code. On motion of Terry, the Court entered an *Order Granting Emergency Motion for an Order Appointing A Trustee for the Chapter 11 Estates of Acis Capital Management, L.P. and Acis Capital Management GP, LLC Pursuant to Bankruptcy Code Section 1104(A)* [Docket No. 206] on May 11, 2018, directing the United States Trustee (the “U.S. Trustee”) to appoint a Chapter 11 Trustee in the Chapter 11 Cases. The U.S. Trustee appointed Robin Phelan as Chapter 11 Trustee in the Chapter 11 Cases. Mr. Phelan’s appointment as Chapter 11 Trustee in Acis LP’s case was approved pursuant to an *Order Approving Appointment of Chapter 11 Trustee* [Docket No. 221] entered by the Court on May 17, 2018 and his appointment as Chapter 11 Trustee in Acis GP’s case was approved pursuant to an *Order Approving Appointment of Chapter 11 Trustee* [Docket No. 184 in Case No. 18-30265] entered by the Court on June 12, 2018.

F. No Official Committee of Unsecured Creditors. The U.S. Trustee has not appointed an official committee of unsecured creditors in the Chapter 11 Cases.

G. Claims Bar Date. October 15, 2018 was originally fixed as the deadline for all holders of alleged Claims (except for governmental units) to file proofs of Claim. However, on

² Unless otherwise indicated, all references to the “Docket” refer to the Docket in Case No. 18-30264.

motion of the Chapter 11 Trustee, the Court entered the Bar Date Order on July 9, 2018 [Docket No. 387]. Pursuant to the Bar Date Order, August 1, 2018 was established as the deadline for all holders of alleged Claims (except for governmental units) to file proofs of Claim and October 10, 2018 was established as the deadline for governmental units to file proofs of Claim.

H. Adequacy of Disclosure Statement. The Disclosure Statement contains “adequate information,” as that term is defined in section 1125 of the Bankruptcy Code and satisfies all requirements of section 1125 of the Bankruptcy Code.

I. Solicitation Order Compliance. On October 3, 2018, the Chapter 11 Trustee filed his *Chapter 11 Trustee’s Amended Motion for Entry of Order (A) Conditionally Approving Disclosure Statement; (B) Scheduling Combined Hearing on Final Approval of Disclosure Statement and Confirmation of Second Amended Joint Plan, and Setting Related Deadlines; (C) Approving Forms for Voting and Notice; and (D) Granting Related Relief* (the “Conditional Approval Motion”) [Docket No. 622]. The Chapter 11 Trustee filed a *Supplement to Amended Motion for Entry of Order (A) Conditionally Approving Disclosure Statement; (B) Scheduling Combined Hearing on Final Approval of Disclosure Statement and Confirmation of Second Amended Joint Plan, and Setting Related Deadlines; (C) Approving Forms for Voting and Notice; and (D) Granting Related Relief* (the “Supplement to Conditional Approval Motion”) [Docket No. 646] on October 19, 2018. The Court conducted a hearing on the Conditional Approval Motion, as supplemented, on October 24, 2018. On October 25, 2018, the Court entered an *Order (I) Conditionally Approving Disclosure Statement, (II) Scheduling Combined Hearing on Final Approval of Disclosure Statement and Confirmation of Second Amended Joint Plan, and Setting Related Deadlines, (III) Approving Forms for Voting and Notice, and (IV) Approving Related Matters* (the “Solicitation Order”) [Docket No. 659] granting the Conditional Approval Motion. The Conditional Approval Motion was filed in connection with a second amended plan of reorganization and disclosure statement with respect thereto. However, for convenience and ease of review, the modifications to the second amended plan and disclosure

statement with respect thereto, including modifications discussed at the October 24, 2018 hearing, were incorporated into the Third Amended Plan and Disclosure Statement filed on October 25, 2018. Consequently, the Solicitation Order approved solicitation of votes on the Third Amended Plan and distribution of the Disclosure Statement in connection with solicitation of votes on the Third Amended Plan. Pursuant to the Solicitation Order, the Court, among other things: (a) conditionally approved the Disclosure Statement for use in soliciting votes on the Third Amended Plan; (b) established procedures and deadlines for the solicitation and submission of votes to accept or reject the Third Amended Plan (the "Solicitation Procedures"); (c) fixed deadlines for objections to final approval of the Disclosure Statement and/or confirmation of the Third Amended Plan and related briefing deadlines; (d) fixed a deadline for serving notice of the Combined Hearing; and (e) set the Combined Hearing to commence on December 11, 2018, at 9:30 a.m., Central Time. The Solicitation Order approved the following documents (collectively the "Solicitation Materials") to be served on Creditors entitled to vote on the Third Amended Plan:

- (i) the Third Amended Plan;
- (ii) the Disclosure Statement;
- (iii) the Ballots for voting on the Third Amended Plan;
- (iv) the Solicitation Order;
- (v) a Notice (the "Combined Hearing Notice") [Docket No. 667] reflecting the deadlines and other information relating to the Combined Hearing; and,
- (vi) a letter (the "Transmittal Letter") from counsel for the Chapter 11 Trustee.

The Solicitation Order directed the Chapter 11 Trustee to serve the Solicitation Materials on holders of Claims in Classes 2 and 3 and Subclasses 4A and 4B under the Third Amended Plan. The Solicitation Order also authorized the tabulation of Ballots on a consolidated basis. The Solicitation Order further directed the Chapter 11 Trustee to serve on various parties defined in the Supplement to Conditional Approval Motion as the "Noteholders," "Highlands" and

“Notice Parties” certain notices and copies of the following documents (the “Notice-Only Materials”): the Disclosure Statement, the Third Amended Plan, the Solicitation Order and the Combined Hearing Notice. The Chapter 11 Trustee has complied with the Solicitation Order, including the Solicitation Procedures contained therein, in all respects.

J. Transmittal and Mailing of Solicitation Materials: Notice. Due, adequate, and sufficient notice of the Third Amended Plan, Disclosure Statement and Combined Hearing, together with all deadlines for voting on the Third Amended Plan and for objecting to final approval of the Disclosure Statement and/or confirmation of the Third Amended Plan, has been given to known holders of Claims and Interests and, to the extent required, to all other known parties-in-interest, in compliance with the applicable Bankruptcy Rules and the Solicitation Order, as evidenced by the: (i) Combined Hearing Notice (and Certificate of Service included therewith) filed at Docket No. 667; (ii) *Notice of Solicitation of Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Noteholders* (and Certificate of Service included therewith) filed at Docket No. 664; (iii) *Notice of Solicitation of Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Highland Entities* (and Certificate of Service included therewith) filed at Docket No. 665; (iv) *Notice of Solicitation of Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Notice Parties* (and Certificate of Service included therewith) filed at Docket No. 666; and (v) *Certificate of Service* filed at Docket No. 676. The packages containing the Solicitation Materials, the packages containing the Notice-Only Materials, and all other materials relating in any way to the solicitation process were transmitted and served in substantial compliance with the Solicitation Order and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Solicitation Procedures set forth in the Solicitation Order, and all other applicable rules, laws and regulations.

K. Adequacy of Solicitation. The Chapter 11 Trustee distributed packages containing the Solicitation Materials to the holders of Claims entitled to vote on the Third

Amended Plan and sufficient time was prescribed for such holders of Claims to vote on the Third Amended Plan in substantial compliance with the Solicitation Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Solicitation Procedures set forth in the Solicitation Order, and all other applicable rules, laws and regulations. Transmittal and service were adequate and sufficient, and no further notice is or shall be required. In addition, holders of Claims not entitled to vote on the Amended Plan, and certain other parties-in-interest, were provided with certain non-voting materials approved by the Court in compliance with the Solicitation Order. All procedures used to distribute the Solicitation Materials to holders of Claims entitled to vote on the Third Amended Plan were fair and conducted in good faith and in accordance with the Bankruptcy Code, Bankruptcy Rules, the Solicitation Procedures contained in the Solicitation Order, and all other applicable rules, laws and regulations.

L. Good Faith Solicitation – Section 1125(e). Based on the Record, the Chapter 11 Trustee and Estate Professionals have acted in good faith within the meaning of sections 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order, in connection with all of their respective activities relating to the solicitation of acceptances of the Third Amended Plan and their participation in the activities described in section 1125, and are entitled to the protections afforded by section 1125(e).

M. Voting Tabulation. In accordance with the Solicitation Order, on December 3, 2018 the *Tabulation of Ballots in Connection with Confirmation of the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the “Ballot Tabulation”) [Docket No. 746] was filed and served on all parties that filed a timely objection to confirmation of the Plan. All procedures used to tabulate the Ballots (which were tabulated on a consolidated basis) were fair and conducted in accordance with the Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws and regulations.

N. Classes Deemed to Have Accepted or Rejected the Third Amended Plan. As set forth in the Third Amended Plan and Disclosure Statement: (i) Class 1 is unimpaired and is conclusively deemed to have accepted the Third Amended Plan pursuant to section 1126(f), and (ii) Class 5, consisting of Interests in the Debtors, is Impaired, but because the Third Amended Plan provides that holders of Class 5 Interests shall not receive or retain any property on account of their Interests, Class 5 is conclusively deemed to have rejected the Third Amended Plan pursuant to section 1126(g).

O. Impaired Classes of Creditors Voting to Accept or Reject the Third Amended Plan. Based upon the Ballot Tabulation, the Court finds that the following Impaired Classes have voted on the Third Amended Plan as follows:

(i) Class 2 (the Terry Partially Secured Claim) voted to accept the Third Amended Plan as follows:

<u>Ballots Accepting</u>		<u>Ballots Rejecting</u>	
<u>Amount</u>	<u>Number</u>	<u>Amount</u>	<u>Number</u>
\$8,060,827.84 100%	1 100%	\$0.00 0.00%	0 0.00%

Two Ballots were submitted by Terry in Class 2. One of the Ballots was based on a proof of Claim recorded in the Claims Register for Case No. 18-30264 as Claim No. 26-1 and filed by Terry for the benefit of his IRAs ("Claim No. 26"). Highland filed an objection [Docket No. 522] on August 17, 2018 seeking an order disallowing Claim No. 26 and striking any vote (on a prior plan of reorganization) by Terry on account of Claim No. 26. Although the Ballot Tabulation reflects the Ballot submitted by Terry on account of Claim No. 26, the Court disregards that Ballot and does not take it into account in its determination regarding acceptance of the Third Amended Plan. The other Ballot submitted by Terry accepted the Third Amended Plan.

(ii) Class 3 (General Unsecured Claims) voted to accept the Third Amended Plan as follows:

<u>Ballots Accepting</u>		<u>Ballots Rejecting</u>	
<u>Amount</u>	<u>Number</u>	<u>Amount</u>	<u>Number</u>
\$667,550.00 100%	2 100%	\$0.00 0.00%	0 0.00%

Three Ballots were submitted in Class 3. One of the Ballots was submitted by Jennifer G. Terry. Such Ballot is based on a proof of Claim recorded in the Claims Register for Case No. 18-30264 as Claim No. 25-1 and filed by Jennifer G. Terry for the benefit of her IRAs and 401k ("Claim No. 25"). Highland filed an objection [Docket No. 521] on August 17, 2018 seeking an order disallowing Claim No. 25 and striking any vote (on a prior plan of reorganization) by Jennifer G. Terry on account of Claim No. 25. Although the Ballot Tabulation reflects the Ballot submitted by Jennifer G. Terry on account of Claim No. 25, the Court disregards that Ballot and does not take it into account in its determination regarding acceptance of the Plan. The other two Ballots submitted in Class 3 accepted the Third Amended Plan.

(iii) Class 4 (Insider Claims) voted to reject the Third Amended Plan as follows:

<u>Ballots Accepting</u>		<u>Ballots Rejecting</u>	
<u>Amount</u>	<u>Number</u>	<u>Amount</u>	<u>Number</u>
\$0.00 0.00%	0 0.00%	\$4,172,140.38 100%	1 100%

Based on the foregoing, and as evidenced by the Ballot Tabulation, at least one Impaired Class of Claims (excluding the acceptance by any Insiders of the Debtors) has voted to accept the Third Amended Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

P. Modifications to the Third Amended Plan. The modifications to the Third Amended Plan set forth in the First Modification, the Second Modification (as supplemented), and as set forth in this Order constitute non-material or technical changes and do not materially or adversely affect or change the treatment of any Claims against or Interests in the Debtors

under the Third Amended Plan (the “Non-Material Modifications”). The filing of the First Modification on November 8, 2018 constitutes due and sufficient notice thereof under the circumstances of these Chapter 11 Cases. The filing of the Second Modification on November 16, 2018 (as supplemented on December 10, 2018) constitutes due and sufficient notice thereof under the circumstances of these Chapter 11 Cases. The Non-Material Modifications neither require additional disclosure under section 1125 of the Bankruptcy Code nor re-solicitation of votes on the Plan under section 1126 of the Bankruptcy Code and Bankruptcy Rules 3018 and 3019. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims against the Debtors who voted to accept the Third Amended Plan are hereby deemed to have accepted the Third Amended Plan as modified consistent with the Non-Material Modifications. No Holder of a Claim against the Debtors who has voted to accept the Third Amended Plan shall be permitted to change its acceptance to a rejection as a consequence of the Non-Material Modifications. The Non-Material Modifications incorporated in the Plan comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

Q. Bankruptcy Rule 3016. The Plan is dated and identifies the Chapter 11 Trustee as the Person submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement satisfied Bankruptcy Rule 3016(b). The Plan provides for the Temporary Plan Injunction (as defined herein), which constitutes an injunction against conduct not otherwise enjoined under the Bankruptcy Code. The Plan and Disclosure Statement both describe in specific and conspicuous language all acts to be enjoined and identify the entities subject to the Temporary Plan Injunction. Therefore, the Plan and Disclosure Statement satisfy the requirements of Bankruptcy Rule 3016(c).

R. Bankruptcy Rule 3017. The Chapter 11 Trustee has given notice of the Combined Hearing as required by the applicable provisions of Bankruptcy Rule 3017 and the Solicitation Order. The materials transmitted and notice given by the Chapter 11 Trustee to holders of Claims entitled to vote on the Third Amended Plan and the materials transmitted by

the Chapter 11 Trustee to holders of Interests and other parties-in-interest satisfy the applicable provisions of Bankruptcy Rules 3017(d)-(f) and the Solicitation Order. Therefore, the requirements of Bankruptcy Rule 3017 have been satisfied.

S. Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Third Amended Plan satisfies Bankruptcy Rule 3018. The Third Amended Plan was transmitted to all holders of Claims entitled to vote, sufficient time was prescribed for such parties to accept or reject the Third Amended Plan, and the Solicitation Materials used and Solicitation Procedures followed comply with sections 1125 and 1126, thereby satisfying the requirements of Bankruptcy Rule 3018. Further, the Chapter 11 Trustee filed the Ballot Tabulation in accordance with the provisions of the Solicitation Order.

T. Burden of Proof. The Chapter 11 Trustee, as proponent of the Plan, has the burden of proving the elements of sections 1122, 1123 and 1129 of the Bankruptcy Code by a preponderance of the evidence. The Court finds that the Chapter 11 Trustee has met each element of such burden with respect to the Plan.

U. Judicial Notice. The Court takes judicial notice of the entire record of proceedings in the Chapter 11 Cases and related adversary proceedings, including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Court during the Chapter 11 Cases and related adversary proceedings, including, without limitation, the Combined Hearing. Any resolutions of objections to final approval of the Disclosure Statement or confirmation of the Plan explained on the record at the Combined Hearing are hereby incorporated by reference.

V. The Record. The record established at the Combined Hearing (the "Record") to support final approval of the Disclosure Statement and confirmation of the Plan includes:

- (i) All documents identified by the Chapter 11 Trustee at the Combined Hearing and all exhibits admitted into evidence at the Combined Hearing, including but not limited to admitted exhibits which are listed on the *Joint*

Witness and Exhibit List [Docket No. 767] filed jointly by the Chapter 11 Trustee, Highland and HCLOF with the Court on December 7, 2018;

- (ii) The Ballot Tabulation;
- (iii) The testimony of witnesses; and
- (iv) The statements and arguments of counsel.

W. *Objections to Final Approval of Disclosure Statement and Confirmation of Plan.*

The Solicitation Order established November 26, 2018 as the deadline for filing objections to final approval of the Disclosure Statement and/or confirmation of the Plan. The following objections to final approval of the Disclosure Statement and/or confirmation of the Plan (the "Objections") were timely filed in accordance with the Solicitation Order:

- (i) *Objection by Stinson Leonard Street LLP to Debtors' Second Modification to the Third Amended Joint Plan* [Docket No. 720];
- (ii) *Joint Objection of Highland Capital Management, L.P. and Highland CLO Funding, Ltd. to Final Approval of Disclosure Statement and to Confirmation of the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket no. 722]; and
- (iii) *Objection of Neutra Ltd. to Final Approval of Disclosure Statement and to Confirmation of the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 723].

X. *Transfer and Vesting of Assets.* Pursuant to Article VI of the Plan, all Assets shall be transferred to and vested in the Reorganized Debtor as of the Effective Date. The transfer of the Assets to the Reorganized Debtor pursuant to the Plan is consistent with, and authorized by, section 1123(a)(5)(B) of the Bankruptcy Code and will be fully effectuated through this Order as of the Effective Date without the necessity of any other or further assignment or transfer.

Y. *Claim Objections and Resolutions.* Pursuant to the Plan, the Reorganized Debtor has the sole power and exclusive standing and authority to object to any Claim. Without limiting the generality of the foregoing, the Reorganized Debtor shall have the power: (i) to

object to any Claim on any legal or equitable basis; (ii) to seek subordination of any Claim on any legal or equitable basis; (iii) to assert any right of setoff or recoupment, including without limitation, any such right pursuant to section 553 of the Bankruptcy Code; (iv) to assert any and all Estate Defenses to any Claim, whether legal or equitable, including any affirmative defenses or any right of setoff; (v) to assert all Estate Claims as a counterclaim against any Claim, whether arising out of the same or different transactions, both for an affirmative recovery and as an offset against any such Claim; and (vi) to object to any Claims on the basis of section 502(d). Vesting such exclusive power and standing in the Reorganized Debtor is reasonable and appropriate, and is authorized by, and in compliance with, section 1123(b)(3) of the Bankruptcy Code.

Z. Compliance with the Requirements of Section 1129 of the Bankruptcy Code. The Plan complies with the applicable provisions of the Bankruptcy Code, as follows:

(i) Section 1129(a)(1) – Compliance of the Plan with the Applicable Provisions of the Bankruptcy Code. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123.

(a) Sections 1122 and 1123(a)(1) – Proper Classification. The classification of Claims and Interests in the Plan is proper under the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1), the Plan provides for the separate classification of Claims and Interests into six (6) Classes (Class 1, Class 2, Class 3, Subclass 4A, Subclass 4B and Class 5), based on differences in the legal nature and priority of such Claims and Interests (other than Claims for Administrative Expenses, Priority Tax Claims and U.S. Trustee's quarterly fees, which are not required to be designated as separate Classes pursuant to section 1123(a)(1)). Based upon the Record, valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan, the classifications were not created for any improper purpose and the creation of such Classes

does not unfairly discriminate between or among holders of Claims or Interests. In accordance with section 1122(a), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code have been satisfied.

(b) Section 1123(a)(2) – Specification of Unimpaired Classes. The Plan specifies that Claims in Class 1 are unimpaired under the Plan. Therefore, the requirements of section 1123(a)(2) of the Bankruptcy Code have been satisfied.

(c) Section 1123(a)(3) – Specification of Treatment of Impaired Classes. Other than Class 1, all Classes of Claims and Interests (Class 2, Class 3, Subclass 4A, Subclass 4B and Class 5) are Impaired under the Plan. The Plan specifies the treatment of each Impaired Class of Claims and Interests under the Plan. The treatment of Impaired Classes of Claims and Interests is specified in Article IV of the Plan. Therefore, the requirements of section 1123(a)(3) of the Bankruptcy Code have been satisfied.

(d) Section 1123(a)(4) – No Discrimination. The Plan provides for the same treatment for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest. Therefore, the requirements of section 1123(a)(4) of the Bankruptcy Code have been satisfied.

(e) Section 1123(a)(5) – Adequate Means for Plan Implementation. The Plan provides for adequate and proper means for the Plan's implementation. This includes means for implementation set forth in Article VI of the Plan. Therefore, the requirements of section 1123(a)(5) of the Bankruptcy Code have been satisfied.

(f) Section 1123(a)(6) – Prohibition on Issuance of Non-Voting Securities. The Debtors are not corporations. Therefore, section 1123(a)(6) of the Bankruptcy Code is inapplicable.

(g) Section 1123(a)(7) – Selection of Officers, Directors and Trustees.

Under the Plan, Terry shall receive 100% of the equity interests in the Reorganized Debtor. The

Plan does not provide for the selection or appointment of any officers or directors of the Reorganized Debtor as of the Effective Date and Terry, as the sole owner of the Reorganized Debtor, shall be free to structure the Reorganized Debtor's management as he wishes. Therefore, to the extent section 1123(a)(7) of the Bankruptcy Code is applicable to the Plan, its requirements have been satisfied.

(h) Section 1123(a)(8) – Payment of Individual Debtor's Earnings.

The Debtors are not individuals. Therefore, section 1123(a)(8) of the Bankruptcy Code is inapplicable.

(i) Section 1123(b) – Discretionary Contents of the Plan. The Plan

contains various provisions that are properly construed as discretionary and not required for confirmation of the Plan under the Bankruptcy Code. As set forth below, all such discretionary provisions comply with section 1123(b) of the Bankruptcy Code, are not inconsistent with the applicable provisions of the Bankruptcy Code and are hereby approved. Therefore, section 1123(b) of the Bankruptcy Code has been satisfied.

(1) Section 1123(b)(1) – Impairment / Unimpairment of Claims

and Interests. The Plan impairs or leaves unimpaired each Class of Claims and Interests.

Therefore, the Plan is consistent with section 1123(b)(1) of the Bankruptcy Code.

(2) Section 1123(b)(2) – Assumption / Rejection of Executory

Contracts and Unexpired Leases. Article XI of the Plan provides that all of the Debtors'

Executory Contracts and Unexpired Leases shall be deemed rejected upon the Effective Date unless an Executory Contract or Unexpired Lease (a) has been previously assumed or rejected pursuant to an order of the Court, (b) is identified in **Exhibit 5** to this Order to be (i) assumed or (ii) assumed and assigned, or (c) is the subject of a motion to assume filed on or before the Confirmation Date. Therefore, the Plan is consistent with section 1123(b)(2) of the Bankruptcy Code.

(3) Section 1123(b)(3) – Settlement / Retention of Claims and

Causes of Action. The Chapter 11 Trustee has delineated the Estate Claims and Estate Defenses to be retained in the Plan. The terms “Estate Claims” and “Estate Defenses” are defined in sections 1.55 and 1.56 of the Plan, respectively, and together include all claims, causes of action, defenses, affirmative defenses, counterclaims, or offsets held by the Debtors’ Estate. The identification and retention of the Estate Claims and Estate Defenses in the Plan is reasonable and appropriate and reflects a proper exercise of the good faith business judgment of the Chapter 11 Trustee. Articles VI and IX of the Plan, including Exhibit A to the Plan, contain a specific and unequivocal reservation of Estate Claims and Estate Defenses as required under applicable Fifth Circuit authority. The Estate Claims and Estate Defenses are expressly, specifically, and unequivocally retained and reserved pursuant to Articles VI and IX of the Plan (including Exhibit A to the Plan) in accordance with section 1123(b)(3)(B) of the Bankruptcy Code. Unless otherwise expressly stated in the Plan or this Order, all Estate Claims and Estate Defenses are hereby reserved for the benefit of the Reorganized Debtor and the Reorganized Debtor shall be entitled to file, prosecute and/or settle each of the Estate Claims so reserved in accordance with the terms of the Plan. The provisions of the Plan regarding reservation of Estate Claims and Estate Defenses are appropriate and in the best interests of the Debtors, the Estate, and holders of Claims and Interests.

(4) Section 1123(b)(5) – Modification of Creditors’ Rights.

With the exception of holders of Class 1 Claims, which are unimpaired, the Plan modifies the rights of all holders of Claims against the Debtors. Accordingly, the Plan is consistent with section 1123(b)(5) of the Bankruptcy Code.

(ii) Section 1129(a)(2) – Compliance of the Chapter 11 Trustee with the

Applicable Provisions of the Bankruptcy Code. The Chapter 11 Trustee, as proponent of the Plan, has complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, 1126, 1127 and

1128 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019. Votes to accept or reject the Third Amended Plan were solicited after the Court conditionally approved the adequacy of the Disclosure Statement. The Chapter 11 Trustee and his present and former representatives, advisors, attorneys, professionals and agents have solicited and tabulated the votes on the Third Amended Plan and have participated in the activities described in section 1125 of the Bankruptcy Code fairly and in good faith within the meaning of section 1125(e) of the Bankruptcy Code, and in a manner consistent with the applicable provisions of the Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws and regulations, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code. The Chapter 11 Trustee and his present and former representatives, advisors, attorneys, professionals and agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect to the offering, issuance and distribution of recoveries under the Plan and, therefore, are not (and on account of such distributions, will not be) liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Third Amended Plan or distributions made pursuant to the Plan, so long as distributions are made consistent with and pursuant to the Plan.

(iii) Section 1129(a)(3) – Proposal of the Plan in Good Faith. The Chapter 11 Trustee has proposed the Plan (and all other agreements, documents and instruments necessary to effectuate the Plan) in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined and considered the totality of the circumstances surrounding the formulation of the Plan, including both the Record at the Combined Hearing and the record of the Chapter 11 Cases. The Chapter 11 Trustee's good faith is evident from the facts and Record of the Combined Hearing. The Chapter 11 Trustee proposed the Plan for legitimate and honest purposes.

(iv) Section 1129(a)(4) – Court Approval of Certain Payments as Reasonable.

All payments made or to be made by the Reorganized Debtor for services or for costs and expenses in or in connection with the Chapter 11 Cases or in connection with the Plan and incident to the Chapter 11 Cases, have either been approved by, or are subject to final approval of, the Court as reasonable. Notwithstanding anything to the contrary in the Plan, the provisions of section 3.01(e) of the Plan governing the filing of final fee applications by Estate Professionals and allowance of Administrative Expense Claims of Estate Professionals apply to the Chapter 11 Trustee. Compensation sought by the Chapter 11 Trustee through a final fee application shall be subject to final approval of the Court as reasonable in accordance with section 330(a)(3) of the Bankruptcy Code. Therefore, the requirements of section 1129(a)(4) of the Bankruptcy Code are satisfied.

(v) Section 1129(a)(5) – Disclosure of Identity of Proposed Management,

Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy. Under the Plan, Terry, who does not constitute an Insider, shall receive 100% of the equity interests in the Reorganized Debtor. The Plan does not provide for appointment of any officers or directors of the Reorganized Debtor as of the Effective Date and Terry, as the sole owner of the Reorganized Debtor, shall be free to structure the Reorganized Debtor's management as he wishes. Terry's identity and affiliations have been fully disclosed and, to the extent that Terry serves as an officer of the Reorganized Debtor after confirmation of the Plan, Terry's appointment to any such role is consistent with the interests of Creditors, holders of Interests and public policy. Therefore, the requirements of section 1129(a)(5) of the Bankruptcy Code are satisfied.

(vi) Section 1129(a)(6) – No Rate Changes. The Plan does not contain any

rate changes subject to the jurisdiction of any governmental regulatory commissions and will not require governmental regulatory approval. Therefore, section 1129(a)(6) is not applicable to the Chapter 11 Cases.

(vii) Section 1129(a)(7) – Best Interest of Creditors Test. The Plan satisfies section 1129(a)(7). The Liquidation Analysis attached as Exhibit 4 to the Disclosure Statement and the other exhibits and evidence proffered or adduced at the Combined Hearing related thereto: (a) are persuasive and credible; (b) have not been controverted by other evidence; (c) are based upon sound methodology; and (d) conclusively establish that each holder of an Impaired Claim or Interest either (1) has accepted the Plan, or (2) will receive or retain under the Plan, on account of such holder's Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

(viii) Section 1128(a)(8) – Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of Plan by Each Impaired Class. Class 1 is unimpaired under the Plan and is conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Classes 2 and 3 are Impaired under the Plan and have voted to accept the Plan. Class 4 is Impaired under the Plan and voted to reject the Plan. Class 5 is Impaired under the Plan. Holders of Class 5 Interests will not receive or retain any property on account of their Interests under the Plan and are therefore conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Notwithstanding the fact that the Plan was not accepted by all Classes of Impaired Claims and Interests, the Plan is confirmable because it satisfies sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

(ix) Section 1129(a)(9) – Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code. The treatment of Allowed Claims for Administrative Expenses and Priority Tax Claims under Article III of the Plan satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(9) are satisfied.

(x) Section 1129(a)(10) – Acceptance by at Least One Impaired Class. As set forth in the Ballot Tabulation and in this Order, Classes 2 and 3 voted to accept the Plan. As

such, at least one Class of Claims that is Impaired under the Plan has accepted the Plan without including the acceptance of the Plan by any Insider. Therefore, the requirements of section 1129(a)(10) of the Bankruptcy Code have been satisfied.

(xi) Section 1129(a)(11) – Feasibility of the Plan. The evidence submitted at the Combined Hearing regarding feasibility, together with all evidence proffered or advanced at or prior to the Combined Hearing, (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtor. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

(xii) Section 1129(a)(12) – Payment of Bankruptcy Fees. The Plan provides that all fees due and payable under 28 U.S.C. section 1930 as of the Confirmation Date will be paid in full on the Effective Date or as soon thereafter as is practicable, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

(xiii) Section 1129(a)(13), (14), (15) and (16) – Non-Applicability. The Debtors do not provide any retiree benefits within the meaning of section 1114, do not owe any domestic support obligations, are not individuals, and are not non-profit corporations. Thus, sections 1129(a)(13), 1129(a)(14), 1129(a)(15) and 1129(a)(16) do not apply to the Chapter 11 Cases.

(xiv) Section 1129(b) – Confirmation of the Plan Over Non-Acceptance of Impaired Classes. Class 4 is Impaired under the Plan and voted to reject the Plan. Holders of Class 5 Interests are deemed to have rejected the Plan. Nevertheless, the Plan may be confirmed pursuant to section 1129(b) of the Bankruptcy Code notwithstanding that the requirements of section 1129(a)(8) have not been met because the Chapter 11 Trustee has demonstrated by a preponderance of the evidence that the Plan (a) satisfies all of the other requirements of section 1129(a) of the Bankruptcy Code and (b) does not “discriminate unfairly” and is “fair and equitable” as to each Impaired Class which has not voted to accept (or is

deemed to reject) the Plan. The Plan therefore satisfies the requirements of section 1129(b) of the Bankruptcy Code and may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

(xv) Section 1129(c) – Only One Plan. Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Cases. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

(xvi) Section 1129(d) – Principal Purpose of the Plan is Not the Avoidance of Taxes. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of application of Section 5 of the Securities Act of 1933 and there has been no filing by a Governmental Unit asserting any such attempted avoidance. Therefore, the requirements of section 1129(d) of the Bankruptcy Code are satisfied.

(xvii) Section 1129(e) – Small Business Case. Neither of the Chapter 11 Cases is a “small business case,” as that term is defined in the Bankruptcy Code and, accordingly, section 1129(e) is inapplicable to the Chapter 11 Cases.

AA. Executory Contracts and Unexpired Leases. The Chapter 11 Trustee has satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption and rejection of the Executory Contracts and Unexpired Leases pursuant the Plan. The Chapter 11 Trustee has exercised reasonable business judgment prior to the Combined Hearing in determining whether to assume or reject each of the Executory Contracts and Unexpired Leases as set forth in Article XI of the Plan, **Exhibit “5”** to this Order, or otherwise. Each assumption or rejection of an Executory Contract or Unexpired Lease pursuant to this Order and in accordance with Article XI of the Plan, or otherwise by order of this Court, shall be valid, legal, and binding upon the applicable Debtor, Reorganized Debtor, Estate, and all non-Debtor persons or entities party to such Executory Contract or Unexpired Lease. Executory Contracts and Unexpired Leases not previously assumed by order of this Court and which the Chapter 11 Trustee has determined to assume are identified in **Exhibit “5”** to this Order.

Because no defaults exist under the Executory Contracts and Unexpired Leases identified in **Exhibit “5”** to this Order, the Chapter 11 Trustee is not required to make any cure payments, provide any other compensation, cure any nonmonetary defaults, or provide adequate assurance of future performance under section 365(b) of the Bankruptcy Code as a condition to the assumption of such Executory Contracts and Unexpired Leases.

BB. Compromise and Settlement. The Court finds and concludes that, pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, in consideration of the Distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Impaired Claims and Interests. Such settlement and compromise, which was made at arms'-length in exchange for good and valuable consideration, is in the best interests of the holders of Impaired Claims and Interests, is within the range of possible litigation outcomes, and is fair, equitable, and reasonable. Each element of the compromise and settlement reflected in the Plan is integrated and inexorably linked.

CC. Plan Injunction. The Plan Injunction is necessary and appropriate to facilitate the transactions and distributions to Creditors pursuant to the Plan. The Plan Injunction constitutes an essential and integral part of the Plan without which the holders of Claims against the Debtors could potentially interfere with implementation and performance of the Plan. The Plan Injunction protects the best interests of the holders of Allowed Claims and facilitates the efficient performance of the Plan. Consequently, the Plan Injunction is appropriate pursuant to sections 105(a) and 1123(a)(5) of the Bankruptcy Code.

DD. Temporary Plan Injunction. The Temporary Plan Injunction (as defined herein) is a temporary injunction which provides for the continuation, after the Effective Date, of injunctive relief the Court previously granted in its *Preliminary Injunction Order* (the “Preliminary Injunction”) [Docket No. 21 in Adversary No. 18-03212-sgj] entered on July 10, 2018 in the Trustee’s Adversary. The Preliminary Injunction was originally set to expire by its own terms

upon confirmation of the Plan, but is extended by this Order through the Effective Date of the Plan. Based on the record of prior proceedings in the Chapter 11 Cases, including in the Trustee's Adversary, and the Record at the Combined Hearing, no grounds have been shown to give the Court reason to reconsider any findings supporting its prior Preliminary Injunction. Furthermore, as set forth below, the Record at the Combined Hearing demonstrates that the four elements required for issuance of injunctive relief are present, the Temporary Plan Injunction is necessary and appropriate in all respects, and it complies with the applicable requirements of the Bankruptcy Rules.

(i) Substantial Likelihood of Success on the Merits. In the Highland Adversary, the Chapter 11 Trustee has asserted a counterclaim seeking to avoid the prepetition transfer of Acis LP's rights under the ALF PMA (the "ALF PMA Transfer") as a fraudulent transfer under the Bankruptcy Code and the Texas Uniform Fraudulent Transfer Act. Such fraudulent transfer actions seek an equitable remedy and involve claims to specific assets of Highland HCF. But for the ALF PMA Transfer, HCLOF could not have attempted to direct and effectuate an optional redemption of the Acis CLOs (which it has twice attempted to do postpetition in the Chapter 11 Cases). The rights transferred in the ALF PMA Transfer appear to have been fraudulently transferred for no apparent value. The Court found in the Preliminary Injunction, and the Court finds again for purposes of this Order, that the Chapter 11 Trustee has demonstrated a substantial likelihood of success on the merits of his claim to avoid the ALF PMA Transfer as a fraudulent transfer.

(ii) Irreparable Harm. Revenue to be generated by the Reorganized Debtor under the PMAs is a primary source of funding Distributions to Creditors under the Plan. Absent the Temporary Plan Injunction, HCLOF will be free to direct an optional redemption before this Court can adjudicate the fraudulent transfer actions with respect to the ALF PMA Transfer. Such an optional redemption – or similar call or liquidation of the Acis CLOs – would not only render such fraudulent transfer actions moot, but would effectively terminate and destroy all

value in the PMAs. This would, in turn, effectively destroy the Reorganized Debtor's ability to perform under the Plan to the detriment of the Reorganized Debtor, Creditors and other parties-in-interest. Consequently, the Reorganized Debtor faces immediate and irreparable harm if the Temporary Plan Injunction is not issued.

(iii) Balance of Harms. The balance of harms weighs in favor of issuing the Temporary Plan Injunction because any alleged harm to HCLOF, Highland or their affiliates is substantially outweighed by the imminent and irreparable harm that would be suffered by the Reorganized Debtor, Creditors and other parties-in-interest if the Temporary Plan Injunction is not issued and an optional redemption, call or other liquidation of the Acis CLOs follows. At a minimum, the Temporary Plan Injunction is appropriate to maintain the status quo pending adjudication of the fraudulent transfer actions with respect to the ALF PMA Transfer. Highland, HCLOF and their affiliates will not suffer any material, recognizable harm if temporarily enjoined from pursuing an optional redemption, call or other liquidation of the Acis CLOs before the Court adjudicates the fraudulent transfer actions concerning the ALF PMA Transfer and thereby determines whether HCLOF has any legitimate right to direct an optional redemption, call or other liquidation of the Acis CLOs in the first instance.

(iv) Public Policy. Public policy favors maximization of a debtor's assets and successful reorganization. Because an optional redemption, call or other liquidation of the Acis CLOs would destroy the value of the PMAs and the Reorganized Debtor's ability to perform under the Plan, issuance of the Temporary Plan Injunction is consistent with public policy. Furthermore, public policy favors disposition of cases on their merits. Absent the Temporary Plan Injunction, HCLOF could be expected to immediately direct an optional redemption, call or other liquidation of the Acis CLOs following confirmation of the Plan, thus rendering the fraudulent transfer actions concerning the ALF PMA Transfer moot. Issuance of the Temporary Plan Injunction will avoid the potential for such fraudulent transfer actions being mooted prior to adjudication of such actions on their merits and is consistent with public policy.

(v) Section 105(a). Section 105(a) empowers this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). The Temporary Plan Injunction is essential to the Reorganized Debtor’s ability to perform the Plan and to maintain the status quo during prosecution of the fraudulent transfer actions concerning the ALF PMA Transfer. The Temporary Plan Injunction is therefore both necessary and appropriate to carry out the provisions of the Bankruptcy Code in the Chapter 11 Cases.

(vi) Compliance with Technical Requirements. Bankruptcy Rule 3020(c) requires that the Temporary Plan Injunction (a) describe the acts enjoined in reasonable detail; (b) be specific in its terms with regard to the injunction; and (c) identify the entities subject thereto. The Temporary Plan Injunction satisfies each of these requirements. The description of acts enjoined is specific and particular and the language of the Temporary Plan Injunction is therefore reasonably detailed. The Temporary Plan Injunction is also specific in its terms, as its language clearly describes the condition triggering the injunction and the specific events which will serve to terminate it. The Temporary Plan Injunction also specifically identifies the entities subject to its terms. Federal Rule of Civil Procedure 65(d)(1), made applicable by Bankruptcy Rule 7065, also requires that the Temporary Plan Injunction be specific in its terms and describe the enjoined acts in reasonable detail. Federal Rule of Civil Procedure 65(d)(1) further requires that the reasons for issuance of the Temporary Plan Injunction are stated. The reasons for this Court’s issuance of the Temporary Plan Injunction are stated herein. Therefore, the Temporary Plan Injunction satisfies all requirements of the applicable Bankruptcy Rules.

EE. Substantive Consolidation of the Debtors. The Court finds and concludes that the substantive consolidation of the Debtors for the purpose of implementing the Plan, including for purposes of distributions under the Plan, is in the best interests of the Debtors, the Estate, and holders of Claims and Interests. Substantive consolidation recognizes the Debtors’ common business purpose and the fact that Acis GP’s liability is derived from the liabilities of

Acis LP based on Acis GP's status as general partner of Acis LP. The Court further finds that substantive consolidation of the Debtors constitutes an integral part of the Plan.

FF. Retention of Jurisdiction. This Court finds and concludes that this Court's retention of jurisdiction as set forth herein and in the Plan comports with 28 U.S.C. sections 157 and 1334. Consequently, the Court may properly retain jurisdiction over the matters set forth in Article XV of the Plan.

GG. Implementation of Other Necessary Documents and Agreements. All documents and agreements necessary to implement the Plan are essential elements of the Plan and entry into and consummation of the transactions contemplated by each of such documents and agreements is in the best interests of the Debtors, the Estate, and holders of Claims and Interests. The Chapter 11 Trustee has exercised reasonable business judgment in determining which agreements to enter into and has provided sufficient and adequate notice of such documents and agreements. The terms and conditions of such documents and agreements have been negotiated in good faith, at arm's length, are fair and reasonable, and are reaffirmed and approved.

HH. Conditions Precedent to the Effective Date. Each of the conditions precedent to the Effective Date, as set forth in Article XIII of the Plan, has been satisfied or waived in accordance with the provisions of the Plan, or is reasonably likely to be satisfied or waived.

II. Satisfaction of Confirmation Requirements. Based upon the foregoing, all other filed pleadings, exhibits and documents filed in connection with confirmation of the Plan and all evidence and arguments made, proffered, or adduced at the Combined Hearing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

ORDER

Based on the foregoing, it is hereby ORDERED:

1. Findings of Fact and Conclusions of Law. The above-referenced findings of fact and conclusions of law are incorporated by reference as though fully set forth herein. To the

extent any of the prior findings of fact or conclusions of law constitutes an order of this Court, they are adopted as such.

2. Objections to Final Approval of Disclosure Statement and Confirmation of Plan.

To the extent that any of the Objections have not been resolved, withdrawn, waived or settled prior to entry of this Order or otherwise resolved as stated on the Record of the Combined Hearing or as set forth in this Order, they are hereby overruled on their merits.

3. Final Approval of Disclosure Statement. The Disclosure Statement is hereby approved on a final basis as containing adequate information as required by section 1125 of the Bankruptcy Code.

4. Confirmation of Plan. All requirements for confirmation of the Plan have been satisfied. The Third Amended Plan, as modified by the First Modification and Second Modification (as supplemented) and as modified herein, is hereby CONFIRMED in accordance with section 1129 of the Bankruptcy Code, and all terms and conditions set forth in the Plan are hereby APPROVED. The terms of the Plan are incorporated by reference into, and as an integral part of, this Order.

5. Solicitation and Notice. Notice of the Combined Hearing complied with the terms of the Solicitation Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases and was in compliance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The solicitation of votes on the Third Amended Plan and the Solicitation Materials complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

6. Plan Classification Controlling. The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the Holders of Claims in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to

accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim as representing the actual classification of such Claim under the Plan for distribution purposes; and (d) shall not be binding upon the Debtors and the Reorganized Debtor except for voting purposes.

7. Resolution of Stinson Objection. Stinson Leonard Street LLP (“Stinson”) has asserted a Claim against the Debtors for \$158,552.98. On July 31, 2018, Stinson initially asserted its Claim as an unsecured Claim by filing proof of Claim number 12 in the Acis LP case and proof of claim number 2 in the Acis GP case. Those Claims represent a single Claim for satisfaction of a total alleged debt of \$158,552.89. All proofs of Claim filed by Stinson will be referred to collectively as the “Stinson Claim.” The Stinson Claim is treated as part of Class 3 under the Plan. On November 9, 2018, Stinson amended the Stinson Claim to assert a secured Claim based on a possessory lien on legal files belonging to the Debtors. The Chapter 11 Trustee currently intends to object to the Stinson Claim, including Stinson’s claim to secured status. Stinson filed an Objection to the Plan on November 26, 2018 [Docket No. 720] which was subsequently withdrawn based on this proposed paragraph being included in any Order confirming the Plan. This paragraph resolves Stinson’s Objection as follows: Notwithstanding any contrary provision of the Plan or this Order, the Stinson Claim, to the extent it is Allowed by a Final Order of the Bankruptcy Court as a Secured Claim, shall be considered a separate class under the Plan and paid by the Reorganized Debtor within thirty (30) days after entry of such Final Order. To the extent it is an Allowed Secured Claim, the Stinson Claim will be removed from Class 3. To the extent it is an Allowed General Unsecured Claim, the Stinson Claim will remain a Class 3 Claim. This recognizes that the Stinson Claim may be allowed as partly secured (*i.e.* only secured to the extent of the value of its collateral) and be paid accordingly. The Chapter 11 Trustee reserves all rights to object to Stinson’s proofs of Claim, and Stinson reserves all rights to defend its proofs of Claim.

8. Plan Implementation. Upon the Effective Date of the Plan, the Chapter 11 Trustee and the Reorganized Debtor are hereby authorized and directed to take all actions necessary or appropriate to implement, effectuate or consummate the Plan, the terms of this Order and the transactions respectively contemplated therein, and to otherwise fully perform and execute their duties under the Plan or this Order. Without limiting the generality of the foregoing, pursuant to section 1142(b) of the Bankruptcy Code, each and every Person (including, without limitation, the Chapter 11 Trustee, HCLOF, Highland, any and all affiliates of HCLOF and Highland, the Issuers and Co-Issuers, and the Indenture Trustee), to the extent necessary, is hereby directed to execute or deliver, or to join in the execution or delivery of, any instrument required to effect the transfers of property dealt with under the Plan and this Order, and to perform all other acts necessary for the consummation of the Plan. Further pursuant to section 1142(b) of the Bankruptcy Code, to the extent that any Person fails to execute or deliver any instrument required to effect the transfers of property pursuant to the Plan and this Order, the Chapter 11 Trustee is hereby authorized to execute and deliver on behalf of any such Person (including, without limitation, HCLOF, Highland, and any and all affiliates of HCLOF and Highland) any instrument required to effect the transfers of property pursuant to the Plan and this Order. In the event of an appeal of this Order, the Chapter 11 Trustee and the Reorganized Debtor are hereby authorized and directed to take all steps necessary to make the Plan effective and, from and after the Effective Date, execute their duties, responsibilities and obligations under the Plan, this Order and the Plan Documents unless and until this Order is stayed by order of a court of appropriate jurisdiction.

9. Restructuring Transactions. On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan; provided, however, that no such restructuring transactions may violate the terms of any assumed Executory Contract or Unexpired Lease.

10. Approval of Plan Documents. The form and substance of the Plan Documents are all hereby APPROVED. The Chapter 11 Trustee is authorized and directed, without the need for further corporate or other organizational action by or on behalf of the Debtors or further order or authorization of this Court, to take such actions and do all things as may be necessary or required to implement and effectuate the Plan Documents and to make the Plan effective.

11. Transfer and Vesting of Assets; Assumption of Obligations. On the Effective Date, without the execution of any other or further document or any further order by the Court, all Assets shall be deemed as fully, completely and irrevocably transferred to, and vested in, the Reorganized Debtor in accordance with the Plan. All transfers of Assets to the Reorganized Debtor shall be free and clear of all Liens, Claims, rights, Interests and charges, except as otherwise expressly provided in the Plan or any agreement, instrument, or other document incorporated therein, or this Order. Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the obligations to make all Distributions pursuant to the Plan and this Order.

12. Estate Claims and Estate Defenses. Upon the Effective Date, without the necessity of the execution of any further documents or further order of the Court, all Estate Claims and Estate Defenses, including without limitation all Estate Claims and Estate Defenses identified in Exhibit A to the Plan, shall be deemed as fully, completely and irrevocably transferred to, and vested in, the Reorganized Debtor. From and after the Effective Date, the Reorganized Debtor shall have the exclusive standing and authority to assert, prosecute, collect, compromise and settle all Estate Claims and Estate Defenses pursuant to the terms of the Plan.

13. Treatment of Executory Contracts and Unexpired Leases. The Executory Contract and Unexpired Lease provisions of Article XI of the Plan, as modified herein, are hereby approved in their entirety. The assumption of Executory Contracts and Unexpired Leases as set forth in the Plan, this Order, and **Exhibit "5"** to this Order are hereby approved.

Because no defaults exist under the Executory Contracts and Unexpired Leases identified in **Exhibit “5”** to this Order, the Chapter 11 Trustee is not required to make any cure payments, provide any other compensation, cure any nonmonetary defaults, or provide adequate assurance of future performance under section 365(b) of the Bankruptcy Code as a condition to the assumption of such Executory Contracts and Unexpired Leases. All other Executory Contracts and Unexpired Leases that have not been previously assumed or rejected shall be deemed as rejected as of the Effective Date in accordance with the terms of the Plan. All Rejection Claims must be filed within the time specified in section 11.03 of the Plan, failing which any such Rejection Claim shall be forever barred and precluded from receiving any Distribution pursuant to the Plan. Notwithstanding anything to the contrary herein or in the Plan, Exhibit 5 to this Order hereby replaces, is substituted for, and supersedes Exhibit B to the Third Amended Plan and any explicit or inferred references herein or in the Plan to Exhibit B to the Third Amended Plan shall refer to Exhibit 5 to this Order.

14. Executory Contracts with Issuers and Co-Issuers. Pursuant to the Plan and as provided in this Order, the Debtors are authorized to assume executory contracts that include as a party ACIS CLO 2014-3 Ltd., ACIS CLO 2014-4 Ltd., ACIS CLO 2014-5 Ltd., ACIS CLO 2015-6 Ltd., ACIS CLO 2014-3 LLC, ACIS CLO 2014-4 LLC, ACIS CLO 2014-5 LLC, and/or ACIS CLO 2015-6 LLC solely if and to the extent that one or more of the Debtors is a signatory to each such executory contract.

15. Approval of Brigade as Sub-Advisor and Shared Services Provider. Pursuant to an *Order Granting Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Docket No. 464] entered on August 1, 2018, the Court authorized the Chapter 11 Trustee to engage Brigade Capital Management, LP (“Brigade”) and Cortland Capital Markets Services LLC to perform the services previously provided by Highland under the Sub-Advisory Agreement and Shared Services Agreement, on an interim basis. The Chapter 11 Trustee

selected Brigade as the party to provide both sub-advisory and shared services to the Reorganized Debtor. Based on the record of prior proceedings in the Chapter 11 Cases and the Record at the Combined Hearing, the Chapter 11 Trustee has demonstrated that Brigade is fully qualified to perform such services, and that the Chapter 11 Trustee's selection of Brigade is an exercise of his sound business judgment. Furthermore, adequate assurance of future performance by Brigade has been shown. Therefore, the selection of Brigade as the provider to the Reorganized Debtor of the sub-advisory and shared services previously provided by Highland under the Sub-Advisory Agreement and Shared Services Agreement is hereby approved in all respects.

16. Substantive Consolidation. The substantive consolidation of the Debtors for purposes of implementation of and distributions under the Plan is hereby approved as of the Effective Date such that on the Effective Date: (a) all assets and liabilities of the Debtors will be deemed merged; (b) all guaranties by one Debtor of the obligations of the other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by the other Debtor and any joint or several liability of the Debtors will be deemed to be one obligation of the consolidated Debtors; and (c) each and every Claim filed or to be filed in the case of either of the Debtors will be deemed filed against the consolidated Debtors and will be deemed one Claim against and a single obligation of the consolidated Debtors.

17. Compromise and Settlement. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the classification, potential Distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies subject to, or dealt with, under the Plan, including, without limitation, all Claims against the Debtors or Estate arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, fixed or contingent, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtors or the Estate. The entry of this Order constitutes the

Court's approval of each of the foregoing compromises or settlements embodied in the Plan, and all other compromises and settlements provided for in the Plan, as well as a finding by the Court that such compromises and settlements are in the best interest of the Debtors, the Estate, holders of Claims and Interests, and other parties-in-interest, and are fair, equitable and within the range of reasonableness. The rights afforded in the Plan and the treatment of all Claims and Interests therein are in exchange for, and in complete satisfaction and release of, all Claims and Interests of any nature whatsoever against and in the Debtors, the Estate, and the Assets. Except as otherwise provided in the Plan or this Order, all Persons shall be precluded and forever barred by the Plan Injunction from asserting against the Debtors and their affiliates, successors, assigns, the Reorganized Debtor or the Reorganized Debtor's assets, the Estate, or the Assets, any event, occurrence, condition, thing, or other or further Claims or causes of action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date.

18. Discharge. Except for the obligations expressly set forth in the Plan or this Order, on the Effective Date, the Debtors, the Reorganized Debtor and their successors in interest and assigns shall be deemed and they each are discharged and released to the fullest extent permitted by applicable law, including pursuant to section 1141(d)(1) of the Bankruptcy Code, from any and all Claims, Interests, demands, debts and liabilities that arose before the Effective Date. Without limiting the generality of the foregoing, the discharge shall apply to and cover both known and unknown Claims although the Court makes no determination in this Order as to which Creditors may constitute holders of unknown Claims. In addition, all such discharged Claims, both known and unknown, shall be subject to the Plan Injunction.

19. Injunctions. The following injunction provisions set forth in Article XIV of the Plan are hereby approved and authorized in their entirety:

(a) Permanent General Plan Injunction:

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, AS OF THE EFFECTIVE DATE ALL HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS, THE ESTATE OR ANY OF THE ASSETS THAT AROSE PRIOR TO THE EFFECTIVE DATE ARE HEREBY PERMANENTLY ENJOINED AND PROHIBITED FROM THE FOLLOWING: (a) THE COMMENCING OR CONTINUATION IN ANY MANNER, DIRECTLY OR INDIRECTLY, OF ANY ACTION, CASE, LAWSUIT OR OTHER PROCEEDING OF ANY TYPE OR NATURE AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS WITH RESPECT TO ANY SUCH CLAIM OR INTEREST ARISING OR ACCRUING BEFORE THE EFFECTIVE DATE, INCLUDING WITHOUT LIMITATION THE ENTRY OR ENFORCEMENT OF ANY JUDGMENT, OR ANY OTHER ACT FOR THE COLLECTION, EITHER DIRECTLY OR INDIRECTLY, OF ANY CLAIM OR INTEREST AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS; (b) THE CREATION, PERFECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST, ENCUMBRANCE, RIGHT OR BURDEN, EITHER DIRECTLY OR INDIRECTLY, AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, OR (c) TAKING ANY ACTION IN RELATION TO THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, EITHER DIRECTLY OR INDIRECTLY, WHICH VIOLATES OR DOES NOT CONFORM OR COMPLY WITH THE PROVISIONS OF THE PLAN APPLICABLE TO SUCH CLAIM OR INTEREST.

The above injunction is an integral term of this Order and shall be fully binding upon, and enforceable against, all Persons through and as a part of this Order. Furthermore, notwithstanding anything to the contrary in the Plan or this Order, the above injunction is permanent and shall not expire upon the occurrence of any event that causes the Temporary Plan Injunction to expire.

(b) Temporary Injunction Against the Liquidation of the Acis CLOs and Related Actions (the "Temporary Plan Injunction"):

EXCEPT TO THE EXTENT NECESSARY TO ALLOW HCLOF, THE REORGANIZED DEBTOR AND BRIGADE TO EFFECTUATE THE RESET OF ONE OR MORE OF THE ACIS CLOS IN ACCORDANCE WITH SECTION 6.08 OF THE PLAN, PURSUANT TO SECTIONS 105(a), 1123(a)(5), 1123(b)(6), AND 1142(b) OF THE BANKRUPTCY CODE, THE ENJOINED PARTIES (DEFINED BELOW) ARE HEREBY ENJOINED FROM: (a) PROCEEDING WITH, EFFECTUATING, OR OTHERWISE TAKING (i) ANY ACTION IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS PREVIOUSLY OR CURRENTLY ISSUED BY ANY SUCH PARTIES, AND (ii) ANY OTHER ATTEMPT TO LIQUIDATE THE ACIS CLOS BY ANY MEANS, (b) TRADING ANY ACIS CLO COLLATERAL IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, (c) EXERCISING ANY RIGHTS TO ASK OR DIRECT THE ISSUERS, CO-ISSUERS OR INDENTURE TRUSTEE TO PERFORM ANY ACTION IN RELATION TO THE ACIS CLOS THAT THE ENJOINED PARTIES ARE PROHIBITED FROM TAKING UNDER THE TERMS OF THE PLAN INJUNCTION, (d) INTERFERING IN ANY WAY WITH THE CAPITAL MARKETS PROCESS OF RESETTING ANY ACIS CLO, AND (e) SENDING, MAILING, OR OTHERWISE DISTRIBUTING ANY NOTICE TO THE HOLDERS OF

THE NOTES IN THE ACIS CLOS IN CONNECTION WITH THE EFFECTUATION OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, UNTIL THE EARLIER TO OCCUR OF: (w) THE DATE UPON WHICH A FINAL ORDER IS ENTERED RESOLVING THE ESTATE'S AVOIDANCE CLAIMS AGAINST ALL ENJOINED PARTIES RELATING TO ACIS LP'S RIGHTS UNDER THE ALF PMA; (x) THE DATE UPON WHICH ALL ALLOWED CLAIMS AGAINST THE DEBTORS HAVE BEEN PAID IN FULL, (y) THE ENTRY OF AN ORDER BY THE BANKRUPTCY COURT FINDING THAT A MATERIAL DEFAULT HAS OCCURRED UNDER THE TERMS OF THE PLAN, OR (z) THE ENTRY OF A SUBSEQUENT ORDER BY THE BANKRUPTCY COURT PROVIDING OTHERWISE WITH RESPECT TO ONE OR MORE OF THE ACIS CLOS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "ENJOINED PARTIES" SHALL INCLUDE HIGHLAND, HCLOF, CLO HOLDCO, NEUTRA, HIGHLAND HCF, HIGHLAND CLOM, ANY AFFILIATES OF HIGHLAND, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, TRANSFEREES, ASSIGNS, AND SUCCESSORS. FOR PURPOSES OF CLARIFICATION AND AVOIDANCE OF DOUBT, NOTHING IN THIS PARAGRAPH SHALL PRECLUDE ORDINARY DAY-TO-DAY TRADING OF THE COLLATERAL IN THE ACIS CLOS BY THE REORGANIZED DEBTOR.

The above Temporary Plan Injunction is an integral term of this Order and the Temporary Plan Injunction shall be fully binding upon, and enforceable against, the Enjoined Parties through and as a part of this Order. For the avoidance of doubt, the occurrence of any event specified in the Temporary Plan Injunction that results in expiration of the Temporary Plan Injunction shall not cause any of the other injunctive relief set forth in the first paragraph of section 14.03 of the Plan and paragraph 18(a) of this Order to expire, such other injunctive relief being permanent.

20. Notwithstanding anything to the contrary in the Plan or this Order, nothing in the Plan or in this Order shall discharge, release, enjoin or otherwise bar (a) any liability of the Debtors, the Estate, the Reorganized Debtor, or the Reorganized Debtor's assets ("Released Parties") to a Governmental Unit arising on or after the Confirmation Date with respect to events occurring after the Confirmation Date, provided that the Released Parties reserve the right to assert that any such liability is a Claim that arose on or prior to the Confirmation Date and constitutes a Claim that is subject to the deadlines for filing proofs of Claim, (b) any liability to a Governmental Unit that is not a Claim subject to the deadlines for filing proofs of Claim, (c) any valid right of setoff or recoupment of a Governmental Unit, and (d) any police or regulatory action by a Governmental Unit. In addition, nothing in the Plan or this Order discharges, releases, precludes or enjoins any environmental liability to any Governmental Unit that any

Person other than the Released Parties would be subject to as the owner or operator of the property after the Effective Date. For the avoidance of any doubt, nothing in this paragraph shall be construed to limit the application of the Plan Injunction to any Claim which was subject to any bar date applicable to such Claim.

21. Extension of the Preliminary Injunction. Notwithstanding anything to the contrary in the terms of the Preliminary Injunction entered in the Trustee's Adversary, the Preliminary Injunction shall not expire upon confirmation of the Plan. The Preliminary Injunction is hereby extended to and through the Effective Date of the Plan and shall remain in full force and effect until the Effective Date of the Plan.

22. Exculpation. The exculpation provisions set forth in section 16.06 of the Plan are hereby approved in all respects.

23. Priority and Secured Tax Claims. The treatment of Priority Tax Claims and Secured Tax Claims is specified in the Plan. Nothing in the Plan or this Order shall modify or affect the Lien rights of a Taxing Authority under applicable non-bankruptcy law. In the event of a default on the payment of a Priority Tax Claim or Secured Tax Claim under the Plan, the Taxing Authority to which the payment is owed may pursue all administrative and judicial remedies under applicable law to collect the unpaid Priority Tax Claim or Secured Tax Claim.

24. Injunctions and Automatic Stay. Except as otherwise provided in the Plan or this Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or this Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Order shall remain in full force and effect in accordance with their terms.

25. Setoffs. Except as otherwise expressly provided for in the Plan, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the holder of a Claim, the Reorganized Debtor may set off

against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before such Distribution is made), any Claims, rights, Estate Claims and Estate Defenses of any nature that the Debtors may hold against the holder of such Allowed Claim, to the extent such Claims, rights, Estate Claims and Estate Defenses against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release of any such Claims, rights, Estate Claims and Estate Defenses that the Estate may possess against such Claimant. In no event shall any Claimant or Interest holder be entitled to setoff any Claim or Interest against any Claim, right, or Estate Claim of the Debtors without the consent of the Debtors or the Reorganized Debtor unless such holder files a motion with the Court requesting the authority to perform such setoff notwithstanding any indication in any proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

26. Recoupment. Except as otherwise expressly provided for in the Plan, in no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, account receivable, or Estate Claim of the Debtors or the Reorganized Debtor unless (a) such holder actually provides notice thereof in writing to the Debtors or the Reorganized Debtor of its intent to perform a recoupment; (b) such notice includes the amount to be recouped by the holder of the Claim or Interest and a specific description of the basis for the recoupment, and (c) the Debtors or the Reorganized Debtor have provided a written response to such Claim or Interest holder, stating unequivocally that the Debtors or the Reorganized Debtor consents to the requested recoupment. The Debtors and the Reorganized Debtor shall have the right, but not the obligation, to seek an order of the Court allowing any or all of the proposed recoupment. In the absence of a written response from the Debtors or the

Reorganized Debtor consenting to a recoupment or an order of the Court authorizing a recoupment, no recoupment by the holder of a Claim or Interest shall be allowed.

27. Preservation of Causes of Action. Articles VI and IX of the Plan, including Exhibit A to the Plan, contain a specific and unequivocal reservation of Estate Claims and Estate Defenses as required under applicable Fifth Circuit authority. The Estate Claims and Estate Defenses are expressly, specifically, and unequivocally retained and reserved pursuant to Articles VI and IX of the Plan (including Exhibit A to the Plan) in accordance with section 1123(b)(3)(B) of the Bankruptcy Code. Such reservation of the Estate Claims and Estate Defenses is hereby approved. **No person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any cause of action against them as any indication that the Debtors or the Reorganized Debtor will not pursue any and all available causes of action (including all Estate Claims, Estate Defenses and Avoidance Actions) against any Person, except as otherwise provided in the Plan.** Unless any causes of action against a Person are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Final Order, such causes of action are hereby expressly reserved (including all Estate Claims, Estate Defenses and Avoidance Actions) for later adjudication and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such causes of action upon or after the confirmation or consummation of the Plan.

28. Unless otherwise expressly stated in the Plan or this Order, all Estate Claims and Estate Defenses are hereby reserved for the benefit of the Reorganized Debtor notwithstanding the occurrence of the Effective Date or the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. All such reserved Estate Claims and Estate Defenses shall be vested with the Reorganized Debtor and the Reorganized Debtor shall have the exclusive right, authority and standing to assert, file,

prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment each of the Estate Claims and Estate Defenses so reserved in accordance with the terms of the Plan without the consent or approval of any third party or further notice to or action, order or approval of the Court.

29. Subordinated Claims. The allowance, classification and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtor reserves the right to seek to re-classify any Allowed Claim or Interest in accordance with any contractual, legal or equitable subordination relating thereto.

30. Release of Liens. Except as otherwise provided in the Plan, this Order, or in any contract, instrument, or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date all Liens against any Assets transferred to and vested in the Reorganized Debtor are hereby deemed to be released, terminated and nullified without the necessity of further order of this Court.

31. Provisions Governing Distributions. The distribution provisions of Articles VII and VIII of the Plan shall be, and hereby are, approved in their entirety; provided, however, that notwithstanding anything to the contrary set forth in Section 7.02 of the Plan, the Reorganized Debtor may, but shall not be required to, reserve for Distributions to holders of Allowed Subclass 4B Claims. The Reorganized Debtor shall make all Distributions required under the Plan.

32. Procedures for Resolving Contested and Contingent Claims. The Claims resolution procedures contained in Article X of the Plan are hereby approved.

33. Section 1145 Exemption. The solicitation of acceptances and rejections of the Plan was exempt from the registration requirements of the Securities Act of 1933 and applicable state securities laws, and no other nonbankruptcy law applies to the solicitation.

34. Exemption from Certain Transfer Taxes and Recording Fees. Section 1146(a) shall apply to the transfers of Assets pursuant to the Plan and, therefore, such transfers may not be taxed under any law imposing a stamp tax or similar tax.

35. Governmental Approvals Not Required. This Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

36. Allowance and Payment of Certain Administrative Expense Claims

(a) Administrative Expense Claims (Generally). The holder of a Claim for an Administrative Expense, other than (i) such a Claim by an Estate Professional, (ii) an Ordinary Course Claim, (iii) a Claim for U.S. Trustee fees under 28 U.S.C. § 1930, or (iv) an Allowed Administrative Expense, must file with the Court and serve upon the Reorganized Debtor and its counsel, as set forth in the Plan, a written notice of such Claim for an Administrative Expense within thirty (30) days after the Effective Date (the "Administrative Bar Date"). Such notice of Claim for an Administrative Expense shall include at a minimum: (i) the name, address, telephone number and fax number (if applicable) or email address of the holder of such Claim, (ii) the amount of such Claim, and (iii) the basis of such Claim. **The failure to timely and properly file and serve a notice of Claim for an Administrative Expense on or before the Administrative Bar Date shall result in such Claim for an Administrative Expense being forever barred and discharged without further order of the Court and the holder thereof shall be barred from receiving any Distribution from the Reorganized Debtor on account**

of such Claim for an Administrative Expense. A Claim for an Administrative Expense with respect to which a notice of Claim for an Administrative Expense has been timely and properly filed and served shall become an Allowed Administrative Expense if no objection is filed within thirty (30) days after the date of filing and service of the applicable notice of Claim for an Administrative Expense, or such later date as may be approved by the Court on motion of a party in interest, without notice or a hearing. If an objection is filed within such 30-day period (or any extension thereof), the Claim for an Administrative Expense shall become an Allowed Administrative Expense only to the extent allowed by a Final Order.

(b) **Estate Professional Compensation.** All final requests for compensation or reimbursement by any Estate Professional shall be filed no later than sixty (60) days after the Effective Date in accordance with the Plan. A Claim for an Administrative Expense by an Estate Professional in respect of which a final fee application has been properly filed shall become an Allowed Administrative Expense only to the extent allowed by Final Order and, if so Allowed, shall be paid in accordance with the terms of the Plan. Notwithstanding anything to the contrary in the Plan, the provisions of the Plan governing the filing of final fee applications by Estate Professionals and allowance of Administrative Expense Claims of Estate Professionals apply to the Chapter 11 Trustee. Compensation or reimbursement sought by the Chapter 11 Trustee through a final fee application shall be subject to final approval of the Court as reasonable in accordance with section 330(a)(3) of the Bankruptcy Code.

(c) **U.S. Trustee Fees.** Any U.S. Trustee fees incurred pursuant to 28 U.S.C. § 1930 which are past due as of the Confirmation Date shall be paid in full by the Chapter 11 Trustee on or before the earlier of (i) December 21, 2018, or (ii) that day which is ten (10) days after the Confirmation Date. After the Confirmation Date, the Reorganized Debtor shall continue to pay U.S. Trustee fees as they accrue until a final decree is entered and the Chapter 11 Cases are closed.

37. Effectuating Documents and Further Transactions. The Chapter 11 Trustee and the Reorganized Debtor, and their respective representatives, agents and attorneys, may take all actions to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant hereto. This Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, agreements, any amendments or modifications thereto and any other acts and transactions referred to in or contemplated by the Plan, the Plan Documents, the Disclosure Statement, and any documents, instruments, and agreements and any amendments or modifications thereto.

38. Filing and Recording. This Order is and shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required, by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any document or instruments. Each and every federal, state and local government agency is hereby directed to accept any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan and this Order.

39. Inconsistency between Documents. In the event of an inconsistency between the terms of the Plan and the terms of the Disclosure Statement, the Plan shall control. In the event of any inconsistency between the terms of the Plan or the terms of the Disclosure Statement and the terms of this Order, this Order shall control.

40. References to Plan Provisions. The failure specifically to include or to refer to any particular article, section, or provision of the Plan or any related document in this Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan and any related documents be confirmed in their entirety.

41. Applicable Nonbankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of the Plan and this Order shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

42. Notice of Entry of the Confirmation Order. No later than the third Business Day after the entry of this Order, the Chapter 11 Trustee shall serve a copy of this Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c) on all holders of Claims and Interests, the U.S. Trustee, the Persons specifically identified in the Temporary Plan Injunction as subject thereto, and all other known parties-in-interest.

43. Notice of the Effective Date. No later than the third Business Day after the occurrence of the Effective Date, the Reorganized Debtor shall file a notice of occurrence of the Effective Date with the Clerk of the Court and shall serve a copy on all holders of Claims and Interests, the U.S. Trustee, the Persons specifically identified in the Temporary Plan Injunction as subject thereto, and all other known parties-in-interest. Such notice shall include notice of (a) the Administrative Bar Date, (b) the deadline for filing Rejection Claims set forth in section 11.03 of the Plan, and (c) the deadline for filing final requests for compensation and reimbursement by Estate Professionals. The filing of such notice shall conclusively establish that all conditions precedent have been satisfied or waived and shall constitute adequate and sufficient notice to all parties entitled thereto of the occurrence of the Effective Date.

44. Retention of Jurisdiction. The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising in, arising under, and related to, the Chapter 11 Cases, including the matters set forth in Article XV of the Plan and section 1142 of the Bankruptcy Code. Without limitation as to the generality of the

preceding sentence, the Court retains exclusive jurisdiction (a) to interpret and enforce this Order and the Plan; (b) to enforce the provisions of this Order and the Plan; (c) to resolve any disputes arising under or related to this Order or the Plan; and (d) over all transactions contemplated in this Order and the Plan. All Persons are hereby forever prohibited and enjoined from taking any action (including, without limitation, legal action) that would adversely affect or interfere with the ability of any Person to complete any of the transfers of property contemplated by this Order and the Plan other than in this Court or in connection with any appeals from this Court.

45. Headings. Paragraph headings contained in this Order are for convenience of reference only and shall not affect the meaning or interpretation of this Order.

46. Final Order. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

47. Appeal or Motion for Reconsideration; Reversal. In the event this Order is appealed or a motion for reconsideration is filed, the Chapter 11 Trustee and the Reorganized Debtor, and their respective representatives, agents and attorneys, are all hereby authorized to proceed with the consummation and performance of the Plan unless and until this Order is stayed, reversed or modified by a court of competent jurisdiction. If any or all of the provisions of this Order are hereafter reversed, modified, or vacated by subsequent order of this Court or any other court of competent jurisdiction, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Chapter 11 Trustee's or Reorganized Debtor's receipt of written notice of any such order. Notwithstanding any such reversal, modification, or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order and the Plan (including the Plan Documents) and any amendments or modifications thereto.

END OF ORDER

SUBMITTED BY:

/s/ Jeff P. Prostok

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EXHIBIT “1”

**[Third Amended Joint Plan for Acis Capital Management, L.P.
and Acis Capital Management GP, LLC – Dkt. No. 660]**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

ACIS CAPITAL MANAGEMENT, L.P.,
ACIS CAPITAL MANAGEMENT GP, LLC,

DEBTORS.

§
§
§
§
§
§
§

Case No. 18-30264-SGJ-11
Case No. 18-30265-SGJ-11

(Jointly Administered Under Case
No. 18-30264-SGJ-11)

Chapter 11

THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, L.P. AND
ACIS CAPITAL MANAGEMENT GP, LLC

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DATED: October 25, 2018
Dallas, Texas

ARTICLE I. DEFINITIONS

A. Defined Terms. In addition to such other terms as are defined in other sections of the Plan, the following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural, masculine and feminine forms of the terms defined).

1.01. "Acis CLOs" refers collectively to CLO-3, CLO-4, CLO-5, and CLO-6.

1.02. "Acis GP" means Acis Capital Management, GP, LLC, one of the Debtors in the above-referenced Chapter 11 Cases.

1.03. "Acis LP" means Acis Capital Management, LP, one of the Debtors in the above-referenced Chapter 11 Cases.

1.04. "Administrative Bar Date" means the deadline to file Claims for Allowance as an Administrative Expense set forth in section 3.01(c) of the Plan.

1.05. "Administrative Expense" means any cost or expense of administration of the Chapter 11 Cases allowed under subsections 503(b) and 507(a)(1) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the Estate of the Debtors, any actual and necessary expenses of operating the business of the Debtors, all compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the estates of the Debtors under section 1930, chapter 123 of title 28 of the United States Code.

1.06. "Affiliate" has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code.

1.07. "ALF PMA" means that certain Portfolio Management Agreement by and between Acis LP and Acis Loan Funding, Ltd. dated December 22, 2016.

1.08. "Allowed," when used with respect to a Claim (other than an Administrative Expense), means a Claim (a) to the extent it is not Contested; or (b) a Contested Claim, proof of which was filed timely with the Bankruptcy Court, and (i) as to which no Objection was filed by the Objection Deadline, or (ii) as to which an Objection was filed by the Objection Deadline, to the extent, if any, such Claim is ultimately allowed by a Final Order; *provided, however*, if a Claim is to be determined in a forum other than the Bankruptcy Court, such Claim shall not become Allowed until determined by Final Order of such other forum and allowed by Final Order of the Bankruptcy Court. "Allowed," when used with respect to an Administrative Expense, shall mean an Administrative Expense approved by application to the Bankruptcy Court.

1.09. "Assets" includes all right, title, and interest in and to all property of every type or nature owned or claimed by the Debtors as of the Petition Date, together with all such property of every type or nature subsequently acquired by the Debtors through the Effective Date, whether real or personal, tangible or intangible, and wherever located, and including, but not limited to, property as defined in section 541 of the Bankruptcy Code. Without limiting the foregoing, this shall include all

- 1.10. “Available Cash” means any Cash over and above the amount needed for the Reorganized Debtor to maintain business operations and pursue the Estate Claims, as determined in the sole discretion of the Reorganized Debtor.
- 1.11. “Avoidance Action” means a cause of action assertable by the Debtors pursuant to Chapter 5 of the Bankruptcy Code, including without limitation, actions brought or which may be brought under sections 542, 543, 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code. Such causes of action may be asserted to recover, among other things, the transfers listed in the Debtors’ respective Schedules, including in response to Question 3 of the statements of financial affairs.
- 1.12. “Ballot” means the form of ballot provided to holders of Claims or Interests entitled to vote pursuant to Bankruptcy Rule 3017(d), by which each such holder may accept or reject the Plan.
- 1.13. “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended and codified at Title 11 of the United States Code.
- 1.14. “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or such other court having jurisdiction over all or any part of the Chapter 11 Cases.
- 1.15. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Cases, including applicable local rules of the Bankruptcy Court.
- 1.16. “Brigade” means Brigade Capital Management, LP.
- 1.17. “Business Day” means any day other than Saturday, Sunday, a legal holiday, or a day on which national banking institutions in Texas are authorized or obligated by law or executive order to close.
- 1.18. “Cash” means legal tender of the United States of America, cash equivalents and other readily marketable securities or instruments, including, but not limited to, readily marketable direct obligations of the United States of America, certificates of deposit issued by banks or commercial paper.
- 1.19. “Chapter 11 Cases” refers collectively to the Acis LP bankruptcy case, Case No. 18-30264-sgj11, and the Acis GP bankruptcy case, Case No. 18-30265-sgj11, which are being jointly administered under Case No. 18-30264-sgj11.
- 1.20. “Chapter 11 Trustee” refers to Robin Phelan, the chapter 11 trustee for the Debtors.
- 1.21. “Claim” means (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, legal, equitable, secured or unsecured, or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, secured or unsecured.

- 1.22. “Claimant” means the holder of a Claim.
- 1.23. “Class” means a class of Claims or Interests as described in the Plan.
- 1.24. “CLO” means collateralized loan obligations.
- 1.25. “CLO-1” means Acis CLO 2013-1 LTD.
- 1.26. “CLO-1 Indenture” means that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-Issuer and US Bank, as Indenture Trustee.
- 1.27. “CLO-1 PMA” means that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013.
- 1.28. “CLO-3” means Acis CLO 2014-3 LTD.
- 1.29. “CLO-3 Indenture” means that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-Issuer and US Bank, as Indenture Trustee
- 1.30. “CLO-3 PMA” means that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014.
- 1.31. “CLO-4” means Acis CLO 2014-4 LTD.
- 1.32. “CLO-4 Indenture” means that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-Issuer and US Bank, as Indenture Trustee.
- 1.33. “CLO-4 PMA” means that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014.
- 1.34. “CLO-5” means Acis CLO 2014-5 LTD.
- 1.35. “CLO-5 Indenture” means that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-Issuer and US Bank, as Indenture Trustee.
- 1.36. “CLO-5 PMA” means that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014.
- 1.37. “CLO-6” means Acis CLO 2015-6 LTD.
- 1.38. “CLO-6 Indenture” means that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-Issuer and US Bank, as Indenture Trustee.
- 1.39. “CLO-6 PMA” means that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015.
- 1.40. “CLO Holdco” means CLO Holdco, Ltd.
- 1.41. “Collateral” means any Asset subject to a valid and enforceable Lien to secure payment of a Claim.

- 1.42. "Confirmation Date" means the date of entry of the Confirmation Order.
- 1.43. "Confirmation Hearing" means the hearing conducted by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3020(b) to consider confirmation of the Plan, as such hearing may be continued from time to time.
- 1.44. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.
- 1.45. "Contested," when used with respect to a Claim, means a Claim against the Debtors that is listed in the Debtors' Schedules as disputed, contingent, or unliquidated; that is listed in the Debtors' Schedules as undisputed, liquidated, and not contingent and as to which a proof of Claim has been filed with the Bankruptcy Court, to the extent the proof of Claim amount exceeds the scheduled amount; that is not listed in the Debtors' Schedules, but as to which a proof of Claim has been filed with the Bankruptcy Court; or as to which an objection has been or may be timely filed and has not been denied by Final Order. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Contested Claim only to the extent of the objection.
- 1.46. "Creditor" means a "creditor," as defined in section 101(10) of the Bankruptcy Code.
- 1.47. "Cure Claim" means the payment or other performance required to cure any existing default under an Executory Contract or Unexpired Lease.
- 1.48. "Debtors" means, collectively, Acis GP and Acis LP, the debtors in the above-captioned Chapter 11 Cases.
- 1.49. "Disallowed," when used with respect to all or any part of a Claim or Interest, means that portion of a Claim or Interest to which an objection or motion to disallow has been sustained by a Final Order.
- 1.50. "Disclosure Statement" means the Disclosure Statement filed with respect to the Plan, as it may be amended, modified, or supplemented from time to time.
- 1.51. "Distribution" means any payment or other disbursement of property pursuant to the Plan.
- 1.52. "Effective Date" means the first Business Day which is fourteen (14) days after the Confirmation Date if the Confirmation Order is not stayed or, if the Confirmation Order is stayed, the first Business Day following the lifting, dissolution, or removal of such stay which is at least fourteen (14) Business Days after the Confirmation Date, and upon which all conditions to the effectiveness of the Plan set forth in Article XIII below are satisfied.
- 1.53. "Estate" shall collectively refer to the bankruptcy estates of the Debtors in the Chapter 11 Cases.
- 1.54. "Estate Accounts Receivable" shall include all accounts receivable of the Estate, including from all sums payable to the Debtors on account of goods or services provided by the Debtors.

1.55. “Estate Claims” shall include all claims and causes of action held by the Debtors’ Estate, including, without limitation, the Estate Claims listed on the attached **Exhibit A** and all Avoidance Actions.

1.56. ““Estate Defenses” means all defenses, affirmative defenses, counterclaims, or offsets by the Debtors’ Estate against any Person, including but not limited to any Creditor.

1.57. “Estate Insurance” means any insurance policy or interest in an insurance policy in which the Estate has an interest or rights.

1.58. “Estate Professionals” means those Persons employed pursuant to an order of the Bankruptcy Court in accordance with sections 327, 328, and 1103 of the Bankruptcy Code or who are entitled to compensation or reimbursement pursuant to sections 503(b)(3)(D) or 506(b) of the Bankruptcy Code.

1.59. “Executory Contract” means any executory contract which is subject to section 365 of the Bankruptcy Code and which is not an Unexpired Lease.

1.60. “Final Order” means an order or judgment of the Bankruptcy Court or any other court or adjudicative body, as to which the time to appeal or seek rehearing or petition for certiorari shall have expired or which order or judgment shall no longer be subject to appeal, rehearing, or certiorari proceeding and with respect to which no appeal, motion for rehearing, or certiorari proceeding or stay shall then be pending.

1.61. “General Unsecured Claim” means any Claim against the Debtors that is not an Administrative Expense, Priority Tax Claim, Priority Non-Tax Claim, Secured Tax Claim, Secured Claim, or Insider Claim, but includes any Rejection Claims pursuant to section 502(g) of the Bankruptcy Code.

1.62. “Governmental Unit” means a “governmental unit” as such term is defined in section 101(27) of the Bankruptcy Code.

1.63. “HCLOF” means Highland CLO Funding, Ltd.

1.64. “Highland” means Highland Capital Management, L.P.

1.65. “Highland Adversary” means Adversary Proceeding No. 18-03078-sgj.

1.66. “Highland Claim” means all Claims asserted by Highland or any Affiliates of Highland against the Debtors, including any Claim resulting from the termination of the Sub-Advisory Agreement and Shared Services Agreement.

1.67. “Highland CLOM” means Highland CLO Management, Ltd.

1.68. “Highland HCF” means Highland HCF Advisors, Ltd.

1.69. “Impaired” means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.70. “Indentures” refers collectively to the CLO-1 Indenture, the CLO-3 Indenture, the CLO-4 Indenture, the CLO-5 Indenture, and the CLO-6 Indenture.

1.71. “Indenture Trustee” refers to US Bank solely in its capacity as Indenture Trustee under the CLO-1 Indenture, the CLO-3 Indenture, the CLO-4 Indenture, the CLO-5 Indenture and the CLO-6 Indenture, as applicable

1.72. “Initial Distribution Date,” when used with respect to any Contested Claim or Rejection Claim, shall mean the later of (i) the first Business Day at least thirty (30) days after the date on which any such Contested Claim or Rejection Claim becomes an Allowed Claim, or (ii) if the payment terms of Article IV of this Plan applicable to each such Claim specify a different date, then the date as calculated pursuant to the terms of Article IV of this Plan applicable to each such Claim. The Initial Distribution Date shall be separately determined with respect to each Contested Claim or Rejection Claim based upon the date each such Claim becomes an Allowed Claim.

1.73. “Insider” means a Person described in section 101(31) of the Bankruptcy Code.

1.74. “Insider Claim” means any Claim asserted by Insiders of the Debtors, including but not limited to any Claim asserted by Highland or any Affiliate thereof, unless otherwise indicated in the Plan.

1.75. “Interests” means any equity or stock ownership interest in the Debtors.

1.76. “Issuers and Co-Issuers” means CLO-1, CLO-3, CLO-4, CLO-5, CLO-6, Acis CLO 2013-1, Acis CLO-2014-3, LLC, Acis CLO 2014-4, LLC, Acis CLO 2014-5, LLC, and Acis 2015-6, LLC.

1.77. “Lien” means any mortgage, lien, charge, security interest, encumbrance, or other security device of any kind affecting any asset or property of the Debtors contemplated by section 101(37) of the Bankruptcy Code.

1.78. “Management Fees” shall, when used in relation to any of the Acis CLOs, have the meaning set forth in the applicable Indenture.

1.79. “Neutra” means Neutra, Ltd.

1.80. “Objection” means (a) an objection to the allowance of a Claim interposed by any party entitled to do so within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, and (b) as to any Taxing Authority, a proceeding commenced under section 505 of the Bankruptcy Code to determine the legality or amount of any tax.

1.81. “Objection Deadline” shall mean the later of (a) ninety (90) days following the Effective Date, unless otherwise extended by order of the Bankruptcy Court, or (b) as to any Rejection Claim filed after the Effective Date, ninety (90) days after the date on which the proof of Claim reflecting the Rejection Claim is filed.

1.82. “Optional Redemption” shall, when used in relation to any of the Acis CLOs, have the meaning set forth in the applicable Indenture.

1.83. “Person” means any individual, corporation, general partnership, limited partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government, or any political subdivision thereof or other entity.

- 1.84. "Petition Date" means January 30, 2018.
- 1.85. "Plan" means this Third Amended Joint Chapter 11 plan, either in its present form or as it may be altered, amended, or modified from time to time.
- 1.86. "Plan Documents" means the documents that aid in effectuating the Plan as specifically identified as such herein and filed with the Bankruptcy Court.
- 1.87. "Plan Rate" means a rate of interest of five percent (5%) per annum.
- 1.88. "PMAs" refers collectively to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA.
- 1.89. "Priority Claim" means a Claim (other than a Claim for an Administrative Expense) to the extent that it is entitled to priority in payment under section 507(a) of the Bankruptcy Code.
- 1.90. "Priority Non-Tax Claim" means a Priority Claim other than a Priority Tax Claim.
- 1.91. "Priority Tax Claim" means a Claim of a Governmental Unit of the kind specified in subsection 507(a)(8) of the Bankruptcy Code.
- 1.92. "Professional" means those persons retained pursuant to an order of the Bankruptcy Court in accordance with sections 327 and 1103 of the Bankruptcy Code.
- 1.93. "Pro Rata Distribution" means an optional Distribution made in accordance with section 4.03(c), 4.04(e), or 4.04(i) of the Plan. Each Creditor entitled to receive a portion of a Pro Rata Distribution shall receive such Creditor's Pro Rata Share of such Distribution.
- 1.94. "Pro Rata Share" means, as to the holder of a specific Claim, the ratio that the amount of such holder's Claim bears to the aggregate amount of all Claims included in the particular Class or category in which such holder's Claim is included.
- 1.95. "Refinancing Proceeds" shall, when used in relation to any of the Acis CLOs, have the meaning set forth in the applicable Indenture.
- 1.96. "Rejection Claim" means a Claim arising under section 502(g) of the Bankruptcy Code as a consequence of the rejection of any Executory Contract or Unexpired Lease.
- 1.97. "Reorganized Debtor" refers collectively to the Debtors, as reorganized, acting from and after the Effective Date if the Plan is confirmed based on the terms and provisions herein.
- 1.98. "Reserve" or "Reserves" means any reserves set aside by the Reorganized Debtor pursuant to this Plan, including reserves set aside to fund any Distributions, make payments pursuant to the Plan, or pursue the Estate Claims.
- 1.99. "Schedules" means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules or statements have been or may be subsequently amended.
- 1.100. "Secured Claim" means (a) a Claim secured by a lien on any Assets, which lien is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law, and which is duly Allowed, but only to the

extent of the value of the holder's interest in the Collateral that secures payment of the Claim; (b) a Claim against the Debtors that is subject to a valid right of recoupment or setoff under section 553 of the Bankruptcy Code, but only to the extent of the Allowed amount subject to recoupment or setoff as provided in section 506(a) of the Bankruptcy Code; and (c) a Claim deemed or treated under the Plan as a Secured Claim; provided, that, to the extent that the value of such interest is less than the amount of the Claim which has the benefit of such security, the unsecured portion of such Claim shall be treated as a General Unsecured Claim unless, in any such case the Class of which the Claim is a part makes a valid and timely election in accordance with section 1111(b) of the Bankruptcy Code to have such Claim treated as a Secured Claim to the extent Allowed.

1.101. "Secured Tax Claim" means any ad valorem tax Claim that arises or is deemed to have arisen on or before the Petition Date, irrespective of the date on which such Claim is assessed or due.

1.102. "Shared Services Agreement" means that certain Fourth Amended and Restated Shared Services Agreement by and between Acis LP and Highland dated March 17, 2017.

1.103. "Sub-Advisory Agreement" means that certain Third Amended and Restated Sub-Advisory Agreement by and between Acis LP and Highland dated March 17, 2017

1.104. "Subordinated Notes" means the subordinated notes in the Acis CLOs held by HCLOF, and expressly does not include any subordinated notes in the Acis CLOs held by any other party.

1.105. "Substantial Consummation" means the day on which a Creditor first receives a Distribution of any kind under the terms and provisions of the Plan.

1.106. "Taxing Authority" shall include the State of Texas or any subdivision thereof, including without limitation any political subdivision of the State of Texas assessing ad valorem taxes against any of the Assets.

1.107. "Terry" means Joshua N. Terry.

1.108. "Terry Partially Secured Claim" means any Claim asserted against the Debtors by Terry, including as asserted in Proof of Claim No. 1 in both Chapter 11 Cases and Proof of Claim No. 26 against Acis LP.

1.109. "Unclaimed Property" means any cash, Distribution, or any other property of the Debtors unclaimed for a period of one (1) year after the applicable Initial Distribution Date.

1.110. "Unexpired Lease" means any unexpired lease or agreement which is subject to section 365 of the Bankruptcy Code and which is not an Executory Contract.

1.111. "US Bank" means U.S. Bank National Association.

1.112. "Other Acis-Managed Funds" refers collectively to CLO-1, Acis CLO 2013-2, Ltd., Hewitt's Island CLO 1-R, Ltd, and BayVK R2 Lux S.A., SICAV-FIS.

B. Interpretation. Unless otherwise specified, all section, article and exhibit references in the Plan are to the respective section in, article of, or exhibit to, the Plan, as the

same may be amended, waived, or modified from time to time. The headings in the Plan are for convenience and reference only and shall not limit or otherwise affect the provisions hereof. The rules of construction set forth in section 102 of the Bankruptcy Code, other than section 102(5) of the Bankruptcy Code, apply to construction of the Plan. For the purposes of construction of the Plan, “or” is disjunctive.

C. Other Terms. The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. References herein to “after notice and hearing” or other similar language shall have the same meaning as in section 102(1) of the Bankruptcy Code. Otherwise, a term used herein that is not specifically defined herein shall have the meaning ascribed to that term, if any, in the Bankruptcy Code.

D. Exhibits and Plan Documents. All Exhibits to the Plan and all Plan Documents are incorporated into the Plan by this reference and are a part of the Plan as if set forth in full herein. Any Plan Documents may be filed with the Clerk of the Bankruptcy Court prior to the commencement of the Confirmation Hearing. Holders of Claims and Interests may obtain a copy of the Plan Documents, once filed, by a written request sent to the following address: Forshey & Prostok, LLP, 777 Main Street, Suite 1290, Fort Worth, Texas 76102, Attention: Linda Breedlove; Fax number (817) 877-4151; email: lbreedlove@forsheyprostok.com.

**ARTICLE II.
CLASSIFICATION OF CLAIMS AND INTERESTS**

2.01. The following is a designation of the Classes of Claims and Interests under the Plan. Administrative Expenses, Priority Claims of the kinds specified in sections 507(a)(2) and 507(a)(3) of the Bankruptcy Code and Priority Tax Claims have not been classified, are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code, and their treatment is set forth in Article III of the Plan. A Claim shall be deemed classified in a particular Class only to the extent that the Claim qualifies within the description of that Class. A Claim is included in a particular Class only to the extent that the Claim is an Allowed Claim in that Class.

- Class 1 – Secured Tax Claims
- Class 2 – Terry Partially Secured Claim
- Class 3 – General Unsecured Claims
- Class 4 – Insider Claims
- Class 5 – Interests

2.02. Impaired Classes of Claims and Interests. Class 1 is unimpaired. Classes 2 through 5 are Impaired.

2.03. Impairment or Classification Controversies. If a controversy arises as to the classification of any Claim or Interest, or as to whether any Class of Claims or Interests is Impaired under the Plan, the Bankruptcy Court shall determine such controversy as a part of the confirmation process.

**ARTICLE III.
TREATMENT OF UNCLASSIFIED CLAIMS**

3.01. Administrative Expenses

(a) The Reorganized Debtor shall pay, in accordance with the ordinary business terms applicable to each such expense or cost, the reasonable and ordinary expenses incurred in operating the Debtors' businesses or administering the Estate before the Effective Date ("Ordinary Course Claims"). The remaining provisions of this section 3.01 shall not apply to the Ordinary Course Claims, except that if there is a dispute relating to any such Ordinary Course Claim, the Reorganized Debtor may move the Bankruptcy Court to apply the provisions of Article III below relating to Contested Claims and require the holder of the Contested Ordinary Course Claim to assert such Claim through the Chapter 11 Cases.

(b) Each holder of an Allowed Administrative Expense (other than Ordinary Course Claims and Administrative Expense Claims by Estate Professionals), shall receive (i) the amount of such holder's Allowed Administrative Expense in one Cash payment on the later of the Effective Date or the tenth (10th) Business Day after such Administrative Expense becomes an Allowed Administrative Expense, or (ii) such other treatment as may be agreed to in writing by such Administrative Expense Creditor and the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court.

(c) Unless the Bankruptcy Court orders to the contrary or the Reorganized Debtor agrees to the contrary in writing, the holder of a Claim for an Administrative Expense, other than such a Claim by an Estate Professional, an Ordinary Course Claim, or an Administrative Expense which is already Allowed, shall file with the Bankruptcy Court and serve upon the Reorganized Debtor and its counsel a written notice of such Claim for an Administrative Expense within thirty (30) days after the Effective Date. This deadline is the "Administrative Bar Date." Such notice shall include at a minimum: (i) the name, address, telephone number and fax number (if applicable) or email address of the holder of such Claim, (ii) the amount of such Claim, and (iii) the basis of such Claim. **Failure to timely and properly file and serve such notice by the Administrative Bar Date shall result in such Claim for an Administrative Expense being forever barred and discharged and the holder thereof shall be barred from receiving any Distribution from the Reorganized Debtor on account of such Claim for an Administrative Expense.**

(d) A Claim for an Administrative Expense, for which a proper notice was filed and served under subsection 3.01(c) above, shall become an Allowed Administrative Expense if no Objection is filed within thirty (30) days of the filing and service of such notice. If a timely Objection is filed, the Claim shall become an Allowed Administrative Expense only to the extent allowed by a Final Order.

(e) The procedures contained in subsections 3.01(a), (c) and (d) above shall not apply to Administrative Expense Claims asserted by Estate Professionals, who shall each file and submit an appropriate final fee application to the Bankruptcy Court no later than sixty (60) days after the Effective Date. A Claim for an Administrative Expense by an Estate Professional in respect of which a final fee application has been properly filed and served shall become an Allowed Administrative Expense only to the extent Allowed by order of the Bankruptcy Court and, if so Allowed, shall be paid in accordance with subsection 3.01(b) above. Professional fees and expenses to any Estate Professional incurred on or after the Effective Date may be paid by the Reorganized Debtor without necessity of application to or order by the Bankruptcy Court.

(f) If the Reorganized Debtor asserts any Estate Claims as counterclaims or defenses to a Claim for Administrative Expense, the Administrative Expense Claim shall be determined through an adversary proceeding before the Bankruptcy Court. The Bankruptcy

Court shall have exclusive jurisdiction to adjudicate and Allow all Claims for any Administrative Expense.

3.02. Priority Non-Tax Claims. Each holder of an Allowed Priority Non-Tax Claim shall receive (i) the amount of such holder's Allowed Priority Non-Tax Payment in one Cash payment on the later of the Effective Date or the tenth (10th) Business Day after such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim and a determination has been made that such Allowed Priority Non-Tax Claim is not subject to equitable subordination under section 510(c) of the Bankruptcy Code, or (ii) such other treatment as may be agreed to in writing by such Administrative Expense Creditor and the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court.

3.03. Priority Tax Claims. Each holder of an Allowed Priority Tax Claim shall receive (a) one Cash payment in an amount equal to the principal amount of such Allowed Priority Tax Claim, plus interest at the rate and in the manner prescribed by applicable state law from the later of the Petition Date or the first day after the last day on which such Priority Tax Claim may be paid without penalty, no later than sixty (60) days after each such Claim becomes an Allowed Claim, or (b) such other treatment as may be agreed to in writing by the holder of the Priority Tax Claim and the Reorganized Debtor.

3.04. U.S. Trustee's Fees. The Reorganized Debtor shall pay the U.S. Trustee's quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6) which are due as of the Confirmation Date in full on the Effective Date or as soon thereafter as is practicable. After the Confirmation Date, the Reorganized Debtor shall continue to pay quarterly fees as they accrue until a final decree is entered and the Chapter 11 Cases are closed. The Reorganized Debtor shall file with the Bankruptcy Court and serve on the U.S. Trustee quarterly financial reports for each quarter, or portion thereof, that the Chapter 11 Cases remain open.

ARTICLE IV. TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

4.01. Class 1 – Secured Tax Claims. Each holder of an Allowed Secured Tax Claim shall receive (a) one Cash payment in an amount equal to the principal amount of such Allowed Secured Tax Claim, plus interest at the rate and in the manner prescribed by applicable state law from the later of the Petition Date or the first day after the last day on which such Secured Tax Claim may be paid without penalty, on the Initial Distribution Date, or (b) such other treatment as may be agreed to in writing by the holder of the Secured Tax Claim and the Reorganized Debtor. The Liens securing such Secured Tax Claims shall remain unimpaired and unaffected until each such Class 1 Claim is paid in full. All Distributions on account of Allowed Class 1 Claims shall be made by the Reorganized Debtor. Class 1 is unimpaired. Holders of Class 1 Claims are conclusively presumed to have accepted the Plan and, accordingly, are not entitled to vote on the Plan.

4.02. Class 2 – Terry Partially Secured Claim. In exchange for a one million dollar (\$1,000,000.00) reduction in the amount of the Terry Partially Secured Claim, Terry shall receive one hundred percent (100%) of the equity interests in the Reorganized Debtor as of the Effective Date. The remaining balance of any Allowed Terry Partially Secured Claim shall be treated and paid as a Class 3 General Unsecured Claim. Class 2 is Impaired. The Holder of the Class 2 Terry Partially Secured Claim is entitled to vote on the Plan.

4.03. Class 3 – General Unsecured Claims.

(a) Each holder of an Allowed General Unsecured Claim shall receive a promissory note issued by the Reorganized Debtor (each an “Unsecured Cash Flow Note”) on the later of (a) that date that is as soon as practicable after the Effective Date, or (b) that date that is as soon as practicable after such holder’s General Unsecured Claim becomes an Allowed Class 3 Claim. Each Unsecured Cash Flow Note shall be dated as of the Effective Date, bear interest at the Plan Rate and shall mature on that date that is the three (3) years after the Effective Date.

(b) To the extent of Available Cash, the Reorganized Debtor shall make substantially equal quarterly Distributions of principal and accrued interest to each holder of an Unsecured Cash Flow Note, with the first such quarterly Distribution being due and payable on the 180th day after the Effective Date. Thereafter, like Distributions shall be made each quarter by the Reorganized Debtor until the Unsecured Cash Flow Note is paid in full. Notwithstanding the foregoing, in the event that an Unsecured Cash Flow Note is first issued more than one hundred eighty (180) days after the Effective Date, the first Distribution made on account of such Unsecured Cash Flow Note shall be made upon the date that the next Distribution would otherwise be due, but such first Distribution shall also include amounts that would have been distributed to the holder of such Unsecured Cash Flow Note had such Unsecured Cash Flow Note been issued prior to ninety (90) days after the Effective Date, such that the first Distribution shall bring all payments current on account of such Unsecured Cash Flow Note. If on any date on which a quarterly Distribution is due to the holder of an Unsecured Cash Flow Note the remaining principal and accrued interest owing on account of such Unsecured Cash Flow Note is less than the regular quarterly Distribution amount, the Reorganized Debtor shall make a Distribution to the holder of such Unsecured Cash Flow Note in an amount sufficient to fully satisfy the remaining principal and accrued interest owed, but no more. Nothing contained herein shall preclude the Reorganized Debtor from prepaying any Unsecured Cash Flow Note.

(c) If the Reorganized Debtor obtains additional Cash, through litigation recoveries or otherwise, and the Reorganized Debtor determines, in its sole discretion, that the Reorganized Debtor holds Available Cash sufficient to allow one or more Pro Rata Distributions to be made to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims, the Reorganized Debtor may, but shall not be required to, make one or more Pro Rata Distributions to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims. The amount of the Pro Rata Distribution made to each such holder shall be determined as if Class 3 and Subclass 4A constituted a single Class. Any such additional Distributions shall be applied to reduce the outstanding balance of each holder’s Unsecured Cash Flow Note.

(d) Class 3 is Impaired. Holders of Class 3 Claims are entitled to vote on the Plan.

4.04. Class 4 – Insider Claims. Holders of Class 4 Insider Claims shall be treated as follows:

(a) Class 4 Claims shall be divided into two (2) subclasses. Subclass 4A shall consist of all Allowed Class 4 claims which are not subject to equitable subordination. Subclass 4B shall consist of all Class 4 claims which are determined by the Bankruptcy Court to be subject to equitable subordination. If only a part of a Class 4 Claim is subject to equitable subordination, then the portion of such claim subject to equitable subordination shall be included in Subclass 4B and the remainder not subject to equitable subordination shall be included in Subclass 4A. Subclass 4A and Subclass 4B will vote separately on the Plan, although Subclass 4B is currently an empty class.

(b) All Class 4 Claims (regardless of which subclass) shall be and remain subject to all Estate Defenses and all Estate Claims, including any rights of offset, recoupment, and/or to an affirmative recovery against the Holder of any Class 4 Claim.

(c) Each holder of an Allowed Subclass 4A Claim shall receive an Unsecured Cash Flow Note on the later of (a) that date that is as soon as practicable after the Effective Date, or (b) that date that is as soon as practicable after such holder's Subclass 4A Claim becomes an Allowed Subclass 4A Claim. Each Unsecured Cash Flow Note shall be dated as of the Effective Date, bear interest at the Plan Rate and shall mature on that date that is the three (3) years after the Effective Date.

(d) To the extent of Available Cash, the Reorganized Debtor shall make substantially equal quarterly Distributions of principal and accrued interest to each holder of an Unsecured Cash Flow Note, with the first such quarterly Distribution being due and payable on the 180th day after the Effective Date. Thereafter, like Distributions shall be made each quarter by the Reorganized Debtor until the Unsecured Cash Flow Note is paid in full. Notwithstanding the foregoing, in the event that an Unsecured Cash Flow Note is first issued more than one hundred eighty (180) days after the Effective Date, the first Distribution made on account of such Unsecured Cash Flow Note shall be made upon the date that the next Distribution would otherwise be due, but such first Distribution shall also include amounts that would have been distributed to the holder of such Unsecured Cash Flow Note had such Unsecured Cash Flow Note been issued prior to ninety (90) days after the Effective Date, such that the first Distribution shall bring all payments current on account of such Unsecured Cash Flow Note. If on any date on which a quarterly Distribution is due to the holder of an Unsecured Cash Flow Note the remaining principal and accrued interest owing on account of such Unsecured Cash Flow Note is less than the regular quarterly Distribution amount, the Reorganized Debtor shall make a Distribution to the holder of such Unsecured Cash Flow Note in an amount sufficient to fully satisfy the remaining principal and accrued interest owed, but no more. Nothing contained herein shall preclude the Reorganized Debtor from prepaying any Unsecured Cash Flow Note.

(e) If the Reorganized Debtor obtains additional Cash, through litigation recoveries or otherwise, and the Reorganized Debtor determines, in its sole discretion, that the Reorganized Debtor holds Available Cash sufficient to allow one or more Pro Rata Distributions to be made to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims, the Reorganized Debtor may, but shall not be required to, make one or more Pro Rata Distributions to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims. The amount of the Pro Rata Distribution made to each such holder shall be determined as if Class 3 and Subclass 4A constituted a single Class. Any such additional Distributions shall be applied to reduce the outstanding balance of each holder's Unsecured Cash Flow Note.

(f) Unless otherwise provided by Order of the Bankruptcy Court, holders of Allowed Subclass 4B claims shall not be entitled to any Distribution from the Reorganized Debtor until all Allowed Claims included in Classes 1 through 3 and Subclass 4A, including all Unsecured Cash Flow Notes, have been paid in full.

(g) Holders of Allowed Subclass 4B Claims shall receive a subordinated promissory note issued by the Reorganized Debtor ("Subordinated Unsecured Cash Flow Note") on the later of (a) that date that is as soon as practicable after the Effective Date, or (b) that date that is as soon as practicable after such holder's Subclass 4A Claim becomes an Allowed Subclass 4A Claim. Each Subordinated Unsecured Cash Flow Note shall be dated as of the Effective Date, bear interest at the Plan Rate and shall mature on the earlier to occur of (i) the date that is two

(2) years after the date all Unsecured Cash Flow Notes have been paid in full, or (ii) five (5) years after the Effective Date.

(h) To the extent of Available Cash, the Reorganized Debtor shall make substantially equal quarterly Distributions of principal and accrued interest to each holder of a Subordinated Unsecured Cash Flow Note, with the first such quarterly Distribution being due and payable on the 90th day after the payment in full of the Unsecured Cash Flow Notes. Thereafter, like Distributions shall be made each quarter by the Reorganized Debtor until the Subordinated Unsecured Cash Flow Note is paid in full. Notwithstanding the foregoing, in the event that a Subordinated Unsecured Cash Flow Note is first issued after payments have been made on one or more other Subordinated Unsecured Cash Flow Notes, the first Distribution made on account of such Subordinated Unsecured Cash Flow Note shall be made upon the date that the next Distribution would otherwise be due, but such first Distribution shall also include amounts that would have been distributed to the holder of such Subordinated Unsecured Cash Flow Note had such Subordinated Unsecured Cash Flow Note been issued at the time the first payment on any Subordinated Unsecured Cash Flow Note was made, such that the first Distribution shall bring all payments current on account of such Subordinated Unsecured Cash Flow Note. If on any date on which a quarterly Distribution is due to the holder of a Subordinated Unsecured Cash Flow Note the remaining principal and accrued interest owing on account of such Subordinated Unsecured Cash Flow Note is less than the regular quarterly Distribution amount, the Reorganized Debtor shall make a Distribution to the holder of such Subordinated Unsecured Cash Flow Note in an amount sufficient to fully satisfy the remaining principal and accrued interest owed, but no more. Nothing contained herein shall preclude the Reorganized Debtor from prepaying any Subordinated Unsecured Cash Flow Note.

(i) Subject to section 4.04(f) above, if the Reorganized Debtor obtains additional Cash, through litigation recoveries or otherwise, and the Reorganized Debtor determines, in its sole discretion, that the Reorganized Debtor holds Available Cash sufficient to allow one or more Pro Rata Distributions to be made to holders of Allowed Subclass 4B Claims, the Reorganized Debtor may, but shall not be required to, make one or more Pro Rata Distributions to holders of Allowed Subclass 4B Claims. Any such additional Distributions shall be applied to reduce the outstanding balance of each holder's Subordinated Unsecured Cash Flow Note.

(j) The Reorganized Debtor may establish appropriate Reserves as to any Contested Claim included in Class 4.

(k) Class 4 is Impaired. Holders of Class 4 Claims are entitled to vote on the Plan.

4.05. Class 5 – Interests. All Interests in the Debtors shall be extinguished and shall cease to exist as of the Effective Date. The holders of such Interests shall not receive or retain any property on account of such Interests under the Plan. Class 5 is Impaired. Holders of Class 5 Interests are conclusively presumed to have rejected the Plan and, accordingly, are not entitled to vote on the Plan.

ARTICLE V. **ACCEPTANCE OR REJECTION OF THE PLAN**

5.01. Classes Entitled to Vote. Creditors in Classes 2 through 4 are entitled to vote and shall vote separately to accept or reject the Plan. Any unimpaired Class shall not be entitled to vote to accept or reject the Plan. Any unimpaired Class is deemed to have accepted the Plan under section 1126(f) of the Bankruptcy Code.

5.02. Class Acceptance Requirement. A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have voted on the Plan.

5.03. Cramdown. This section shall constitute the request by the Plan proponent, pursuant to section 1129(b) of the Bankruptcy Code, that the Bankruptcy Court confirm the Plan notwithstanding the fact that the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met.

ARTICLE VI.
MEANS FOR IMPLEMENTATION OF THE PLAN

6.01. Vesting of Assets. As of the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all Assets, including the PMAs, all Cash, Estate Accounts Receivable, Estate Insurance, Estate Claims and Estate Defenses, shall be transferred from the Estate to, and vested in, the Reorganized Debtor, free and clear of all rights, title, interests, claims, liens, encumbrances and charges, except as expressly set forth in the Plan. On and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire or dispose of property without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for all fees, disbursements, expenses or related support services of Professionals (including fees relating to the preparation of professional fee applications) without application to, or approval of, the Bankruptcy Court.

6.02. Continued Existence of the Debtors. The Debtors shall continue to exist after the Effective Date, with all the powers available to such legal entities, in accordance with applicable law and pursuant to their constituent documents. On or after the Effective Date, each Reorganized Debtor may, within its sole and exclusive discretion, take such action as permitted by applicable law and its constituent documents as it determines is reasonable and appropriate.

6.03. Retention and Assertion of Causes of Action and Defenses.

(a) Except as expressly set forth in this Plan, all causes of action, claims, counterclaims, defenses and rights of offset or recoupment (including but not limited to all Estate Claims, Estate Defenses and Avoidance Actions) belonging to the Debtors (collectively, the "Retained Causes of Action") shall, upon the occurrence of the Effective Date, be reserved, retained and preserved for, and transferred to, received by and vested, in the Reorganized Debtor for the benefit of the Debtors and the Debtors' estates. Without limitation, the Retained Causes of Action include the claims and causes of action described on **Exhibit A** attached hereto.

(b) Except as expressly set forth in this Plan, the rights of the Reorganized Debtor to commence, prosecute or settle the Retained Causes of Action shall be retained, reserved, and preserved notwithstanding the occurrence of the Effective Date. **No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any cause of action against them as any indication that the Debtors or the Reorganized Debtor will not pursue any and all available causes of action (including all Estate Claims, Estate Defenses and Avoidance Actions) against them. The Debtors and their Estate expressly reserve all rights to prosecute any and all of the Retained Causes of Action (including all**

Estate Claims, Estate Defenses and Avoidance Actions) against any Person, except as otherwise provided in this Plan. Unless any causes of action against a Person are expressly waived, relinquished, exculpated, released, compromised or settled in this Plan or a Final Order, the Debtors expressly reserve all causes of action (including all Estate Claims, Estate Defenses and Avoidance Actions) for later adjudication, and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such causes of action upon or after the confirmation or consummation of the Plan. The Debtors and the Reorganized Debtor may also assert Estate Defenses as a defense to the allowance of any Claim not otherwise Allowed.

6.04. Assumption of Obligations to Make Distributions. The Reorganized Debtor shall be deemed to have assumed the obligations to make all Distributions pursuant to this Plan.

6.05. Actions by the Debtors and the Reorganized Debtor to Implement Plan. The entry of the Confirmation Order shall constitute all necessary authorization for the Debtors and the Reorganized Debtor to take or cause to be taken all actions necessary or appropriate to consummate, implement or perform all provisions of this Plan on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order, rule or regulation, including without limitation, (a) all transfers of Assets, including to the Reorganized Debtor, that are to occur pursuant to the Plan; (b) the cancellation of Interests and issuance of 100% of the equity interests in the Reorganized Debtor to Terry; (c) the performance of the terms of the Plan and the making of all Distributions required under the Plan; and (d) subject to the terms of the Plan, entering into any and all transactions, contracts, or arrangements permitted by applicable law, order, rule or regulation.

6.06. Termination of Highland as Shared Services Provider and Sub-Advisor. The Bankruptcy Court authorized the Chapter 11 Trustee to terminate the Shared Services Agreement and Sub-Advisory Agreement and engage Brigade to perform the services previously provided by Highland. The Shared Services Agreement and Sub-Advisory Agreement were terminated by the Chapter 11 Trustee on or about August 1, 2018, and the services previously performed by Highland were transitioned to Brigade on an interim basis. Brigade has agreed to continue to provide shared services and sub-advisory services to the Reorganized Debtor with respect to the Acis CLOs and the Other Acis-Managed Funds (and any reset Acis CLOs) subject to a minimum two (2) year term unless otherwise agreed as between the Reorganized Debtor and Brigade. Consequently, any agreement between the Reorganized Debtor and Brigade shall provide that Brigade cannot be removed without cause for a period of two (2) years except as may be otherwise agreed as between the Reorganized Debtor and Brigade.

6.07. Continued Portfolio Management by the Reorganized Debtor. The PMAs and any other Executory Contracts and Unexpired Leases identified on Exhibit B to the Plan or in the Confirmation Order shall be assumed and the Reorganized Debtor shall, from an after the Effective Date, serve as the portfolio manager with respect to the Acis CLOs and the Other Acis-Managed Funds (and any reset Acis CLOs). Consistent with Section 15 of the PMAs, the Reorganized Debtor may only be removed as portfolio manager under the assumed PMAs for cause as set forth in the PMAs.

6.08. Reset of the Acis CLOs. HCLOF has maintained that it desires to reset the Acis CLOs. The Reorganized Debtor, with the assistance of Brigade as its shared services provider and sub-advisor, is prepared to promptly seek to perform such reset transactions as set forth herein.

HCLOF shall have the right to submit one or more notice(s) of Optional Redemption solely for the purpose of effectuating a reset of one or more of the Acis CLOs under this section 6.08 of the Plan utilizing Refinancing Proceeds (a "Reset Optional Redemption") for each of the Acis CLOs. If HCLOF requests a Reset Optional Redemption of an Acis CLO, the Reorganized Debtor, with the assistance of Brigade, shall thereafter seek to reset the Acis CLOs, either consecutively or simultaneously, in its good faith business judgment and consistent with then-prevailing market terms; *provided, however*, (i) the Management Fees to be charged by the Reorganized Debtor to any reset Acis CLOs shall remain the same going forward and shall not be increased, and no transaction fee shall be charged by the Reorganized Debtor (other than, for avoidance of doubt, transaction expense reimbursements consistent with market standards), and (ii) HCLOF shall be granted a right of first refusal for any funding of debt or equity required to effectuate a reset of each of the Acis CLOs. The terms of the Indentures shall control any Reset Optional Redemption. If HCLOF elects not to reset one or more of the Acis CLOs, then the Acis CLOs will continue to be managed in accordance with market standards.

6.09. Post-Effective Date Service List. Pleadings filed by any party-in-interest with the Bankruptcy Court after the Effective Date shall be served on the following Persons (collectively the "Service List"): (a) any Person directly affected by the relief sought in the pleading, (b) the U.S. Trustee, (c) parties which have filed a Notice of Appearance in the Chapter 11 Cases, and (d) the Reorganized Debtor.

6.10. Section 505 Powers. All rights and powers pursuant to section 505 of the Bankruptcy Code are hereby reserved to the Estate and shall be transferred to, and vested in, the Reorganized Debtor as of the Effective Date.

6.11. Section 510(c) Powers. All rights and powers to seek or exercise any right or remedy of equitable subordination are hereby reserved to the Estate and shall be transferred to, and vested in, the Reorganized Debtor as of the Effective Date as an Estate Defense.

6.12. Section 506(c) Powers. The Estate hereby reserves all rights and powers pursuant to section 506(c) of the Bankruptcy Code, and all such rights shall be specifically transferred to, and vested in, the Reorganized Debtor.

6.13. Plan Injunction. The Reorganized Debtor shall each have full power, standing and authority to enforce the Plan Injunction against any Person, either through an action before the Bankruptcy Court or any other tribunal having appropriate jurisdiction.

6.14. Cancellation of Interests. Except as otherwise specifically provided herein, upon the Effective Date of the Plan: (a) all Interests in the Debtors shall be cancelled; and (b) all obligations or debts of, or Claims against, the Debtors on account of, or based upon, the Interests shall be deemed as cancelled, released and discharged, including all obligations or duties by the Debtors relating to the Interests in any of their respective formation documents, including Acis LP's limited partnership agreement and bylaws, Acis GP's articles of formation and company agreement, or any similar formation or governing documents.

ARTICLE VII. **PROVISIONS GOVERNING DISTRIBUTION**

7.01. Distributions from Reorganized Debtor. The Reorganized Debtor shall be responsible for making Distributions to holders of Allowed Claims only to the extent this Plan requires Distributions to be made by the Reorganized Debtor. The priority of Distributions from the

Reorganized Debtor shall be in accordance with the terms of this Plan and the Confirmation Order as follows:

- (a) First, to satisfy Allowed Class 1 Secured Tax Claims;
- (b) Second, to satisfy Allowed Administrative Expenses and Allowed Priority Claims in accordance with Article III above, including all U.S. Trustee quarterly fees due and owing as of the Effective Date;
- (c) Third, to make Distributions to holders of any Allowed Class 3 General Unsecured Claims and Allowed Subclass 4A Claims; and
- (e) Fourth, to make Distributions to holders of any Allowed Subclass 4B Claims

7.02. Reserves. The Reorganized Debtor may estimate, create and set aside Reserves as may be necessary or appropriate, including without limitation, Reserves on account of Contested Claims. The Reorganized Debtor may, but shall not be required to, move the Bankruptcy Court to approve: (a) the amount of, and terms on which, such Reserves shall be held, maintained and disbursed, or (b) the amount and timing of any proposed interim Distribution to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims. The Reorganized Debtor may elect to seek approval by the Bankruptcy Court for the creation and amount of any Reserves or regarding the amount or timing of any Distribution on account of any Allowed Claims. Except as otherwise expressly provided herein, the Reorganized Debtor, in the exercise of its good faith business judgment, may transfer funds out of any of the Reserves as necessary or appropriate. However, the Reorganized Debtor shall not be required to create separate accounts for such Reserves which may be created and memorialized by entries or other accounting methodologies, which may be revised from time-to-time, to enable the Reorganized Debtor to determine the amount of Cash available for Distributions under the Plan. Subject to any specific deadlines set forth herein, the Reorganized Debtor, shall determine, from time-to-time, in the exercise of the Reorganized Debtor's good faith business judgment: (x) the amount of Cash available for Distribution, (y) the timing of any Distributions, and (z) the amount and creation of any Reserves for Contested Claims. The Reorganized Debtor shall not be entitled to reserve for, and this section 7.02 does not apply to, Distributions to holders of Allowed Subclass 4B Claims.

7.03. Prosecution and Settlement of Estate Claims. Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

7.04. Plan Injunction. The Reorganized Debtor shall be entitled to the full protection and benefit of the Plan Injunction and shall have standing to bring any action or proceeding necessary to enforce the Plan Injunction against any Person.

7.05. Relief from the Bankruptcy Court. The Reorganized Debtor shall be authorized to seek relief from the Bankruptcy Court or any other tribunal having jurisdiction as to any matter relating or pertaining to the consummation, administration or performance of this Plan, including without

limitation seeking any relief from the Bankruptcy Court which the Reorganized Debtor deems necessary or appropriate to the performance of its duties or the administration of this Plan.

ARTICLE VIII. SOURCE OF DISTRIBUTIONS

8.01. Source of Distributions. All Distributions under this Plan shall be made by the Reorganized Debtor in the manner provided in this Plan and the Confirmation Order.

8.02. Timing and Amount of Distributions. No Distribution shall be made on account of any Claim until such Claim is Allowed, except as otherwise set forth in this Plan or otherwise ordered by the Bankruptcy Court. No Distribution shall be made on account of any Contested Claim until such Claim is Allowed. Except as expressly set forth in the Plan or in the Confirmation Order, the Reorganized Debtor shall, in the exercise of its good faith business judgment, determine the timing and amount of all Distributions which are required to be made under the Plan, consistent with the goal of making such Distributions as expeditiously as reasonably possible. The Reorganized Debtor may, but shall not be required to, seek approval of, or any other appropriate relief from, the Bankruptcy Court with respect to any of such Distributions. Any Unclaimed Property may be paid into the registry of the Bankruptcy Court or otherwise distributed in accordance with the orders of the Bankruptcy Court.

8.03. Means of Cash Payment. Cash payments pursuant to this Plan shall be made by check drawn on, or by wire transfer from, a domestic bank, or by other means agreed to by the payor and payee.

8.04. Record Date for Distributions. As of the close of business on the Effective Date (the “Distribution Record Date”), the register for Claims will be closed, and there shall be no further changes in the holders of record of any Claims. Although there is no prohibition against the transfer of any Claim by any Creditor, the Reorganized Debtor shall have no obligation to recognize any transfer of a Claim occurring after the Distribution Record Date, and the Reorganized Debtor shall instead be authorized and entitled to recognize and deal for all purposes under this Plan, including for the purpose of making all Distributions, with only those holders of Claims so reflected as of the Distribution Record Date. However, the Reorganized Debtor may, in the exercise of its good faith business judgment, agree to recognize transfers of Claims after the Distribution Record Date, but shall have no obligation to do so.

8.05. Delivery of Distributions. All Distributions, deliveries and payments to the holders of any Allowed Claims shall be made to the addresses set forth on the respective proofs of Claim filed in the Chapter 11 Cases by such Claimants or, if the Distribution is to be made based on a Claim reflected as Allowed in the Schedules, at the address reflected in the Schedules. Any such Distribution, delivery or payment shall be deemed as made for all purposes relating to this Plan when deposited in the United States Mail, postage prepaid, addressed as required in the preceding sentence. If any Distribution is returned as undeliverable, no further Distribution shall be made on account of such Allowed Claim unless and until the Reorganized Debtor is notified of such holder's then current address, at which time all missed Distributions shall be made to the holder of such Allowed Claim. However, all notices to the Reorganized Debtor reflecting new or updated addresses for undeliverable Distributions shall be made on or before one hundred twenty (120) days after the date of the attempted Distribution or such longer period as the Reorganized Debtor may fix in the exercise of its sole discretion. After such date, all Unclaimed Property shall revert to the Reorganized Debtor and the Claim of any holder with respect to such property shall be discharged and forever barred.

8.06. W-9 Forms. Each holder of an Allowed Claim must provide a W-9 form or other such necessary information to comply with any withholding requirements of any Governmental Unit (collectively the “W-9 Form”) to the Reorganized Debtor prior to receiving any Distribution from the Reorganized Debtor. In the event a holder of an Allowed Claim does not provide a W-9 Form to the Reorganized Debtor within thirty (30) days of the Effective Date, the Reorganized Debtor shall, at an appropriate time, issue a written request to each holder of an Allowed Claim that has not previously provided a W-9 Form to the Reorganized Debtor. The request shall be in writing and shall be delivered to the last address known to the Debtors or Reorganized Debtor, as appropriate. The request shall conspicuously advise and disclose that failure to provide a W-9 Form to the Reorganized Debtor within thirty (30) days shall result in a waiver of any right or rights to a Distribution from the Reorganized Debtor. In the event any holder of an Allowed Claim fails to provide the Reorganized Debtor with a W-9 Form within thirty (30) days after the date of written request described herein, then the holder of such Allowed Claim shall be deemed to have waived the right to receive any Distribution whatsoever from the Reorganized Debtor.

8.07. Time Bar to Cash Payments. Checks issued in respect of Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of issuance thereof. Requests for reissuance of any check shall be made directly to the issuer of the check by the holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in respect of such a voided check shall be made on or before one hundred twenty (120) days after the date of issuance of such check or such longer period as the Reorganized Debtor may fix. After such date, all Claims in respect of void checks shall be discharged and forever barred.

8.08. Cure Period. Except as otherwise set forth herein, the failure by the Reorganized Debtor to timely perform any term, provision or covenant contained in this Plan, or to make any payment or Distribution required by this Plan to any Creditor, or the failure to make any payment or perform any covenant on any note, instrument or document issued pursuant to this Plan, shall not constitute an event of default unless and until the Reorganized Debtor has been given thirty (30) days written notice of such alleged default in the manner provided in this Plan, and provided an opportunity to cure such alleged default. Until the expiration of such thirty (30) day cure period, the Reorganized Debtor shall not be in default, and performance during such thirty (30) day cure period shall be deemed as timely for all purposes. Such written notice and passage of the thirty (30) day cure period shall constitute conditions precedent to declaring or claiming any default under this Plan or bringing any action or legal proceeding by any Person to enforce any right granted under this Plan.

8.09. Pre-Payment of Claims. Unless the Plan expressly prohibits or conditions the pre-payment of an Allowed Claim, the Reorganized Debtor may pre-pay any Allowed Claim in whole or in part at any time and may do so without penalty.

8.10. Distributions after Substantial Consummation. All Distributions of any kind made to any Creditor after Substantial Consummation and any and all other actions taken under this Plan after Substantial Consummation shall not be subject to relief, reversal or modification by any court unless the implementation of the Confirmation Order is stayed by an order granted under Bankruptcy Rule 8005.

ARTICLE IX.
RETENTION OF ESTATE CLAIMS AND ESTATE DEFENSES.

9.01. Retention of Estate Claims. Except as otherwise specifically provided in this Plan, pursuant to section 1123(b)(3) of the Bankruptcy Code, all Estate Claims shall be transferred to, and vested in, the Reorganized Debtor, both for purposes of seeking an affirmative recovery against any Person and for the purposes of offset, recoupment or defense against any Claim asserted against the Estate or Reorganized Debtor. All Estate Claims shall be deemed to have been transferred to, and vested in, the Reorganized Debtor as of the Effective Date based on the entry of the Confirmation Order.

Without limiting the effectiveness or generality of the foregoing reservation, out of an abundance of caution, the Debtors and the Estate hereby specifically reserves, retains, and preserves the Estate Claims reflected in the attached **Exhibit A**. Reference is here made to **Exhibit A** which constitutes an integral part of this Plan. The provisions of this Article of the Plan, as well as the descriptions and disclosures relating to the Estate Claims in the Disclosure Statement, are provided in the interest of providing maximum disclosure of the Estate Claims of which Debtors are presently aware and shall not act as a limitation on the potential Estate Claims that may exist. It is the specific intention of this Plan that all Avoidance Actions and all associated remedies, and any other Estate Claims, whether arising before or after the Petition Date, and whether arising under the Bankruptcy Code or applicable state or federal non-bankruptcy laws, shall all be reserved, retained and preserved under this Plan to be transferred to, and vested in, the Reorganized Debtor. All Estate Claims are reserved, retained and preserved both as causes of action for an affirmative recovery and as counterclaims and for the purposes of offset or recoupment against any Claims asserted against the Estate.

9.02. Retention of Estate Defenses. Except as otherwise specifically provided in this Plan, pursuant to section 1123(b)(3) of the Bankruptcy Code, all Estate Defenses shall be transferred to, and vested in, the Reorganized Debtor. For this purpose, all Estate Defenses are hereby reserved, retained and preserved by the Debtors and the Estate, including without limitation all such Estate Defenses available to the Estate pursuant to section 558 of the Bankruptcy Code, and shall be deemed as transferred to, and vested in, the Reorganized Debtor as of the Effective Date based on the entry of the Confirmation Order.

9.03. Assertion of Estate Claims and Estate Defenses. The Reorganized Debtor shall have, and be vested with, the exclusive right, authority and standing to assert all Estate Claims and Estate Defenses for the benefit of the Reorganized Debtor.

ARTICLE X.
PROCEDURES FOR RESOLVING AND TREATING
CONTESTED AND CONTINGENT CLAIMS

10.01. Claims Listed in Schedules as Disputed. Any General Unsecured Claim which is listed in the Schedules as unliquidated, contingent or disputed, and for which no proof of Claim has been timely filed, shall be considered as Disallowed as of the Effective Date without the necessity of any further action by the Reorganized Debtor or further order of the Bankruptcy Court other than the entry of the Confirmation Order.

10.02. Responsibility for Objecting to Claims and Settlement of Claims. The Reorganized Debtor shall have the exclusive standing and authority to either object to any Claim or settle and compromise any Objection to any Claim, including as follows:

(a) From and after the Effective Date, the Reorganized Debtor shall have the sole and exclusive right to (i) file, settle, or litigate to Final Order any Objections to any Claims; and (ii) seek to subordinate any Claim. Any Contested Claim may be litigated to Final Order by the Reorganized Debtor; and

(b) From and after the Effective Date, the Reorganized Debtor shall have the sole and exclusive right to settle, compromise or otherwise resolve any Contested Claim without the necessity of any further notice or approval of the Bankruptcy Court. Bankruptcy Rule 9019 shall not apply to any settlement or compromise of a Contested Claim after the Effective Date.

10.03. Objection Deadline. All Objections to Claims shall be served and filed by the Objection Deadline; provided, however, the Objection Deadline shall not apply to Claims which are not reflected in the claims register, including any alleged informal proofs of Claim. The Reorganized Debtor may seek to extend the Objection Deadline pursuant to a motion filed on or before the then applicable Objection Deadline with respect to any Claim. Any such motion may be granted without notice or a hearing. In the event that the Reorganized Debtor files such a motion and the Bankruptcy Court denies such motion, the Objection Deadline shall nevertheless be automatically extended to that date which is ten (10) Business Days after the date of entry of the Bankruptcy Court's order denying such motion. Any proof of Claim other than one based upon a Rejection Claim and which is filed more than thirty (30) days after the Effective Date shall be of no force and effect and need not be objected to by the Reorganized Debtor. Nothing contained herein shall limit the right of the Reorganized Debtor to object to Claims, if any, filed or amended after the Objection Deadline.

10.04. Response to Claim Objection. If the Reorganized Debtor files an Objection to any Claim, then the holder of such Claim shall file a written response to such Objection within twenty-four (24) days after the filing and service of the Objection upon the holder of the Contested Claim. Each such Objection shall contain appropriate negative notice advising the Creditor whose Claim is subject to the Objection of the requirement and time period to file a response to such Objection and that, if no response is timely filed to the Objection, the Bankruptcy Court may enter an order that such Claim is Disallowed without further notice or hearing. The negative notice language in the Objection shall satisfy the notice requirement in section 3007(a) of the Bankruptcy Rules, and the Reorganized Debtor shall not be required to send a separate notice of the Objection to the Creditor whose Claim is subject to the Objection.

10.05. Distributions on Account of Contested Claims. If a Claim is Contested, then the dates for any Distributions as to such Contested Claim shall be determined based upon its date of Allowance, and thereafter Distribution shall be made on account of such Allowed Claim pursuant to the provisions of the Plan. No Distribution shall be made on account of a Contested Claim until Allowed. Until such time as a contingent Claim becomes fixed and absolute by a Final Order Allowing such Claim, such Claim shall be treated as a Contested Claim for purposes of estimates, allocations, and Distributions under the Plan. Any contingent right to contribution or reimbursement shall continue to be subject to section 502(e) of the Bankruptcy Code.

10.06. No Waiver of Right to Object. Except as expressly provided in this Plan, nothing contained in the Disclosure Statement, this Plan, or the Confirmation Order shall waive, relinquish, release or impair the Reorganized Debtor's right to object to any Claim.

10.07. Offsets and Defenses. The Reorganized Debtor shall be vested with and retain all Estate Claims and Estate Defenses, including without limitation all rights of offset or recoupment and all counterclaims against any Claimant holding a Claim. Assertion of counterclaims by the

Reorganized Debtor against any Claim asserted against the Estate or Reorganized Debtor shall constitute “core” proceedings.

10.08. Claims Paid or Reduced Prior to Effective Date. Notwithstanding the contents of the Schedules, Claims listed therein as undisputed, liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtors prior to the Effective Date, including pursuant to orders of the Bankruptcy Court. To the extent such payments are not reflected in the Schedules, such Schedules will be deemed amended and reduced to reflect that such payments were made. Nothing in the Plan shall preclude the Debtors or the Reorganized Debtor from paying Claims that the Debtors were authorized to pay pursuant to any Final Order entered by the Bankruptcy Court prior to the Confirmation Date.

ARTICLE XI.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

11.01. Assumption and Rejection of Executory Contracts. All Executory Contracts and Unexpired Leases of the Debtors shall be deemed rejected by the Debtors upon the Effective Date unless an Executory Contract or Unexpired Lease (a) has been previously assumed or rejected pursuant to an order of the Bankruptcy Court, (b) is identified in **Exhibit B** to this Plan and/or the Confirmation Order to be (i) assumed or (ii) assumed and assigned, or (c) is the subject of a motion to assume filed on or before the Confirmation Date. The Plan shall constitute a motion to reject all Executory Contracts and Unexpired Leases except as stated in this paragraph. However, the Debtors may file a separate motion for the assumption or rejection of any Executory Contract or Unexpired Lease at any time through the Confirmation Date.

11.02. Cure Payments. All payments that may be required by section 365(b)(1) of the Bankruptcy Code to satisfy any Cure Claim shall be made by the Reorganized Debtor as soon as reasonably practical after the Effective Date or upon such terms as may be otherwise agreed between the Reorganized Debtor and the holder of such Cure Claim; *provided, however*, in the event of a dispute regarding the amount of any Cure Claim, the cure of any other defaults, or any other matter pertaining to assumption or assignment of an Executory Contract, the Reorganized Debtor shall make such cure payments and cure such other defaults, all as may be required by section 365(b)(1) of the Bankruptcy Code, following the entry of a Final Order by the Bankruptcy Court resolving such dispute.

11.03. Bar to Rejection Claims. Except as otherwise ordered by the Bankruptcy Court, any Rejection Claim based on the rejection of an Executory Contract or Unexpired Lease shall be forever barred and shall not be enforceable against the Reorganized Debtor or the Reorganized Debtor’s assets unless a proof of Claim is filed with the Bankruptcy Court and served upon the Reorganized Debtor and its counsel by the earlier of thirty (30) days after the Effective Date or thirty (30) days after entry of the Final Order approving rejection of such Executory Contract or Unexpired Lease.

11.04. Rejection Claims. Any Rejection Claim not barred by section 11.03 of the Plan shall be classified as a Class 3 General Unsecured Claim subject to the provisions of sections 502(b)(6) and 502(g) of the Bankruptcy Code; *provided, however*, that any Rejection Claim by a lessor based upon the rejection of an unexpired lease of real property, either prior to the Confirmation Date, upon the entry of the Confirmation Order, or upon the Effective Date, shall be limited in accordance with section 502(b)(6) of the Bankruptcy Code and state law mitigation requirements. All Rejection Claims shall be deemed as Contested Claims until Allowed. Nothing contained herein shall be deemed an admission by the Debtors or the Reorganized

Debtor that such rejection gives rise to or results in a Claim or shall be deemed a waiver by the Debtors or the Reorganized Debtor of any objections or defenses to any such Rejection Claim if asserted.

11.05. Reservation of Rights. Nothing contained in the Plan shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors or the Reorganized Debtor have any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Reorganized Debtor shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease.

ARTICLE XII. SUBSTANTIVE CONSOLIDATION OF THE DEBTORS

12.01. Pursuant to the Confirmation Order, the Bankruptcy Court shall approve the substantive consolidation of the Debtors for the sole purposes of implementing the Plan, including for purposes of voting and Distributions to be made under the Plan. Pursuant to such order: (a) all assets and liabilities of the Debtors will be deemed merged; (b) all guarantees by one Debtor of the obligations of the other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by the other Debtor and any joint or several liability of the Debtors will be deemed to be one obligation of the consolidated Debtors; and (c) each and every Claim filed or to be filed in the Chapter 11 Case of either Debtor will be deemed filed against the consolidated Debtors and will be deemed one Claim against and a single obligation of the consolidated Debtors.

ARTICLE XIII. CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF PLAN

13.01. Conditions to Confirmation and Effectiveness of Plan. The Plan shall not become effective until the following conditions shall have been satisfied and which may occur concurrently with the Effective Date: (a) the Confirmation Order shall have been entered, in form and substance acceptable to the Chapter 11 Trustee; (b) the necessary Plan Documents have been executed and delivered, and (c) all other conditions specified by the Chapter 11 Trustee have been satisfied. Any or all of the above conditions other than (a) may be waived at any time by the Chapter 11 Trustee.

13.02. Notice of the Effective Date. On or as soon as reasonably practical after the occurrence of the Effective Date, the Reorganized Debtor shall cause a notice of the Effective Date to be filed with the Bankruptcy Court and served on all Creditors and parties-in-interest.

13.03. Revocation of Plan. The Chapter 11 Trustee may revoke and withdraw the Plan at any time before the Effective Date. If the Chapter 11 Trustee revokes or withdraws the Plan, or if confirmation of the Plan does not occur, then this Plan shall be deemed null and void and nothing contained in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors, as the case may be, or any other Person, or to prejudice in any manner the rights of the Debtors or any other Person in any further proceedings involving the Debtors.

ARTICLE XIV.
EFFECT OF THE PLAN ON CLAIMS AND INTERESTS

14.01. Compromise and Settlement

(a) Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the classification, potential Distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies subject to, or dealt with, under this Plan, including, without limitation, all Claims against the Debtors or Estate arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, fixed or contingent, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtors or the Estate. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements embodied in this Plan, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interest of the Debtors, the Estate, Creditors and other parties-in-interest, and are fair, equitable and within the range of reasonableness. The rights afforded in the Plan and the treatment of all Claims and Interests herein shall be in exchange for, and in complete satisfaction and release of, all Claims and Interests of any nature whatsoever against and in the Debtors, the Estate, and the Assets. Except as otherwise provided herein, all Persons shall be precluded and forever barred by the Plan Injunction from asserting against the Debtors and their affiliates, successors, assigns, the Reorganized Debtor or the Reorganized Debtor's Assets, or the Estate, any event, occurrence, condition, thing, or other or further Claims or causes of action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date.

(b) It is not the intent of this Plan that confirmation of the Plan shall in any manner alter or amend any settlement and compromise (including those contained in agreed orders) between the Debtors and any Person that has been previously approved by the Bankruptcy Court (each, a "Prior Settlement"). To the extent of any conflict between the terms of the Plan and the terms of any Prior Settlement, the terms of the Prior Settlement shall control and such Prior Settlement shall be enforceable according to its terms.

14.02. Discharge. The Debtors and their successors in interest and assigns shall be deemed discharged and released pursuant to section 1141(d)(1) of the Bankruptcy Code from any and all Claims provided for in the Plan.

14.03. **PLAN INJUNCTION.**

THIS SECTION IS REFERRED TO HEREIN AS THE "PLAN INJUNCTION." EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, AS OF THE EFFECTIVE DATE ALL HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS, THE ESTATE OR ANY OF THE ASSETS THAT AROSE PRIOR TO THE EFFECTIVE DATE ARE HEREBY PERMANENTLY ENJOINED AND PROHIBITED FROM THE FOLLOWING: (a) THE COMMENCING OR CONTINUATION IN ANY MANNER, DIRECTLY OR INDIRECTLY, OF ANY ACTION, CASE, LAWSUIT OR OTHER PROCEEDING OF ANY TYPE OR NATURE AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS WITH RESPECT TO

ANY SUCH CLAIM OR INTEREST ARISING OR ACCRUING BEFORE THE EFFECTIVE DATE, INCLUDING WITHOUT LIMITATION THE ENTRY OR ENFORCEMENT OF ANY JUDGMENT, OR ANY OTHER ACT FOR THE COLLECTION, EITHER DIRECTLY OR INDIRECTLY, OF ANY CLAIM OR INTEREST AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS; (b) THE CREATION, PERFECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST, ENCUMBRANCE, RIGHT OR BURDEN, EITHER DIRECTLY OR INDIRECTLY, AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, OR (c) TAKING ANY ACTION IN RELATION TO THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, EITHER DIRECTLY OR INDIRECTLY, WHICH VIOLATES OR DOES NOT CONFORM OR COMPLY WITH THE PROVISIONS OF THIS PLAN APPLICABLE TO SUCH CLAIM OR INTEREST. THE PLAN INJUNCTION SHALL ALSO BE INCORPORATED INTO THE CONFIRMATION ORDER.

IN ADDITION TO THE FOREGOING, EXCEPT TO THE EXTENT NECESSARY TO ALLOW HCLOF, THE REORGANIZED DEBTOR AND BRIGADE TO EFFECTUATE THE RESET OF ONE OR MORE OF THE ACIS CLOS IN ACCORDANCE WITH SECTION 6.08 OF THE PLAN, PURSUANT TO SECTIONS 105(a), 1123(a)(5), 1123(b)(6), AND 1142(b) OF THE BANKRUPTCY CODE, THE ENJOINED PARTIES (DEFINED BELOW) ARE HEREBY ENJOINED FROM: (a) PROCEEDING WITH, EFFECTUATING, OR OTHERWISE TAKING (i) ANY ACTION IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS PREVIOUSLY OR CURRENTLY ISSUED BY ANY SUCH PARTIES, AND (ii) ANY OTHER ATTEMPT TO LIQUIDATE THE ACIS CLOS BY ANY MEANS, (b) TRADING ANY ACIS CLO COLLATERAL IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, (c) EXERCISING ANY RIGHTS TO ASK OR DIRECT THE ISSUERS, CO-ISSUERS OR INDENTURE TRUSTEE TO PERFORM ANY ACTION IN RELATION TO THE ACIS CLOS THAT THE ENJOINED PARTIES ARE PROHIBITED FROM TAKING UNDER THE TERMS OF THE PLAN INJUNCTION, (d) INTERFERING IN ANY WAY WITH THE CAPITAL MARKETS PROCESS OF RESETTING ANY ACIS CLO, AND (e) SENDING, MAILING, OR OTHERWISE DISTRIBUTING ANY NOTICE TO THE HOLDERS OF THE NOTES IN THE ACIS CLOS IN CONNECTION WITH THE EFFECTUATION OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, UNTIL THE EARLIER TO OCCUR OF: (w) THE DATE UPON WHICH A FINAL ORDER IS ENTERED RESOLVING THE ESTATE'S AVOIDANCE CLAIMS AGAINST ALL ENJOINED PARTIES RELATING TO ACIS LP'S RIGHTS UNDER THE ALF PMA; (x) THE DATE UPON WHICH ALL ALLOWED CLAIMS AGAINST THE DEBTORS HAVE BEEN PAID IN FULL, (y) THE ENTRY OF AN ORDER BY THE BANKRUPTCY COURT FINDING THAT A MATERIAL DEFAULT HAS OCCURRED UNDER THE TERMS OF THE PLAN, OR (z) THE ENTRY OF A SUBSEQUENT ORDER BY THE BANKRUPTCY COURT PROVIDING OTHERWISE WITH RESPECT TO ONE OR MORE OF THE ACIS CLOS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "ENJOINED PARTIES" SHALL INCLUDE HIGHLAND, HCLOF, CLO HOLDCO, NEUTRA, HIGHLAND HCF, HIGHLAND CLOM, ANY AFFILIATES OF

HIGHLAND, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, TRANSFEREES, ASSIGNS, AND SUCCESSORS. FOR PURPOSES OF CLARIFICATION AND AVOIDANCE OF DOUBT, NOTHING IN THIS PARAGRAPH SHALL PRECLUDE ORDINARY DAY-TO-DAY TRADING OF THE COLLATERAL IN THE ACIS CLOS BY THE REORGANIZED DEBTOR.

Notwithstanding anything to the contrary in the Plan: (a) third-party professionals employed by the Reorganized Debtor shall not be released or exculpated from any losses, claims, damages, liabilities, or expenses arising from their duties and services provided to the Reorganized Debtor; and (b) any third-party professionals employed by the Reorganized Debtor shall only be entitled to be indemnified by the Reorganized Debtor to the extent provided by applicable law.

Notwithstanding anything to the contrary in the Plan or Confirmation Order, nothing in the Plan or in the Confirmation Order shall discharge, release, enjoin or otherwise bar (i) any liability of the Debtors, the Estate, the Reorganized Debtor, or the Reorganized Debtor's assets ("Released Parties") to a Governmental Unit arising on or after the Confirmation Date with respect to events occurring after the Confirmation Date, provided that the Released Parties reserve the right to assert that any such liability is a Claim that arose on or prior to the Confirmation Date and constitutes a Claim that is subject to the deadlines for filing proofs of claim, (ii) any liability to a Governmental Unit that is not a Claim subject to the deadlines for filing proofs of Claim, (iii) any valid right of setoff or recoupment of a Governmental Unit, and (iv) any police or regulatory action by a Governmental Unit. In addition, nothing in the Plan or Confirmation Order discharges, releases, precludes or enjoins any environmental liability to any Governmental Unit that any Person other than the Released Parties would be subject to as the owner or operator of the property after the Effective Date. For the avoidance of any doubt, nothing in this paragraph shall be construed to limit the application of the Plan Injunction to any Claim which was subject to any bar date applicable to such Claim.

14.04. Setoffs. Except as otherwise expressly provided for in the Plan, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the holder of a Claim, the Reorganized Debtor may set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before such Distribution is made), any Claims, rights, Estate Claims and Estate Defenses of any nature that the Debtors may hold against the holder of such Allowed Claim, to the extent such Claims, rights, Estate Claims and Estate Defenses against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release of any such Claims, rights, Estate Claims and Estate Defenses that the Estate may possess against such Claimant. In no event shall any Claimant or Interest holder be entitled to setoff any Claim or Interest against any Claim, right, or Estate Claim of the Debtors without the consent of the Debtors or the Reorganized Debtor unless such holder files a motion with the Bankruptcy Court requesting the authority to perform such setoff notwithstanding any indication in any proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

14.05. Recoupment. Except as otherwise expressly provided for in the Plan, in no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, account receivable, or Estate Claim of the Debtors or the Reorganized Debtor unless (a) such holder actually provides notice thereof in writing to the Debtors or the Reorganized Debtor of its intent to perform a recoupment; (b) such notice includes the amount to be

recouped by the holder of the Claim or Interest and a specific description of the basis for the recoupment, and (c) the Debtors or the Reorganized Debtor have provided a written response to such Claim or Interest holder, stating unequivocally that the Debtors or the Reorganized Debtor consents to the requested recoupment. The Debtors and the Reorganized Debtor shall have the right, but not the obligation, to seek an order of the Bankruptcy Court allowing any or all of the proposed recoupment. In the absence of a written response from the Debtors or the Reorganized Debtor consenting to a recoupment or an order of the Bankruptcy Court authorizing a recoupment, no recoupment by the holder of a Claim or Interest shall be allowed.

14.06. Turnover. On the Effective Date, any rights of the Estate to compel turnover of Assets under applicable nonbankruptcy law and pursuant to section 542 or 543 of the Bankruptcy Code shall be deemed transferred to and vested in the Reorganized Debtor.

14.07. Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code, except as previously modified by the Bankruptcy Court, shall remain in effect until the Effective Date of the Plan as to the Debtors, the Estate and all Assets. As of the Effective Date, the automatic stay shall be replaced by the Plan Injunction.

ARTICLE XV. JURISDICTION OF COURTS AND MODIFICATIONS TO THE PLAN

15.01. Retention of Jurisdiction. Pursuant to sections 1334 and 157 of title 28 of the United States Code, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising in, arising under, and related to the Chapter 11 Cases and the Plan, to the full extent allowed or permitted by applicable law, including without limitation for the purposes of invoking sections 105(a) and 1142 of the Bankruptcy Code, and for, among other things, the following purposes:

- (a) To hear and determine any and all objections to, or applications or motions concerning, the allowance of Claims or the allowance, classification, priority, compromise, estimation, or payment of any Administrative Expense;
- (b) To hear and determine any and all applications for payment of fees and expenses pursuant to this Plan to any Estate Professional pursuant to sections 330 or 503 of the Bankruptcy Code, or for payment of any other fees or expenses authorized to be paid or reimbursed under this Plan, and any and all objections thereto;
- (c) To hear and determine pending applications for the rejection, assumption, or assumption and assignment of Executory Contracts and Unexpired Leases and the allowance of Claims resulting therefrom, and to determine the rights of any party in respect to the assumption or rejection of any Executory Contract or Unexpired Lease;
- (d) To hear and determine any and all adversary proceedings, applications, or contested matters, including relating to the allowance of any Claim;
- (e) To hear and determine all controversies, disputes, and suits which may arise in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan or in connection with the enforcement of any remedies made available under the Plan, including without limitation, (i) adjudication of all rights, interests or disputes relating to any of the Assets, (ii) the valuation of all Collateral, (iii) the determination of the validity of any Lien or claimed right of offset or recoupment; and (iv) determinations of Objections to Contested Claims;

- (f) To liquidate and administer any disputed, contingent, or unliquidated Claims, including the Allowance of all Contested Claims;
- (g) To administer Distributions to holders of Allowed Claims as provided herein;
- (h) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;
- (i) To enable the Reorganized Debtor to prosecute any and all proceedings which may be brought to set aside transfers, Liens or encumbrances and to recover any transfers, Assets, properties or damages to which the Reorganized Debtor may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws, including causes of action, controversies, disputes and conflicts between the Reorganized Debtor and any other party, including but not limited to, any causes of action or Objections to Claims, preferences or fraudulent transfers and obligations or equitable subordination;
- (j) To consider any modification of the Plan pursuant to section 1127 of the Bankruptcy Code, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation the Confirmation Order;
- (k) To enforce the discharge and Plan Injunction against any Person;
- (l) To enter and implement all such orders as may be necessary or appropriate to execute, interpret, construe, implement, consummate, or enforce the terms and conditions of this Plan and the transactions required or contemplated pursuant thereto;
- (m) To hear and determine any motion or application which the Reorganized Debtor is required or allowed to commence before the Bankruptcy Court pursuant to this Plan;
- (n) To hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Plan;
- (o) To determine proceedings pursuant to section 505 of the Bankruptcy Code;
- (p) To enter a final decree closing the Chapter 11 Cases; and
- (q) To determine any other matter or dispute relating to the Estate, the Estate Claims, the Estate Defenses, the Assets, or the Distributions by the Reorganized Debtor.

15.02. Abstention and Other Courts. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of or relating to the Chapter 11 Cases, this Article of the Plan shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

15.03. Non-Material Modifications. The Reorganized Debtor may, with the approval of the Bankruptcy Court and without notice to all holders of Claims and Interests, correct any defect, omission, or inconsistency in the Plan in such manner and to such extent as may be necessary or desirable. The Reorganized Debtor may undertake such nonmaterial modification pursuant

to this section insofar as it does not adversely change the treatment of the Claim of any Creditor or the Interest of any Interest holder who has not accepted in writing the modification.

15.04. Material Modifications. Modifications of this Plan may be proposed in writing by the Chapter 11 Trustee at any time before confirmation, provided that this Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Chapter 11 Trustee shall have complied with section 1125 of the Bankruptcy Code. This Plan may be modified at any time after confirmation and before its Substantial Consummation, provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as modified, under section 1129 of the Bankruptcy Code, and the circumstances warrant such modification. A holder of a Claim or Interest that has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

ARTICLE XVI. MISCELLANEOUS PROVISIONS

16.01. Severability. Should the Bankruptcy Court determine any provision of the Plan is unenforceable either on its face or as applied to any Claim or Interest or transaction, the Reorganized Debtor may modify the Plan so that any such provision shall not be applicable to the holder of any Claim or Interest. Such a determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of the Plan or (b) require the resolicitation of any acceptance or rejection of the Plan.

16.02. Oral Agreements; Modification of Plan; Oral Representations or Inducements. The terms of the Plan, Disclosure Statement and Confirmation Order may only be amended in writing and may not be changed, contradicted or varied by any oral statement, agreement, warranty or representation. None of the Debtors, any representative of the Estate, including Robin Phelan in his capacity as Chapter 11 Trustee, nor their attorneys have made any representation, warranty, promise or inducement relating to the Plan or its confirmation except as expressly set forth in this Plan, the Disclosure Statement, or the Confirmation Order or other order of the Bankruptcy Court.

16.03. Waiver. The Reorganized Debtor shall not be deemed to have waived any right, power or privilege pursuant to the Plan unless the waiver is in writing and signed by the Reorganized Debtor. There shall be no waiver by implication, course of conduct or dealing, or through any delay or inaction by the Reorganized Debtor, of any right pursuant to the Plan, including the provisions of this anti-waiver section. The waiver of any right under the Plan shall not act as a waiver of any other or subsequent right, power or privilege.

16.04. Notice. Any notice or communication required or permitted by the Plan shall be given, made or sent as follows:

(a) If to a Creditor, notice may be given as follows: (i) if the Creditor has not filed a proof of Claim, then to the address reflected in the Schedules, or (ii) if the Creditor has filed a proof of Claim, then to the address reflected in the proof of Claim.

(b) If to the Reorganized Debtor, notice shall be sent to the following addresses:

Jeff P. Prostok
Suzanne K. Rosen
Forshey Prostok LLP
777 Main Street, Suite 1290
Fort Worth, Texas 76102

Josh Terry
c/o Brian P. Shaw
Rogge Dunn Group, PC
1201 Elm Street, Suite 5200
Dallas, Texas 75270

(c) Any Creditor desiring to change its address for the purpose of notice may do so by giving notice to the Reorganized Debtor of its new address in accordance with the terms of this section.

(d) Any notice given, made or sent as set forth above shall be effective upon being (i) deposited in the United States Mail, postage prepaid, addressed to the addressee at the address as set forth above; (ii) delivered by hand or messenger to the addressee at the address set forth above; (iii) telecopied to the addressee as set forth above, with a hard confirmation copy being immediately sent through the United States Mail; or (iv) delivered for transmission to an expedited or overnight delivery service such as FedEx.

16.05. Compliance with All Applicable Laws. If notified by any governmental authority that it is in violation of any applicable law, rule, regulation, or order of such governmental authority relating to its business, the Reorganized Debtor shall comply with such law, rule, regulation, or order; provided, however, that nothing contained herein shall require such compliance if the legality or applicability of any such requirement is being contested in good faith in appropriate proceedings and, if appropriate, an adequate Reserve has been set aside on the books of the Reorganized Debtor.

16.06. Duties to Creditors; Exculpation. Neither the Chapter 11 Trustee nor any agent, representative, accountant, financial advisor, attorney, shareholder, officer, affiliate, member or employee of the Chapter 11 Trustee or the Debtors, including but not limited to Estate Professionals (collectively, the "Exculpated Parties"), shall ever owe any duty to any Person (including any Creditor) other than the duties owed to the Debtors' bankruptcy Estate, for any act, omission, or event in connection with, or arising out of, or relating to, any of the following: (a) the Debtors' Chapter 11 Cases, including all matters or actions in connection with or relating to the administration of the Estate, (b) the Plan, including the proposal, negotiation, confirmation and consummation of the Plan, or (c) any act or omission relating to the administration of the Plan after the Effective Date. All such Exculpated Parties shall be fully exculpated and released from any and all claims and causes of action by any Person, known or unknown, in connection with, or arising out of, or relating to, any of the following: (x) the Debtors' Chapter 11 Cases, including all matters or actions in connection with or relating to the administration of the Estate, (y) the Plan, including the proposal, negotiation, confirmation and consummation of the Plan, or (z) any act or omission relating to the administration of the Plan after the Effective Date, except for claims and causes of action arising out of such Exculpated Party's gross negligence or willful misconduct.

16.07. Binding Effect. The Plan shall be binding upon, and shall inure to the benefit of, the Reorganized Debtor, the holders of the Claims or Liens, and their respective successors-in-interest and assigns.

16.08. Governing Law, Interpretation. Unless a rule of law or procedure supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) is applicable, the internal laws of the State of Texas shall govern the construction and implementation of the Plan and any Plan

Documents without regard to conflicts of law. The Plan shall control any inconsistent term or provision of any other Plan Documents.

16.09. Payment of Statutory Fees. All accrued U.S. Trustee Fees as of the Confirmation Date shall be paid by the Reorganized Debtor on or as soon as practicable after the Effective Date, and thereafter shall be paid by the Reorganized Debtor as such statutory fees become due and payable.

16.10. Filing of Additional Documents. On or before Substantial Consummation of the Plan, the Reorganized Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

16.11. Computation of Time. Bankruptcy Rule 9006 shall apply to the calculation of all time periods pursuant to this Plan. If the final day for any Distribution, performance, act or event under the Plan is not a Business Day, then the time for making or performing such Distribution, performance, act or event shall be extended to the next Business Day. Any payment or Distribution required to be made hereunder on a day other than a Business Day shall be due and payable on the next succeeding Business Day.

16.12. Elections by the Reorganized Debtor. Any right of election or choice granted to the Reorganized Debtor under this Plan may be exercised, at the Reorganized Debtor's election, separately as to each Claim, Creditor or Person.

16.13. Release of Liens. Except as otherwise expressly provided in this Plan or the Confirmation Order, all Liens against any of the Assets transferred to and vested in the Reorganized Debtor shall be deemed to be released, terminated and nullified without the necessity of any order by the Bankruptcy Court other than the Confirmation Order.

16.14. Rates. The Plan does not provide for the change of any rate that is within the jurisdiction of any governmental regulatory commission after the occurrence of the Effective Date.

16.15. Compliance with Tax Requirements. In connection with the Plan, the Reorganized Debtor shall comply with all withholding and reporting requirements imposed by federal, state and local Taxing Authorities and all Distributions under the Plan shall be subject to such withholding and reporting requirements. Notwithstanding the above, each holder of an Allowed Claim or Interest that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution under the Plan.

16.16. Notice of Occurrence of the Effective Date. Promptly after occurrence of the Effective Date, the Reorganized Debtor, as directed by the Bankruptcy Court, shall serve on all known parties-in-interest and holders of Claims and Interests, notice of the occurrence of the Effective Date.

16.17. Notice of Entry of Confirmation Order. Promptly after entry of the Confirmation Order, the Chapter 11 Trustee, as directed by the Bankruptcy Court in the Confirmation Order, shall serve on all known parties-in-interest and holders of Claims and Interests, notice of entry of the Confirmation Order.

Dated: October 25, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

APPROVED:

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EXHIBIT A

TO THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC

[ESTATE CLAIMS]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in

control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of

HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Highland Affiliate Claims. All Estate Claims against any Affiliates of Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against any Affiliates of Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Highland Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Highland Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets

owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Highland Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Highland Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, Neutra, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Highland Affiliate as to any Person, including as against any other Affiliates of Highland or any officers, directors, equity interest holders, or Persons otherwise in control of any Highland Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any

unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved, retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Retention of Claims Against Specific Persons or Categories of Persons. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:

- (a) William Scott;
- (b) Heather Bestwick;
- (c) Any other Person who may be so named at a later date by the Reorganized Debtor.

16. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

17. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

18. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

19. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

20. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

21. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Second Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT		PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
		Payments within 90 Days of Petition Date	Days of Petition Date		
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017		\$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017		\$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017		\$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017		\$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017		\$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017		\$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017		\$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017		\$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Uglund House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017		\$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date					
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017		\$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017		\$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017		\$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017		\$438,497.51	Services

Second Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	\$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	\$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	\$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	\$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	\$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	\$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	\$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	\$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	\$967,223.91	Contractual Payment

EXHIBIT B

TO THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC

[EXECUTORY CONTRACTS ASSUMED UNDER THE PLAN]

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2013-1 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2013-1, Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	March 18, 2013	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Collateral Administration Agreement	March 18, 2013	\$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	March 18, 2013	\$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Indenture	March 18, 2013	\$0
Acis CLO 2013-1 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	March 18, 2013	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Indenture	March 18, 2013	\$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Supplemental Indenture	February 26, 2014	\$0
Acis CLO 2013-1 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Supplemental Indenture	February 26, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Supplemental Indenture	February 26, 2014	\$0
Acis CLO 2013-1, Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Governing Documents (Requested from HCM)	--	\$0
Acis CLO 2013-2 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement (requested from HCM)	--	\$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Limited Liability Company Agreement (requested from HCM)	--	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	October 3, 2013	\$0
The Bank of New York Mellon Trust Co., N.A. 601 Travis Street, 16th Floor Houston, Texas 77002 Attn: Global Corporate Trust – Acis CLO 2013-2	Collateral Administration Agreement	October 3, 2013	\$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	October 3, 2013	\$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Indenture	October 3, 2013	\$0
Acis CLO 2013-2 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	October 3, 2013	\$0
The Bank of New York Mellon Trust Co., N.A. 601 Travis Street, 16th Floor Houston, Texas 77002 Attn: Global Corporate Trust – Acis CLO 2013-2	Indenture	October 3, 2013	\$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Governing Document (requested from HCM)	--	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2014-3 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	February 25, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-3	Collateral Administration Agreement	February 25, 2014	\$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	February 25, 2014	\$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	February 25, 2014	\$0
Acis CLO 2014-3 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	February 25, 2014	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-3	Indenture	February 25, 2014	\$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Memorandum and Articles of Association of Acis CLO 2014-3 Ltd.	December 24, 2013	\$0
Acis CLO 2014-4 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Collateral Administration Agreement	June 5, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-4	Collateral Administration Agreement	June 5, 2014	\$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	June 5, 2014	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	June 5, 2014	\$0
Acis CLO 2014-4 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	June 5, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-4	Indenture	June 5, 2014	\$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Island KY1-1102	Memorandum and Articles of Association of Acis CLO 2014-4 Ltd.	April 1, 2014	\$0
Acis CLO 2014-5 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	November 18, 2014	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-5	Collateral Administration Agreement	November 18, 2014	\$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	November 18, 2014	\$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	November 18, 2014	\$0
Acis CLO 2014-5 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	November 18, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-5	Indenture	November 18, 2014	\$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Memorandum and Articles of Association of Acis CLO 2014-5 Ltd.	August 21, 2014	\$0
Acis CLO 2015-6 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Limited Liability Company Agreement	October 28, 2016	\$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	April 16, 2015	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Collateral Administration Agreement	April 16, 2015	\$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	April 16, 2015	\$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	April 16, 2015	\$0
Acis CLO 2015-6 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	April 16, 2015	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Indenture	April 16, 2015	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2015-6 Ltd. P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, KY1-1102, Cayman Islands	Memorandum and Articles of Association of Acis CLO 2015-6 Ltd.	February 11, 2015	\$0
Acis CLO Value Fund II (Cayman), LP. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value Fund II GP, LLC P.O. Box. 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value Fund II, LP. 300 Crescent Court Suite 700 Dallas, TX 75201	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value GP, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	July 19, 2010	\$0
Acis CLO Value Master Fund II, LP. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value Fund II (Cayman), L.P. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	\$0
Acis CLO Value Master Fund II, L.P. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	\$0
Acis Loan Funding, Ltd. 300 Crescent Court Suite 700 Dallas, TX 75201	FATCA and Non-FATCA Services Agreement	June 23, 2017	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
BayVK R2 Lux S.A., SICAV FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	\$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	\$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	\$0
BNP Paribas Securities Services Luxembourg Branch 60 Avenue John F. Kennedy 1855 Luxembourg	Power of Attorney 86578	February 20, 2015	\$0
Hewett's Island CLO 1-R, Ltd. <i>c/o</i> Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Confidentiality Agreement	April 11, 2011	\$0
Hewett's Island CLO 1-R, Ltd. <i>c/o</i> Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Governing Documents (Requested from HCM)	--	\$0
Hewett's Island CLO 1-R, Ltd. <i>c/o</i> Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Management Agreement	July 18, 2011	\$0
Hewett's Island CLO 1-R, Ltd. <i>c/o</i> Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement (Requested from HCM)	November 20, 2007	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Hewett's Island CLO 1-R, Ltd. c/o Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Indenture	November 20, 2007	\$0
Deutsche Bank Trust Company Americas 1761 East St. Andrew Place Santa Ana, CA 92705 Attn: CDO Business Unit – Hewett's Island CLO 1-R	Indenture	November 20, 2007	\$0
State Street (Guernsey Limited) First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey	FATCA and Non-FATCA Services Agreement	June 23, 2017	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Confidentiality Agreement	March 5, 2014	\$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	\$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	\$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	\$0
Acis Loan Funding, Ltd. First Floor, Dorey Court St. Peter Port, Guernsey GY1 6HJ Channel Islands	Portfolio Management Agreement	December 22, 2016	\$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis Capital Management, LP c/o PHELANLAW 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Agreement of Limited Partnership	January 21, 2011	\$0
Acis Capital Management GP, LLC c/o PHELANLAW 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Limited Liability Company Agreement	January 21, 2011	\$0

For the avoidance of doubt, to the extent not otherwise included above, the Trustee intends to assume any additional executory contracts that relate to the funds set forth below as may be necessary or beneficial to the Reorganized Debtor under the Plan:

1. Acis CLO 2013-1, Ltd.
2. Acis CLO 2013-2, Ltd.
3. Acis CLO 2014-3, Ltd.
4. Acis CLO 2014-4, Ltd.
5. Acis CLO 2014-5, Ltd.
6. Acis CLO 2015-6, Ltd.
7. Acis CLO Value Fund II, L.P.
8. Acis CLO Value Fund II (Cayman), L.P.
9. Acis CLO Master Fund II, L.P.
10. BayVK R2 Lux S.A., SICAV FIS
11. Hewitt's Island CLO 1-R, Ltd.
12. Acis Loan Funding, Ltd.

The Trustee reserves the right to amend or supplement this Exhibit B.

EXHIBIT “2”

**[First Modification to the Third Amended Joint Plan for Acis
Capital Management, L.P. and Acis Capital Management GP,
LLC – Dkt. No. 693]**

Rakhee V. Patel – State Bar No. 00797213
 Phillip Lamberson – State Bar No. 00794134
 Joe Wielebinski – State Bar No. 21432400
 Annmarie Chiarello – State Bar No. 24097496

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 ROBIN PHELAN, CHAPTER 11 TRUSTEE**

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**COUNSEL FOR ROBIN PHELAN,
 CHAPTER 11 TRUSTEE**

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

IN RE:

ACIS CAPITAL MANAGEMENT, L.P.,
 ACIS CAPITAL MANAGEMENT GP, LLC,

Debtors.

§
 § CHAPTER 11 CASES
 §
 § CASE NO. 18-30264-sgj11
 § (Jointly Administered)
 §
 §

**FIRST MODIFICATION TO THE THIRD AMENDED JOINT PLAN FOR
 ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC**

Robin Phelan (“Trustee”), the Chapter 11 Trustee for Acis Capital Management, LP and Acis Capital Management GP, LLC (the “Debtors”), files this First Modification (the “First Modification”) to the *Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 660] (the “Plan”).

- Reference is here made to the Plan for all purposes. This First Modification modifies the Plan.
- Modification to Section 1.09.** Section 1.09 of the Plan is hereby modified to read

as follows:

1.09 “Assets” includes all right, title, and interest in and to all property of every type or nature owned or claimed by the Debtors as of the Petition Date, together with all such property of every type or nature subsequently acquired by the Debtors through the Effective Date, whether real or personal, tangible or intangible, and wherever located, and including, but not limited to, property as defined in section 541 of the Bankruptcy Code.

3. The change to section 1.09 above merely corrects a typographical error in the definition of the term “Assets.” Specifically, the revised definition removes the incomplete phrase “Without limiting the foregoing, this shall include all” from the end of the definition of Assets.

4. **Modification to Exhibit “A”**. The copy of the Exhibit “A” reflecting Estate Claims is hereby deleted in its entirety and replaced with the version of the “Exhibit A” attached hereto as **Exhibit “1.”**

5. A copy of the document reflecting the modifications to Exhibit A to the Plan in redline format is attached hereto as **Exhibit “2.”**

6. This First Modification is a non-material change. It merely corrects a typographical error and revises the Estate Claims being reserved, retained and preserved under the Plan. Further, even if this First Modification were deemed material, it does not adversely affect any creditor because no ballots have yet been received in relation to the Plan and this First Modification is being sent to all creditors and parties in interest eighteen (18) days in advance of the deadline for parties to submit ballots and any objections to the Plan. Consequently, creditors and parties in interest will have an adequate opportunity to evaluate this modification prior to voting on the Plan.

Dated: November 8, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

APPROVED:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and the attached exhibits were served electronically via the Court’s Electronic Court Filing (ECF) notification system and via U.S. Mail, postage prepaid (and via Express Mail to out of country recipients) on the parties on the service lists attached as **Exhibit “3”** hereto on November 8, 2018.

/s/ Jeff P. Prostok
Jeff P. Prostok

Exhibit “1”

[Revised Exhibit “A” to the
Third Amended Joint Plan]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum meruit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Highland Affiliate Claims. All Estate Claims against any Affiliates of Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against any Affiliates of Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Highland Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Highland Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Highland Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Highland Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, Neutra, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Highland Affiliate as to any Person, including as against any other Affiliates of Highland or any officers, directors, equity interest holders, or Persons otherwise in control of any Highland Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all

Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved, retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

- (a) Cole Schotz, P.C.
- (b) Michael D. Warner
- (c) Jacob Frumkin
- (d) Warren A. Usatine
- (e) McKool Smith
- (f) Gary Cruciani
- (g) Michael Fritz
- (h) Carson Young
- (i) Lackey Hershman, LLP
- (j) Stinson Leonard Street LLP
- (k) Paul Lackey, Esq.
- (l) Michael Aigen, Esq.
- (m) Abrams & Bayliss, LLP
- (n) Kevin G. Abrams
- (o) A. Thompson Bayliss
- (p) Jones Day
- (q) Hilda C. Galvan
- (r) Michael Weinberg
- (s) Reid Collins & Tsai, LLP
- (t) Lisa Tsai
- (u) Stanton, LLP
- (v) James M. Stanton
- (w) Hunton Andrews Kurth
- (x) Marc Katz
- (y) Greg Waller
- (z) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

16. Retention of Claims Against Specific Persons or Categories of Persons. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:

- (a) William Scott;
- (b) Heather Bestwick;
- (c) Any other Person who may be so named at a later date by the Reorganized Debtor.

17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT		PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
		Payments within 90 Days of Petition Date			
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017		\$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017		\$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017		\$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017		\$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017		\$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017		\$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017		\$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017		\$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Uglund House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017		\$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date					
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017		\$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017		\$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017		\$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017		\$438,497.51	Services

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	\$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	\$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	\$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	\$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	\$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	\$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	\$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	\$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	\$967,223.91	Contractual Payment

Exhibit “2”

[Redline – Plan Exhibit “A”]

**EXHIBIT “A”
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC**

1. Defined Terms. This Exhibit “A” constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit “A”. The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit “A”.

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term “Estate Claims,” shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the “Highland Adversary”) and Adversary Proceeding No. 18-03212-sgj (the “Trustee’s Adversary”). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee’s Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. (“CLO Holdco”) are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee’s Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee’s Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors’ property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Highland Affiliate Claims. All Estate Claims against any Affiliates of Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against any Affiliates of Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Highland Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Highland Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Highland Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Highland Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, Neutra, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Highland Affiliate as to any Person, including as against any other Affiliates of Highland or any officers, directors, equity interest holders, or Persons otherwise in control of any Highland Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all

Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved, retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

- (a) Cole Schotz, P.C.
- (b) Michael D. Warner
- (c) Jacob Frumkin
- (d) Warren A. Usatine
- (e) McKool Smith
- (f) Gary Cruciani
- (g) Michael Fritz
- (h) Carson Young
- (i) Lackey Hershman, LLP
- (j) Stinson Leonard Street LLP
- (k) Paul Lackey, Esq.
- (l) Michael Aigen, Esq.
- (m) Abrams & Bayliss, LLP
- (n) Kevin G. Abrams
- (o) A. Thompson Bayliss
- (p) Jones Day
- (q) Hilda C. Galvan
- (r) Michael Weinberg
- (s) Reid Collins & Tsai, LLP
- (t) Lisa Tsai
- (u) Stanton, LLP
- (v) James M. Stanton
- (w) Hunton Andrews Kurth
- (x) Marc Katz
- (y) Greg Waller
- (z) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

15.16. Retention of Claims Against Specific Persons or Categories of Persons. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:

- (a) William Scott;
- (b) Heather Bestwick;
- (c) Any other Person who may be so named at a later date by the Reorganized Debtor.

16.17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

17.18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

18.19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

19.20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

20.21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity

interest owners of the Debtors, Highland, or any Affiliates thereof.

21.22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT		PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
		Payments within 90 Days of Petition Date			
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017		\$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017		\$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017		\$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017		\$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017		\$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017		\$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017		\$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017		\$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Uglund House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017		\$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date					
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017		\$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017		\$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017		\$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017		\$438,497.51	Services

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	\$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	\$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	\$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	\$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	\$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	\$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	\$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	\$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	\$967,223.91	Contractual Payment

Exhibit “3”

[Service Lists]

**Notice Service List
Acis Capital Mgmt./Phelan
#5980**

**BNP Paribas Securities Services
Luxembourg Branch
60 Avenue John F. Kennedy
1855 Luxembourg**

United States Trustee
Lisa Lambert
1100 Commerce St., Room 976
Dallas, TX 75242

Acis CLO 2013-1 Chemical Holdings, LLC
Acis CLO 2013-2 Chemical Holdings, LLC
Acis CLO 2014-3 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Dallas County
c/o Laurie Spindler
Linebarger, Goggan, Blair & Sampson LLP
2777 N Stemmons Frwy, No 1000
Dallas, TX 75207-2328

Dallas County
c/o Sherrel K Knighton
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemmons Frwy Ste 1000
Dallas, TX 75207-2328

Acis CLO 2014-4 Chemical Holdings, LLC
Acis CLO 2014-5 Chemical Holdings, LLC
Acis CLO 2015-6 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Acis CLO Management, LLC
Acis CLO Value GP, LLC
1209 Orange Street
Wilmington, DE 19801-1120

**Acis CLO Value Fund II (Cayman), L.P.
Acis CLO Value Fund II GP, LLC
Acis CLO Value Master Fund II, L.P.
PO Box 309, Ugland House
Grand Cayman, Cayman Islands KY1-1104**

Acis CLO Value Fund II, L.P.
Acis Loan Funding, Ltd.
Acis Capital Management GP, LLC
300 Crescent Court, Suite 700
Dallas, TX 75201-7849

**Acis Funding GP, Ltd.
Acis Funding L.P.
c/o Maples Corporate Services Limited
P0 Box 309, Ugland House
Grand Cayman, Cayman Islands KY1-1104**

**CLO Holcco, Ltd.
c/o Intertrust Corp. Svcs. (Cayman) Ltd.
190 Elgin Ave., George Town
Grand Cayman, Cayman Islands KY1-9005**

**State Street (Guernsey) Limited
First Floor Dorey Court
Admiral Park, St. Peter Port, Guernsey**

Mizuho Securities USA Inc.
320 Park Ave., 12th Floor
New York, NY 10022-6848

U. S. Bank National Association
Attn: Michael Zak
60 Livingston Ave., EP-MN-WS3D
Saint Paul, MN 55107-2292

The Dugaboy Investment Trust
300 Crescent Court, Suite 700
Dallas, TX 75201-1876

US Bank National Association
c/o Daniel P. Novakov
Frost Brown Todd LLC
100 Crescent Court, Suite 350
Dallas, TX 75201-2348

US Bank National Association
c/o Mark D. Kotwick, Arlene Alves
Seward & Kissell LLP
One Battery Park Plaza
New York, NY 10004-1405

Acis Capital Management, LP
c/o Michael D. Warner
Cole Schotz P.C.
1700 City Center Tower II
301 Commerce St.
Fort Worth, TX 76102-4140

Robin Phelan, Chapter 11 Trustee
Phelenlaw
4214 Woodfin Drive
Dallas, TX 75220-6416

Acis Capital Management, LP
c/o Warren A. Usatine
Cole Schotz P.C.
25 Main Street
Hackensack, NJ 07601-7189

The Bank of N.Y. Mellon Trust Co., N.A.
225 Liberty Street
New York, NY 10286-0001

Texas Comptroller of Public Accounts
c/o John M. Stern, Asst. Attorney General
Bankruptcy & Collection Div. MC 008
PO Box 12548
Austin, TX 78711-2548

Securities and Exchange Commission
801 Cherry Street, Suite 1900, Unit 18
Fort Worth, TX 76102

**BayVK R2 Lux S.A., SICAV-FIS
15 Rue de Flaxweiler
L-6776 Grevenmacher
Luxembourg**

Office of the United States Attorney
3rd Floor, 1100 Commerce Street
Dallas, Texas 75242-1699

Office of the Attorney General
Main Justice Building, Room 5111
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Internal Revenue Service
Special Procedures – Insolvency
P.O. Box 7346
Philadelphia, PA 1901-7346

Noteholders List

[Confidential]

**Creditors Service List
Acis Capital Mgmt./Phelan
#5980**

Class 2

Joshua N. Terry
25 Highland Park Village
Suite 100-848
Dallas, TX 75205-2726

Joshua N. Terry
c/o Brian P. Shaw/John M. Lynch
Rogge Dunn Group, PC
1201 Elm St., Suite 5200
Dallas, TX 75270

Joshua N. Terry
350 9 Princeton Ave.
Dallas, TX 75205-3246

Class 3

Andrews Kurth Kenyon LLP
600 Travis, Suite 4200
Houston, TX 77002-2929

CSI Global Deposition Services
4950 N. O'Connor Road, Suite 152
Irving, TX 75062 - 2778

CT Corporation
P0 Box 4349
Carol Stream, IL 60197-4349

Case Anywhere LLC
21860 Burbank Blvd., Suite 125
Woodland Hills, CA 91367-7447

David Langford
1321 Indian Creek
DeSoto, TX 75115-3652

David Simek
31 Woodacres Road
Brookville, NY 11545-2911

Drexel Limited
309 23rd Street, #340
Miami Beach, FL 33139-1700

Elite Document Technology
400 N. Saint Paul St., Suite 1300
Dallas, TX 75201-6881

Highfield Equities, Inc.
3131 McKinney Ave., Suite 215
Dallas, TX 75204-2421

JAMS, Inc.
18881 Von Karman Ave., Suite 350
Irvine, CA 92612-6589

Jones Day
2727 N. Harwood Street
Dallas, TX 75201-1568

Lackey Hershman LLP
3102 Oak Lawn Ave., Suite 777
Dallas, TX 75219-4259

KPMG LLP (USA)
Two Financial Center
60 South Street
Boston, MA 02111-2759

KPMG LLP
2323 Ross Ave., Suite 1400
Dallas, TX 75201-2721

KPMG LLP
Aon Center
200 E. Randolph St., Suite 5500
Chicago, IL 60601-6607

McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201-6970

Reid Collins & Tsai, LLP
Building C, Suite 300
1301 S. Capital of Texas Highway
Austin, TX 78746-6550

Stanton Advisors LLC
300 Coles St., Apt. 802
Jersey City, NJ 07310-1047

EXHIBIT “3”

**[Second Modification to the Third Amended Joint Plan for
Acis Capital Management, L.P. and Acis Capital Management
GP, LLC – Dkt. No. 702]**

modifies the Plan.

2. **Modification to Exhibit “A”**. The copy of the Exhibit “A” reflecting Estate Claims is hereby deleted in its entirety and replaced with the version of the “Exhibit A” attached hereto as **Exhibit “1.”**

3. A copy of the document reflecting the modifications to Exhibit A to the Plan in redline format is attached hereto as **Exhibit “2.”**

4. This Second Modification is a non-material change. It merely revises the Estate Claims being reserved, retained and preserved under the Plan. Further, even if this First Modification were deemed material, it is being sent to all creditors and parties in interest ten (10) days in advance of the deadline for parties to submit ballots and any objections to the Plan. Consequently, creditors and parties in interest will have an adequate opportunity to evaluate this modification prior to voting on the Plan or to change their previous acceptance or rejection upon consideration of the modification.

Dated: November 16, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

APPROVED:

/s/ Jeff P. Prostok

Jeff P. Prostok – State Bar No. 16352500
J. Robert Forshey – State Bar No. 07264200
Suzanne K. Rosen – State Bar No. 00798518
Matthew G. Maben – State Bar No. 24037008

FORSHEY & PROSTOK LLP

777 Main St., Suite 1290
Ft. Worth, TX 76102
Telephone: (817) 877-8855
Facsimile: (817) 877-4151
jprostok@forsheyprostok.com
bforshey@forsheyprostok.com
srosen@forsheyprostok.com
mmaben@forsheyprostok.com

**COUNSEL FOR ROBIN PHELAN,
CHAPTER 11 TRUSTEE**

APPROVED:

/s/ Rahkee V. Patel

Rakhee V. Patel – State Bar No. 00797213
Phillip Lamberson – State Bar No. 00794134
Joe Wielebinski – State Bar No. 21432400
Annmarie Chiarello – State Bar No. 24097496

WINSTEAD PC

500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 745-5400
Facsimile: (214) 745-5390
rpatel@winstead.com
plamberson@winstead.com
jwielebinski@winstead.com
achiarello@winstead.com

**SPECIAL COUNSEL FOR ROBIN
PHELAN, CHAPTER 11 TRUSTEE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and the attached exhibits were served electronically via the Court’s Electronic Court Filing (ECF) notification system and via U.S. Mail, postage prepaid (and via Express Mail to out of country recipients) on the parties on the service lists attached as **Exhibit “3”** hereto on November 16, 2018.

/s/ Jeff P. Prostok

Jeff P. Prostok

Exhibit “1”

[Revised Exhibit “A” to the
Third Amended Joint Plan]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Claims Against Any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. All Estate Claims against any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates (collectively, the "Affiliates" and each, an "Affiliate") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against such Affiliates shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of

the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Affiliate as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any officers, directors, equity interest holders, or Persons otherwise in control of any Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other

Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved, retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which

rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

- (a) Cole Schotz, P.C.
- (b) Michael D. Warner
- (c) Jacob Frumkin
- (d) Warren A. Usatine
- (e) McKool Smith
- (f) Gary Cruciani
- (g) Michael P. Fritz
- (h) Carson D. Young
- (i) Nicholas Matthews
- (j) Lackey Hershman, LLP
- (k) Stinson Leonard Street LLP
- (l) Jamie R. Welton
- (m) Paul B. Lackey
- (n) Michael Aigen
- (o) Roger L. Mandel
- (p) Abrams & Bayliss, LLP
- (q) Kevin G. Abrams
- (r) A. Thompson Bayliss
- (s) Jones Day
- (t) Hilda C. Galvan
- (u) Michael Weinberg
- (v) Reid Collins & Tsai, LLP
- (w) Lisa Tsai
- (x) Stanton, LLP
- (y) James M. Stanton

- (z) Hunton Andrews Kurth
- (aa) Marc Katz
- (bb) Greg Waller
- (cc) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

16. Claims Against Officers, Directors, Employees, Members, and Managers, of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates, including all such Estate Causes of Action based on fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act. Such present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates include, but are not limited to, the following Persons:

- (a) William Scott;
- (b) Heather Bestwick;
- (c) Scott Ellington
- (d) Isaac Leventon
- (e) Jean Paul Sevilla
- (f) Hunter Covitz
- (g) The Dugaboy Investment Trust
- (h) Nancy Dondero, Trustee of the Dugaboy Trust
- (i) Grant Scott
- (j) Any other Person who may be so named at a later date by the Reorganized Debtor.

17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Exhibit “2”

[Redline – Plan Exhibit “A”]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum meruit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

- (a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;
- (b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;
- (c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. **Neutra, Ltd. Claims.** All Estate Claims against Neutra, Ltd. ("**Neutra**") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. ~~Highland Affiliate Claims Against Any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates.~~ All Estate Claims against any Affiliates of Highland, ~~HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates (collectively, the "Affiliates" and each, an "Affiliate")~~ are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against ~~any such Affiliates of Highland~~ shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any ~~Highland~~ Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any ~~Highland~~ Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any ~~Highland~~ Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any ~~Highland~~ Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any ~~Highland~~ Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any ~~Highland~~ Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, or any the Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any ~~Highland~~ Affiliate as to any Person, including as against ~~any other Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates of Highland, James D. Dondero, Mark K. Okada,~~ or any officers, directors, equity interest holders, or Persons otherwise in control of any ~~Highland~~ Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due

care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved, retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims

for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

- (a) Cole Schotz, P.C.
- (b) Michael D. Warner
- (c) Jacob Frumkin
- (d) Warren A. Usatine
- (e) McKool Smith
- (f) Gary Cruciani
- (g) Michael P. Fritz
- (h) Carson D. Young
- (i) Nicholas Matthews
- ~~(j)~~ Lackey Hershman, LLP
- ~~(k)~~ Stinson Leonard Street LLP
- (l) Jamie R. Welton
- ~~(m)~~ Paul B. Lackey, Esq.
- ~~(n)~~ Michael Aigen, Esq.
- (o) Roger L. Mandel
- ~~(p)~~ Abrams & Bayliss, LLP
- ~~(q)~~ Kevin G. Abrams
- ~~(r)~~ A. Thompson Bayliss
- ~~(s)~~ Jones Day
- ~~(t)~~ Hilda C. Galvan
- ~~(u)~~ Michael Weinberg
- ~~(v)~~ Reid Collins & Tsai, LLP
- ~~(w)~~ Lisa Tsai
- ~~(x)~~ Stanton, LLP

~~(v)~~(y) James M. Stanton

~~(w)~~(z) Hunton Andrews Kurth

~~(x)~~(aa) Marc Katz

~~(y)~~(bb) Greg Waller

~~(z)~~(cc) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

~~16. Retention of Claims Against Specific Persons or Categories of Persons. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:~~

16. Claims Against Officers, Directors, Employees, Members, and Managers, of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates, including all such Estate Causes of Action based on fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act. Such present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates include, but are not limited to, the following Persons:

- (a) William Scott;
- (b) Heather Bestwick;
- (c) Scott Ellington
- (d) Isaac Leventon
- (e) Jean Paul Sevilla
- (f) Hunter Covitz
- (g) The Dugaboy Investment Trust
- (h) Nancy Dondero, Trustee of the Dugaboy Trust
- (i) Grant Scott

(i) Any other Person who may be so named at a later date by the Reorganized Debtor.

(-)

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17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Exhibit “3”

[Service Lists]

Notice Service List
Acis Capital Mgmt./Phelan
#5980

BNP Paribas Securities Services
Luxembourg Branch
60 Avenue John F. Kennedy
1855 Luxembourg

United States Trustee
Lisa Lambert
1100 Commerce St., Room 976
Dallas, TX 75242

Acis CLO 2013-1 Chemical Holdings, LLC
Acis CLO 2013-2 Chemical Holdings, LLC
Acis CLO 2014-3 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Dallas County
c/o Laurie Spindler
Linebarger, Goggan, Blair & Sampson LLP
2777 N Stemmons Frwy, No 1000
Dallas, TX 75207-2328

Dallas County
c/o Sherrel K Knighton
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemmons Frwy Ste 1000
Dallas, TX 75207-2328

Acis CLO 2014-4 Chemical Holdings, LLC
Acis CLO 2014-5 Chemical Holdings, LLC
Acis CLO 2015-6 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Acis CLO Management, LLC
Acis CLO Value GP, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Acis CLO Value Fund II (Cayman), L.P.
Acis CLO Value Fund II GP, LLC
Acis CLO Value Master Fund II, L.P.
PO Box 309, Uglan House
Grand Cayman, Cayman Islands KY1-1104

Acis CLO Value Fund II, L.P.
Acis Loan Funding, Ltd.
Acis Capital Management GP, LLC
300 Crescent Court, Suite 700
Dallas, TX 75201-7849

Acis Funding GP, Ltd.
Acis Funding L.P.
c/o Maples Corporate Services Limited
P0 Box 309, Uglan House
Grand Cayman, Cayman Islands KY1 -1104

U. S. Bank National Association
Attn: Michael Zak
60 Livingston Ave., EP-MN-WS3D
Saint Paul, MN 55107-2292

State Street (Guernsey) Limited
First Floor Dorey Court
Admiral Park, St. Peter Port, Guernsey
Channel Islands GYI 6HJ

Mizuho Securities USA Inc.
320 Park Ave., 12th Floor
New York, NY 10022-6848

US Bank National Association
c/o Mark D. Kotwick, Arlene Alves
Seward & Kissell LLP
One Battery Park Plaza
New York, NY 10004-1405

Acis Capital Management, LP
c/o Michael D. Warner
Cole Schotz P.C.
1700 City Center Tower II
301 Commerce St.
Fort Worth, TX 76102-4140

US Bank National Association
c/o Daniel P. Novakov
Frost Brown Todd LLC
100 Crescent Court, Suite 350
Dallas, TX 75201-2348

Acis Capital Management, LP
c/o Warren A. Usatine
Cole Schotz P.C.
25 Main Street
Hackensack, NJ 07601-7189

The Bank of N.Y. Mellon Trust Co., N.A.
225 Liberty Street
New York, NY 10286-0001

Robin Phelan, Chapter 11 Trustee
Phelenlaw
4214 Woodfin Drive
Dallas, TX 75220-6416

Securities and Exchange Commission
801 Cherry Street, Suite 1900, Unit 18
Fort Worth, TX 76102

Acis Loan Funding, Ltd.
First Floor, Dorey Court
St. Peter Port, Guernsey

Texas Comptroller of Public Accounts
c/o John M. Stern, Asst. Attorney General
Bankruptcy & Collection Div. MC 008
PO Box 12548
Austin, TX 78711-2548

Office of the Attorney General
Main Justice Building, Room 5111
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Acis CLO 2013-1 LLC
Acis CLO 2013-2 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Office of the United States Attorney
3rd Floor, 1100 Commerce Street
Dallas, Texas 75242-1699

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc., Attn. James Dondero
300 Crescent Court, Suite 700
Dallas, TX 75201

Internal Revenue Service
Special Procedures – Insolvency
P.O. Box 7346
Philadelphia, PA 1901-7346

**Creditors Service List
Acis Capital Mgmt./Phelan
#5980**

Class 2

Joshua N. Terry
25 Highland Park Village
Suite 100-848
Dallas, TX 75205-2726

Joshua N. Terry
c/o Brian P. Shaw/John M. Lynch
Rogge Dunn Group, PC
1201 Elm St., Suite 5200
Dallas, TX 75270

Joshua N. Terry
350 9 Princeton Ave.
Dallas, TX 75205-3246

Class 3

Andrews Kurth Kenyon LLP
600 Travis, Suite 4200
Houston, TX 77002-2929

CSI Global Deposition Services
4950 N. O'Connor Road, Suite 152
Irving, TX 75062 - 2778

CT Corporation
P0 Box 4349
Carol Stream, IL 60197-4349

Case Anywhere LLC
21860 Burbank Blvd., Suite 125
Woodland Hills, CA 91367-7447

David Langford
1321 Indian Creek
DeSoto, TX 75115-3652

David Simek
31 Woodacres Road
Brookville, NY 11545-2911

Drexel Limited
309 23rd Street, #340
Miami Beach, FL 33139-1700

Elite Document Technology
400 N. Saint Paul St., Suite 1300
Dallas, TX 75201-6881

Highfield Equities, Inc.
3131 McKinney Ave., Suite 215
Dallas, TX 75204-2421

JAMS, Inc.
18881 Von Karman Ave., Suite 350
Irvine, CA 92612-6589

Jones Day
2727 N. Harwood Street
Dallas, TX 75201-1568

Lackey Hershman LLP
3102 Oak Lawn Ave., Suite 777
Dallas, TX 75219-4259

KPMG LLP (USA)
Two Financial Center
60 South Street
Boston, MA 02111-2759

KPMG LLP
2323 Ross Ave., Suite 1400
Dallas, TX 75201-2721

KPMG LLP
Aon Center
200 E. Randolph St., Suite 5500
Chicago, IL 60601-6607

McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201-6970

Reid Collins & Tsai, LLP
Building C, Suite 300
1301 S. Capital of Texas Highway
Austin, TX 78746-6550

Stanton Advisors LLC
300 Coles St., Apt. 802
Jersey City, NJ 07310-1047

Class 4

Highland Capital Management, LP
300 Crescent Court, Suite 700
Dallas, TX 75201-7849

Highland Capital Management, LP
1209 Orange Street
Wilmington, DE 19801-1120

Highland Capital Management, LP
c/o Michael K. Hurst/Ben A. Barnes
Lynn Pinker Cox & Hurst LLP
2100 Ross Ave., Suite 2700
Dallas, TX 75201

Highland Capital Management, LP, Highland
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

EXHIBIT “4”

**[Supplement to Second Modification to the Third Amended
Joint Plan for Acis Capital Management, L.P. and Acis Capital
Management GP, LLC – Dkt. No. 769]**

Rakhee V. Patel – State Bar No. 00797213
Phillip Lamberson – State Bar No. 00794134
Joe Wielebinski – State Bar No. 21432400
Annmarie Chiarello – State Bar No. 24097496

WINSTEAD PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 745-5400
Facsimile: (214) 745-5390
rpatel@winstead.com
plamberson@winstead.com
jwielebinski@winstead.com
achiarello@winstead.com

Jeff P. Prostok – State Bar No. 16352500
J. Robert Forshey – State Bar No. 07264200
Suzanne K. Rosen – State Bar No. 00798518
Matthew G. Maben – State Bar No. 24037008

FORSHEY & PROSTOK LLP
777 Main St., Suite 1290
Ft. Worth, TX 76102
Telephone: (817) 877-8855
Facsimile: (817) 877-4151
jprostok@forsheyprostok.com
bforshey@forsheyprostok.com
srosen@forsheyprostok.com
mmaben@forsheyprostok.com

**COUNSEL FOR ROBIN PHELAN,
CHAPTER 11 TRUSTEE**

**SPECIAL COUNSEL FOR
ROBIN PHELAN, CHAPTER 11 TRUSTEE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
	§	CHAPTER 11 CASES
	§	
ACIS CAPITAL MANAGEMENT, L.P.,	§	CASE NO. 18-30264-sgj11
ACIS CAPITAL MANAGEMENT GP, LLC,	§	(Jointly Administered)
	§	
Debtors.	§	

**SUPPLEMENT TO SECOND MODIFICATION TO THE THIRD AMENDED JOINT
PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND
ACIS CAPITAL MANAGEMENT GP, LLC**

Robin Phelan (“Trustee”), the Chapter 11 Trustee for Acis Capital Management, LP and Acis Capital Management GP, LLC (the “Debtors”), files this Supplement to the Second Modification (the “Second Modification”) to the *Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 660], as modified by the *First Modification to the Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 693] (together, the “Plan”).

1. On November 16, 2018, the Trustee filed the Second Modification. The Second Modification modified the Plan to replace the Exhibit “A,” reflecting Estate Claims, with a revised version of Exhibit A. The Schedule “1” to Exhibit A, which reflects the Estate’s Preference Claims, was not changed from the version attached to the Plan but was inadvertently omitted from the Second Modification. For completeness and to avoid any confusion regarding the Preference Claims being reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, the Second Modification is hereby supplemented with the Schedule “1” to Exhibit “A” to the Plan.

2. A copy of the Schedule “1” is attached hereto as **Exhibit 1**.

3. A copy of the complete Exhibit “A” to the Plan, including Schedule “1,” is attached hereto as **Exhibit “2.”**

4. A redline is not necessary because the attached Schedule “1” is unchanged from the version attached to the Plan and included in the Trustee’s solicitation materials.

Dated: December 10, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By: /s/ Robin Phelan
Robin Phelan
Chapter 11 Trustee

APPROVED:

/s/ Jeff P. Prostok

Jeff P. Prostok – State Bar No. 16352500
J. Robert Forshey – State Bar No. 07264200
Suzanne K. Rosen – State Bar No. 00798518
Matthew G. Maben – State Bar No. 24037008

FORSHEY & PROSTOK LLP

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srosen@forsheyprostok.com
mmaben@forsheyprostok.com

**COUNSEL FOR ROBIN PHELAN,
CHAPTER 11 TRUSTEE**

APPROVED:

/s/ Rahkee V. Patel

Rakhee V. Patel – State Bar No. 00797213
Phillip Lamberson – State Bar No. 00794134
Joe Wielebinski – State Bar No. 21432400
Annmarie Chiarello – State Bar No. 24097496

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rpatel@winstead.com
plamberson@winstead.com
jwielebinski@winstead.com
achiarello@winstead.com

**SPECIAL COUNSEL FOR ROBIN
PHELAN, CHAPTER 11 TRUSTEE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and the attached exhibits were served electronically via the Court’s Electronic Court Filing (ECF) notification system on December 10, 2018.

/s/ Jeff P. Prostok

Jeff P. Prostok

EXHIBIT “1”

Schedule “1” to Exhibit “A” to
Third Amended Plan

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT		PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
		Days of Petition Date			
Payments within 90 Days of Petition Date					
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017		\$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017		\$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017		\$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017		\$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017		\$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017		\$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017		\$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017		\$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Uglan House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017		\$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date					
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017		\$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017		\$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017		\$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017		\$438,497.51	Services

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Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	\$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	\$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	\$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	\$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	\$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	\$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	\$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	\$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	\$967,223.91	Contractual Payment

EXHIBIT “2”

[Exhibit “A” to Third Amended Plan
as Supplemented]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum meruit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. (“Neutra”) are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee’s Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee’s Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Claims for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors’ property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Affiliate as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any officers, directors, equity interest holders, or Persons otherwise in control of any Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other

Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved, retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which

rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

- (a) Cole Schotz, P.C.
- (b) Michael D. Warner
- (c) Jacob Frumkin
- (d) Warren A. Usatine
- (e) McKool Smith
- (f) Gary Cruciani
- (g) Michael P. Fritz
- (h) Carson D. Young
- (i) Nicholas Matthews
- (j) Lackey Hershman, LLP
- (k) Stinson Leonard Street LLP
- (l) Jamie R. Welton
- (m) Paul B. Lackey
- (n) Michael Aigen
- (o) Roger L. Mandel
- (p) Abrams & Bayliss, LLP
- (q) Kevin G. Abrams
- (r) A. Thompson Bayliss
- (s) Jones Day
- (t) Hilda C. Galvan
- (u) Michael Weinberg
- (v) Reid Collins & Tsai, LLP
- (w) Lisa Tsai
- (x) Stanton, LLP
- (y) James M. Stanton

(z) Hunton Andrews Kurth

(aa) Marc Katz

(bb) Greg Waller

(cc) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

16. Claims Against Officers, Directors, Employees, Members, and Managers, of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates, including all such Estate Causes of Action based on fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act. Such present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates include, but are not limited to, the following Persons:

(a) William Scott;

(b) Heather Bestwick;

(c) Scott Ellington

(d) Isaac Leventon

(e) Jean Paul Sevilla

(f) Hunter Covitz

(g) The Dugaboy Investment Trust

(h) Nancy Dondero, Trustee of the Dugaboy Trust

(i) Grant Scott

(j) Any other Person who may be so named at a later date by the Reorganized Debtor.

17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT		PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
		Payments within 90 Days of Petition Date			
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017		\$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017		\$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017		\$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017		\$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017		\$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017		\$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017		\$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017		\$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Uglund House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017		\$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date					
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017		\$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017		\$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017		\$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017		\$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017		\$438,497.51	Services

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME		ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	\$375,855.01	Contractual Payment	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	\$330,249.69	Services	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	\$974,426.41	Services	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$2,809,518.47	Unsecured loan repayments including interest	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	\$581,036.15	Services	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	\$373,167.08	Contractual Payment	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	\$971,603.02	Contractual Payment	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	\$1,339,422.12	Services	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	\$53.41	Expense Reimbursement	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$372,872.82	Contractual Payment	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	\$728,702.26	Services	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	\$501,979.18	Unsecured loan repayments including interest	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$46,648.82	Expense Reimbursement	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	\$67,966.85	Expense Reimbursement	
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	\$967,223.91	Contractual Payment	

EXHIBIT “5”

**[Executory Contracts and Unexpired Leases to be
Assumed by the Trustee]**

EXHIBIT “5”
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	March 18, 2013	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Collateral Administration Agreement	March 18, 2013	\$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	March 18, 2013	\$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	October 3, 2013	\$0
The Bank of New York Mellon Trust Co., N.A. 601 Travis Street, 16th Floor Houston, Texas 77002 Attn: Global Corporate Trust – Acis CLO 2013-2	Collateral Administration Agreement	October 3, 2013	\$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	October 3, 2013	\$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	February 25, 2014	\$0

**EXHIBIT “5”
 Executory Contracts and Unexpired Leases
 to Be Assumed by the Trustee**

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-3	Collateral Administration Agreement	February 25, 2014	\$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	February 25, 2014	\$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Collateral Administration Agreement	June 5, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-4	Collateral Administration Agreement	June 5, 2014	\$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	June 5, 2014	\$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	November 18, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-5	Collateral Administration Agreement	November 18, 2014	\$0

EXHIBIT “5”
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	November 18, 2014	\$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	April 16, 2015	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Collateral Administration Agreement	April 16, 2015	\$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	April 16, 2015	\$0
Acis CLO Value Fund II (Cayman), LP. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value Fund II GP, LLC P.O. Box. 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value Fund II, LP. 300 Crescent Court Suite 700 Dallas, TX 75201	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value GP, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	July 19, 2010	\$0

EXHIBIT “5”
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO Value Master Fund II, LP. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	\$0
Acis CLO Value Fund II (Cayman), L.P. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	\$0
Acis CLO Value Master Fund II, L.P. P.O. Box 309, Uglan House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	\$0
Acis Loan Funding, Ltd. 300 Crescent Court Suite 700 Dallas, TX 75201	FATCA and Non-FATCA Services Agreement	June 23, 2017	\$0
BayVK R2 Lux S.A., SICAV FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	\$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	\$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	\$0
BNP Paribas Securities Services Luxembourg Branch 60 Avenue John F. Kennedy 1855 Luxembourg	Power of Attorney 86578	February 20, 2015	\$0
Hewett's Island CLO 1-R, Ltd. c/o Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Confidentiality Agreement	April 11, 2011	\$0

**EXHIBIT “5”
 Executory Contracts and Unexpired Leases
 to Be Assumed by the Trustee**

Party	Contract Description	Contract Date	Cure Amount
Hewett's Island CLO 1-R, Ltd. c/o Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Governing Documents (Requested from HCM)	--	\$0
Hewett's Island CLO 1-R, Ltd. c/o Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Management Agreement	July 18, 2011	\$0
Hewett's Island CLO 1-R, Ltd. c/o Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement (Requested from HCM)	November 20, 2007	\$0
Hewett's Island CLO 1-R, Ltd. c/o Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	FATCA and Non-FATCA Services Agreement	June 23, 2017	\$0
State Street (Guernsey Limited) First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey	Confidentiality Agreement	March 5, 2014	\$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	\$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	\$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	\$0

EXHIBIT “5”
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis Loan Funding, Ltd. First Floor, Dorey Court St. Peter Port, Guernsey GY1 6HJ Channel Islands	Portfolio Management Agreement	December 22, 2016	\$0
Acis Capital Management, LP c/o PHELANLAW 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Agreement of Limited Partnership	January 21, 2011	\$0
Acis Capital Management GP, LLC c/o PHELANLAW 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Limited Liability Company Agreement	January 21, 2011	\$0

For the avoidance of doubt, to the extent not otherwise included above, the Trustee intends to assume any additional executory contracts that relate to the funds set forth below as may be necessary or beneficial to the Reorganized Debtor under the Plan:

1. Acis CLO 2013-1, Ltd.
2. Acis CLO 2013-2, Ltd.
3. Acis CLO 2014-3, Ltd.
4. Acis CLO 2014-4, Ltd.
5. Acis CLO 2014-5, Ltd.
6. Acis CLO 2015-6, Ltd.
7. Acis CLO Value Fund II, L.P.
8. Acis CLO Value Fund II (Cayman), L.P.
9. Acis CLO Master Fund II, L.P.
10. BayVK R2 Lux S.A., SICAV FIS

EXHIBIT "5"
**Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee**

11. Hewitt's Island CLO 1-R, Ltd.
12. Acis Loan Funding, Ltd.

The Trustee reserves the right to amend or supplement this Exhibit 5.

Exhibit 12

Rakhee V. Patel – State Bar No. 00797213
 Phillip Lamberson – State Bar No. 00794134
 Jason A. Enright – State Bar No. 24087475
 Annmarie Chiarello – State Bar No. 24097496
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COUNSEL FOR REORGANIZED DEBTORS

COUNSEL FOR REORGANIZED DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

In re:	§	Case No. 18-30264-SGJ-11
	§	Case No. 18-30265-SGJ-11
ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	(Jointly Administered Under Case
LLC,	§	No. 18-30264-SGJ-11)
	§	
Debtors.	§	Chapter 11
	§	

ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	
LLC, Reorganized Debtors,	§	
	§	Adversary No. 18-03078
Plaintiffs,	§	
	§	(To be consolidated with Adversary
vs.	§	Nos. 18-03212 & 19-03103)
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P., HIGHLAND CLO FUNDING, LTD.	§	
F/K/A ACIS LOAN FUNDING, LTD.,	§	
HIGHLAND HCF ADVISOR, LTD.,	§	
HIGHLAND CLO MANAGEMENT, LTD.,	§	
and HIGHLAND CLO HOLDINGS, LTD,	§	
	§	
Defendants.	§	

SECOND AMENDED COMPLAINT (INCLUDING CLAIM OBJECTIONS AND OBJECTIONS TO ADMINISTRATIVE EXPENSE CLAIM)

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors" or "Acis")¹ the reorganized debtors in the above-styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), and Plaintiffs in the in the above-styled adversary proceeding (the "Adversary Proceeding"), file this *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)* (this "Second Amended Complaint"), objections to the proofs of claims filed by Highland Capital Management, L.P. ("Highland Capital"), and objections to the administrative expense claim filed by Highland Capital, and respectfully state as follows:²

ANSWER AND AFFIRMATIVE DEFENSES

1. Pursuant to Federal Rule of Civil Procedure 41(a), incorporated by Federal Rule of Bankruptcy Procedure 7041, all claims asserted in the *Original Complaint and Request for Preliminary Injunction of Highland CLO Funding, Ltd. and Highland Capital Management Against Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 1] (the "Original Complaint") by Highland Capital and Highland CLO Funding, Ltd. ("Highland Funding") have been dismissed without prejudice. *See* Adv. No. 18-03078, Docket No. 79. Accordingly, such dismissal of Highland Capital's and Highland Funding's claims obviates the Trustee's, now Acis's, answer and affirmative defenses thereto;

¹ On February 15, 2019, the date upon which the Plan (defined below) became effective, Acis was substituted for Robin Phelan, the Chapter 11 Trustee, in the above-referenced consolidated adversary cases. *See* Case No. 18-30264, Docket Nos. 829, 830, & 863. Prior to the date upon which the Plan (defined below) became effective, Acis may be referred to as the "Debtors."

² As more fully described below in the Procedural Background, this Second Amended Complaint consolidates: (i) claims, counterclaims, third-party claims, and objections to Highland Capital's proofs of claim brought by the Chapter 11 Trustee, now Acis, in this Adversary No. 18-03078; (ii) claims brought by the Chapter 11 Trustee, now Acis, in Adversary No. 18-03212, which has been consolidated under this Adversary Proceeding; and (iii) objections of the Chapter 11 Trustee, now Acis, against Highland Capital's request for an administrative expense claim, which was converted to Adversary No. 19-03103 and was ordered consolidated under this Adversary Proceeding.

however, Acis reserves all rights with respect to answering or asserting affirmative defenses to any future-filed claims by any parties in this Adversary Proceeding.

2. Additionally, pursuant to Federal Rule of Civil Procedure 41(a)(2), such dismissal of Highland Capital's and Highland Funding's claims is without prejudice to any counterclaims asserted by the Trustee, now Acis, in the *Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims* [Adv. No. 18-03078, Docket No. 23] (the "Original Answer"), as may be amended, and such counterclaims remain pending for independent adjudication.

CLAIMS AND COUNTERCLAIMS

3. Acis hereby asserts the following claims for affirmative recovery against Highland Capital, Highland Funding, Highland HCF Advisor, Ltd. ("Highland Advisor"), Highland CLO Management Ltd. ("Highland Management"), and Highland CLO Holdings, Ltd. ("Highland Holdings"). Additionally, Acis asserts the following claims and counterclaims against Highland Capital and such claims and counterclaims shall also constitute recoupment or offset to any claim Highland Capital has against Acis.

I. JURISDICTION, VENUE, AND STATUTORY PREDICATE

4. This Court has subject matter jurisdiction over the Bankruptcy Cases and this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Adversary Proceeding in this district is proper under 28 U.S.C. § 1409.

5. This matter arises under the laws of the United States of America and state common law. The statutory predicates for the relief sought herein are pursuant to sections 362, 502, 503, 541, 542, 544, 547, 548, 550, and 558 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Texas Business & Commerce Code § 24.001 *et seq.* ("TUFTA"), and Federal Rules of Bankruptcy Procedure 3007(b) and 7001.

6. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Acis hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding. This Adversary Proceeding includes an objection to Highland Capital's proofs of claim pursuant to Federal Rule of Bankruptcy Procedure 3007(b), and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such proofs of claim, to the extent such claims are otherwise allowed. This Adversary Proceeding also includes an objection to Highland Capital's administrative expense claim, and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such administrative expense claim, to the extent such claims are otherwise allowed.

II. PARTIES

7. Acis LP is limited partnership and Acis GP is a limited liability company, both of which were organized under the laws of the State of Delaware, and both of which may be served with pleadings and process in this Adversary Proceeding through the undersigned counsel.

8. Highland Capital is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Highland Funding is an exempted company organized with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

10. Highland Advisor is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See **Exhibit T*** at 86. Highland Advisor may be served through its President, James Dondero, at 300 Crescent

Court, Suite 700 Dallas, Texas 75201. *See id.* at 89. Highland Advisor may be served through its Secretary, Scott Ellington, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Chief Compliance Officer, Thomas Surgent at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Executive Vice President, Mark Okada at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Treasurer, Frank Waterhouse at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Assistant Secretary, Lee "Trey" Parker at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Highland Advisor may also be served through its director John Cullinane at 24 Windjammer Quay, George Town Grand Cayman. Highland Advisor may also be served through its director at Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Advisor by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

11. Highland Management is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Upon information and belief, Highland Management principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. Highland Management may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Management by

any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

12. Highland Holdings is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Holding's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* at 103. Highland Holding's general or managing agent is James Dondero. *See id.* Highland Advisor may be served through its general or managing agent, James Dondero, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Acis reserves the right to serve Highland Holdings by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

III. JURISDICTIONAL BACKGROUND³

A. Highland Advisor Jurisdictional Background

13. Upon information and belief, on October 26, 2017, Jean Paul Sevilla ("Sevilla"), a Highland employee and associate general counsel, requested Maples and Calder create Highland Advisor. On information and belief, on October 27, 2017, Mr. Sevilla requested that Highland Advisor be established such that Highland is the 100% owner of the "high" share class of Highland Advisor.

14. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. *See Exhibit T* at 88. Highland Advisor is ultimately, directly or indirectly, owned or controlled by James Dondero

³ Any capitalized term not otherwise defined in this Jurisdictional Background shall have the meaning ascribed to it later in this Second Amended Complaint.

("Dondero") and Mark Okada ("Okada"), who ultimately, directly or indirectly, own or control Highland Capital. *See id.* at 89 and Opinion at 8.

15. Upon information and belief, the principals of Highland Capital, Dondero and Okada, serve as the president and executive vice president, respectively, of Highland Advisor. *See* Opinion at 8 and **Exhibit T** at 89. Other Highland Capital employees serve as officers of Highland Advisor including Scott Ellington, Lee "Trey" Parker, Thomas Surgent, and Frank Waterhouse. *See* **Exhibit T** at 89.

16. Dondero signed the November 15, 2017 Portfolio Management Agreement by and between Highland Advisor and Highland Funding (the "November 2017 PMA") on behalf of Highland Advisor. A true and correct copy of the November 2017 PMA is attached hereto as **Exhibit P**.

17. Attached hereto as **Exhibit Q** is the December 13, 2018 (A.M.) hearing transcript from *In re Acis Capital Management, L.P., et al.* At the December 13, 2018 hearing, Hunter Covitz, a Highland Capital employee, testified: "As I understand HCF Advisor is a relying advisor of Highland." *See* **Exhibit Q** at 78, ll. 15-16. Hunter Covitz further testified, "[b]ut HCF Advisor is Highland. . . . That's the distinction between Highland HCF Advisor could be well capitalized, the substance of Highland Capital, its office space, employees, balance sheet, back office, legal, what [have] you, would all be incorporated with HCF Advisor, where Acis with no employees is not looked at that way." *Id.* at 61, ll. 5 & 11-15. Finally, Hunter Covitz testified, "there's really no differentiation between HCF Advisor and Highland." *Id.* at 62, ll. 21-23.

18. Attached hereto as **Exhibit R** are meeting minutes of Acis Loan Funding, Ltd. and Highland Funding, which contain a Highland Funding Bates label and were produced in connection with the Bankruptcy Cases or related adversary case. These meeting minutes reflect that various Highland Capital employees, including Sevilla, Hunter Covitz, Tim Cournoyer,

David Wilmore, Issace Leventon, and Thomas Surgent appeared at Highland Funding's board meeting on behalf of Highland Advisor. The parties that conduct the day-to-day operations of Highland Advisor are Highland Capital employees that office in Dallas, Texas.

19. Attached hereto as **Exhibit S** is Highland Capital's 2017 Form ADV, which states that Highland Advisor is another business name of Highland Capital.

20. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201—Highland Capital's office and headquarters. Highland Capital's 2019 Form ADV also states that Highland Capital is a shareholder of Highland Advisor and that Highland Advisor is another business name of Highland Capital.

21. The Confirmation Opinion states that "Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland [Advisor]." Confirmation Opinion at 8. Additionally, the Confirmation Opinion states that "Highland [Advisor] (i.e., the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA)." Confirmation Opinion at 19. Additionally, the Confirmation Opinion states that Highland Advisor is an affiliate of Highland Capital. Confirmation Opinion at 21.

B. Highland Management Jurisdictional Background

22. Upon information and belief, on or about October 27, 2017 (7 days after the Arbitration Award), Highland Management was created at the direction of Sevilla, a Highland lawyer and employee, using the same structure as Highland Advisor. Upon information and belief, Highland Management's mailing address is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland's Dallas office and headquarters.

23. Upon information and belief, Highland Management is ultimately, directly or indirectly, owned or controlled by Dondero and Okada, who ultimately, directly or indirectly, own or control Highland Capital.

24. Additionally, in connection with the hearing on the involuntary petitions, Dondero testified at great length regarding the Note Transfer to Highland Management on behalf of Highland Management.⁴ Dondero testified upon direct examination by Acis's (at the time, a putative debtor) counsel about the Note Transfer, stating:

Q: Now, if there came a time with litigation costs and other expenses where Acis was unable to pay its expenses when they became due, what was your intent in signing this as to whether or not HCLOM [Highland Management] would honor this and make the payment?

A: We would -- we would honor it and -- and pay as appropriate.

See Exhibit U (March 23, 2018 Hr'g Tr., *In re Acis Capital Management, L.P., et al.* 146:7-12) (emphasis added). When Dondero says "we," Acis contends that he is speaking on behalf of Highland Capital and Highland Management. Additionally, Dondero testified that the Note Transfer was an "economic wash" for him as "it doesn't matter which pocket it goes into." *Id.* at 152:20-24.

25. The Opinion states that, "Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer... **it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach.**" Opinion at 20-21, n. 37 (emphasis added).

⁴ Dondero testified at the trial on the involuntary petitions only after Mr. Terry sought to compel Dondero's deposition and after this Court ordered Dondero to appear at the trial on the involuntary petitions.

26. Upon information and belief, Dondero is the managing or general agent of Highland Management.

27. The Confirmation Opinion states that Highland Management is "an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry's Arbitration Award)." Confirmation Opinion at 19. The Confirmation Opinion further states that "it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach." Opinion at 20-21, n.37. Finally, the Confirmation Opinion states that "Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017)." Confirmation Opinion at 24.

C. **Highland Holdings Jurisdictional Background**

28. The Confirmation Opinion states that Highland Holdings is "(yet another entity incorporated in the Cayman Island on October 27, 2017)." Confirmation Opinion at 19.

29. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Holding's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. **Exhibit T** at 103. Highland Capital's 2019 Form ADV also states that Highland Holdings is another business name of Highland Capital. Highland Capital's 2019 Form ADV further states Highland Capital, Dondero, and other Highland affiliates are "control persons" of Highland Holdings.

IV. **PROCEDURAL BACKGROUND**

30. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Terry"), as petitioning creditor, filed involuntary petitions under section 303 of the Bankruptcy Code against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

31. On April 13, 2018, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* in each of the Bankruptcy Cases [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Orders for Relief"). The Opinion is hereby incorporated by reference as if fully set forth herein.

32. On May 14, 2018, Robin Phelan (the "Trustee") was appointed chapter 11 trustee of the Debtors' bankruptcy estates in the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 213.

33. On May 30, 2018, Highland Capital and Highland Funding filed their Original Complaint, initiating this Adversary Proceeding, in which Highland Capital and Highland Funding asserted various claims for breach of contract, declaratory relief, and injunctive relief against the Trustee. *See* Adv. No. 18-03078, Docket No. 1.

34. On June 21, 2018, the Trustee filed his *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Docket No. 1] ("Complaint and Application for TRO"), initiating Adversary No. 18-03212, in which the Trustee sought, *inter alia*, injunctive relief to prevent Highland Capital, Highland Funding, and their affiliates from taking any action to effectuate an optional redemption (which would result in liquidation of the Acis CLOs (defined below)), as well as relief pursuant to 11 U.S.C. § 362(k) for willful violations of the automatic stay for actions taken by Highland Capital and its affiliates, including Highland Funding, in attempting to effectuate an optional

redemption.⁵ Highland Capital and Highland Funding subsequently filed their answers to the Trustee's Complaint and Application for TRO. *See* Adv. No. 18-03212, Docket Nos. 32 & 33.

35. On July 2, 2018, the Trustee filed his Original Answer in this Adversary Proceeding, in which the Trustee asserted certain counterclaims and third-party claims against Highland Capital, Highland Funding, Highland Advisor, and Highland Management (collectively and along with Highland Holdings, the "Highlands") in connection with the Highlands' scheme, described more fully below, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. *See* Adv. No. 18-03078, Docket No. 23.

36. On July 23, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Motion to Dismiss Counterclaims or, Alternatively, for a More Definite Statement* [Adv. No. 18-03078, Docket No. 42] ("Highland's Motion to Dismiss"), in which Highland Capital sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6).

37. Also on July 23, 2018, Highland Funding filed *Highland CLO Funding Ltd.'s Motion to Dismiss* [Adv. No. 18-03078, Docket No. 43] ("Highland Funding's Motion to Dismiss") and *Highland CLO Funding Ltd.'s Brief in Support of its Motion to Dismiss* [Adv. No. 18-03078, Docket No. 44], in which Highland Funding sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

38. On August 1, 2018, Highland Capital filed Proof of Claim No. 27 in the claims register for Case No. 18-30264 (the "Highland Acis LP Claim"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services."

⁵ Certain portions of the Complaint and Application for TRO were subsequently dismissed, ultimately leaving only: Count 1 for *Temporary Restraining Order and Preliminary Injunction* (which injunctive relief expired with confirmation of the Plan (defined below)); and Count 2 for *Willful Violation of the Automatic Stay* against Highland Capital and Highland Funding. *See* Adv. No. 18-03212, Docket Nos. 49 & 56.

39. Also on August 1, 2018, Highland Capital filed Proof of Claim No. 13 in the claims register for Case No. 18-30265 (the "Highland Acis GP Claim," together with the Highland Acis LP Claim, the "Highland Capital Claims"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services." The Highland Acis GP Claim is identical to the Highland Acis LP Claim.

40. On August 10, 2018, Highland Capital and Highland Funding filed *Highland Capital Management, L.P. and Highland CLO Funding Ltd.'s Motion for Leave to Amend Adversary Complaint and Brief in Support* [Docket No. 51] (the "Motion to Amend"), in which Highland Capital and Highland Funding sought to amend their Original Complaint to remove all claims against the Trustee, except for one claim by Highland Funding for a declaratory judgment that the Trustee cannot "sell or transfer Highland Funding's property without Highland Funding's consent."

41. On October 9, 2018, the Court heard Highland Capital's Motion to Dismiss, Highland Funding's Motion to Dismiss, and the Motion to Amend. Considering that the Trustee expressed his intent to amend his Original Answer, the parties agreed that all arguments made by Highland Capital and Highland Funding to dismiss the Trustee's counterclaims pursuant to Rule 12(b)(6) were moot. With respect to Highland Funding's argument to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the Court ruled that Highland Funding has minimum contacts with the United States, and that the Court, has personal jurisdiction over Highland Funding in this Adversary Proceeding, and exercising personal jurisdiction over Highland Funding would not violate any traditional notions of fair play and substantial justice. Further, the Court ruled that, even if sufficient minimum contacts did not exist, Highland Funding has waived personal jurisdiction in this Adversary Proceeding.

42. With respect to the Motion to Amend, due to the change in circumstances in the Bankruptcy Cases, Highland Capital and Highland Funding agreed to voluntarily dismiss all claims asserted in the Original Complaint, without prejudice.

43. On November 13, 2018, the Trustee filed his *Defendant's Amended Answer, Counterclaims (Including Claim Objections) and Third-Party Claims* [Adv. No. 18-03078, Docket No. 84] (the "Amended Counterclaims") in this Adversary Proceeding, in which the Trustee asserted numerous counterclaims and third-party claims against Highland Capital and various of its affiliates in connection with, *inter alia*, their scheme to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. Additionally, with the Amended Counterclaims, the Trustee included his objections to the Highland Claims pursuant to section 502(b)(1), (b)(4), and (d) of the Bankruptcy Code (the "Objections to Claim"), and further asserted that, to the extent allowed, the Highland Claims should be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code.

44. On December 11, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772] (the "Application") for approval of an administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code, in the amount of \$3,554,224.29 (the "Administrative Claim"), for purportedly providing postpetition services to the Debtors in connection with the Sub Agreements (defined below) and the Universal/BVK Agreement (defined below), which Highland Capital contends were actual, necessary costs and expenses of preserving the estate.

45. On January 10, 2019, the Trustee timely filed his *Objection to Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772].

46. On January 31, 2019, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (the "Confirmation Order") [Case No. 18-30264, Docket Nos. 829 & 830], which approves the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Plan") and is supplemented by the *Court's Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan* (the "Confirmation Opinion") [Case No. 18-30264, Docket No. 827]. The Confirmation Opinion is hereby incorporated by reference as if fully set forth herein.

47. On February 15, 2019 (the "Effective Date"), the Trustee filed the *Notice of February 15, 2019 Effective Date for the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 863]. On the Effective Date, Acis (as the Reorganized Debtors) became substituted for the Trustee in the above-referenced consolidated adversary cases pursuant to the Plan, which provides:

Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

Plan § 7.03.

48. On March 11, 2019, the Court entered its *Order Consolidating Adversary Case Nos. 18-03078 & 18-03212* [Adv. No. 18-03078, Docket No. 127; Adv. No. 18-03212, Docket No. 63], under which the Court ordered that Adversary Nos. 18-03078 and 18-03212 are

consolidated under Federal Rule of Civil Procedure 42(a), incorporated by Federal Rule of Bankruptcy Procedure 7042. The Court further directed the Clerk to caption the case *as Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., et al.*, resulting in the designation of the Trustee, now Acis, as the Plaintiff(s) and Highland Capital and its affiliates as Defendants in this Adversary Proceeding.

49. On May 1, 2019, the Court entered its *Order Addressing DE #825 and Directing that: (A) Highland Capital Management, L.P.'s Administrative Expense Request [DE #722] Be Converted from a Contested Matter to Adversary Proceeding; and (B) Counts 27-31 Be Transferred in Adversary Proceeding No. 18-03078 into a New Adversary Proceeding* [Case No. 18-30264, Docket No. 919], whereby the Court converted Highland Capital's Application into a new adversary proceeding, and thereby initiating Adversary No. 19-03103.

50. On June 10, 2019, the Court held a status conference and directed: (i) that Adversary No. 19-03103 should be consolidated under this Adversary No. 18-03078; and (ii) that Acis will file an amended complaint, consolidating all claims, counterclaims, third-party claims against Highland Capital and its affiliates, as well as any objections to the Highland Capital Claims and Administrative Claim, by June 20, 2019.

V. FACTUAL BACKGROUND

A. **The Debtors' Business**

51. Dondero, Okada, and Terry formed Acis LP in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").⁶ The CLOs are governed by certain indentures (the

⁶ The Acis CLOs include: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6").

"Indentures").⁷ Acis LP is the portfolio manager for the CLOs and generates revenue primarily through the management of the CLOs via certain portfolio management agreements ("PMAs").⁸ See Opinion ¶¶ 22-28. While Dondero made and approved the higher-level financial strategies and decisions of Acis, Terry was responsible for the day-to-day management of Acis.

52. Acis LP's business as portfolio manager for the CLOs has been incredibly successful. Between 2011 and 2017, Acis LP distributed profits of \$11,037,445.00 to Dondero, \$4,598,935.00 to Terry, and \$2,759,361.00 to Okada, its partners. Further, on August 31, 2017, right before Highland Capital began its campaign to denude Acis LP and take over its business, Acis LP also boasted millions of dollars in investment assets and total shareholder equity of roughly \$3.4 million. Without question, Acis LP's business as portfolio manager for the CLOs and others has been very valuable and lucrative.

53. As is common with the numerous Highland Capital affiliates, Acis LP contracted out certain of its administrative functions and portfolio management responsibilities to Highland Capital pursuant to that certain *Sub-Advisory Agreement*, originally dated January 1, 2011 (as amended, the "Sub-Advisory Agreement") and that certain *Shared Services Agreement*, originally dated January 1, 2011 (as amended, the "Shared Services Agreement," and together

⁷ The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture").

⁸ The PMA's include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA").

with the "Sub Agreements"). The Sub-Advisory Agreement and Shared Services Agreement have each been amended multiple times.

54. As the Court explained in its Opinion:

Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office" personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at 14 (footnotes omitted).

55. Prior to entry of the Orders for Relief, Dondero directed, either himself or through Highland Capital employees, all actions taken by Acis. *See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

Id.

56. Highland Funding, formerly known as Acis Loan Funding, Ltd. ("ALF"),⁹ holds the subordinated notes issued by the CLOs and receives the "very last cash flow from the CLOs." Opinion at pp. 12-13. "It, in certain ways, controls the CLO vehicle . . . [and] was essentially the equity owner in the CLO special purpose entities." *Id.* Until the ALF PMA Transfer in the Fall of

⁹ On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. before October 30, 2017.

2017 (described below), Acis LP had complete control of Highland Funding and its valuable subordinated note rights to further enhance its successful portfolio management business.

B. Section 3.10(a) of the Limited Partnership Agreement

57. In order to form Acis LP, Acis GP, the general partner, and limited partners The Dugaboy Investment Trust¹⁰ (the "Trust"), Okada, and Terry entered into that certain *Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P.* (the "LPA"), dated to be effective as of January 21, 2011.¹¹ The LPA is attached hereto as **Exhibit A**. The LPA is governed by Delaware Law. LPA § 6.11. At all relevant times herein, the officers of Acis GP are Dondero, as President, and Frank Waterhouse ("Waterhouse")¹², as Treasurer. Further, at least between October 14, 2015, and December 19, 2017, Dondero was the sole member of Acis GP. *See* Case No. 18-30265, Docket No. 152.

58. Pursuant to the Sub Agreements, Highland Capital received compensation for providing services to Acis LP, but amounts of compensation were subject to certain terms of the LPA. Section 3.10 of the LPA directs compensation and reimbursement of the General Partner and contains subpart (a), which limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner without proper consent:

Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that the aggregate annual expenses of the Partnership, inclusive of such compensation, *may not exceed 20% of Revenues without the consent of all of the members of the Founding Partner Group.*

LPA § 3.10(a) (emphasis added).

¹⁰ Dondero was the trustee and owned 100% of the Trust, and he was President of Acis GP.

¹¹ The partnership interests of Acis LP were as follows: Acis GP owned .1%; the Trust owned 59.9%; Okada owned 15%; and Terry owned 25%.

¹² Waterhouse is a partner in Highland Capital and serves as Highland Capital's Chief Financial Officer.

59. An Affiliate under the LPA is defined as:

[A]ny [entity] that directly or indirectly controls, is controlled by, or is under common control with the [entity] in question. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of [an entity], whether through ownership of voting Securities, by contract, or otherwise.

Id. § 2.01.

60. Highland Capital was at all times relevant to this Second Amended Complaint, an Affiliate of Acis GP and Acis LP. Further, Highland Capital was at all times relevant to this Second Amended Complaint, an insider of Acis GP and Acis LP.

C. State Court Litigation and Arbitration

61. In June 2016, Highland Capital advised Terry that he had been terminated.

62. In September 2016, Highland Capital sued Terry in the 162nd Judicial District Court of Dallas County, Texas (the "State Court") under a variety of legal theories and causes of action, including breach of fiduciary duty/self-dealing, disparagement, and breach of contract. Terry asserted his own claims against Highland Capital, as well as claims against the Debtors, Dondero, and others, and demanded arbitration. Opinion ¶ 8.

63. On September 28, 2016, the State Court stayed the litigation and ordered the parties to arbitrate. *Id.* The parties then participated in a ten-day arbitration proceeding before JAMS, styled as *Terry v. Highland*, JAMS Arbitration No. 1310022713.

D. The Arbitration Award

64. On October 20, 2017, Terry obtained an arbitration award (the "Arbitration Award") jointly and severally against the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. The Arbitration Award was based on theories of breach of contract and breach of fiduciary duties. The Arbitration Award is attached hereto as **Exhibit B**.

65. Under the Arbitration Award, the arbitration panel found that Terry's termination by Dondero/Highland Capital was without cause and that, among other things, Acis breached the LPA and breached fiduciary duties owed to Terry as Acis's limited partner. Importantly, the arbitration panel found that Highland Capital had been paid more than 20% of Revenues (as such term is understood under the LPA), without Terry's consent, in violation of Section 3.10(a) of the LPA:

It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA.

.....
The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS's and ACIS GP's breach of contract and breach of fiduciary duty. Clearly, ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

Arbitration Award at pp. 15-16.

66. Additionally, in the analysis of Terry's damages, the arbitration panel stated:

The evidence establishes that ACIS and ACIS GP paid excess expenses to Highland during the years of 2013, 2014, 2015 and January through May 2016. These expenses paid exceeded the 20% of Revenues cap stated in Section 3.10(a) of the ACIS LPA. The payment of these excess expenses reduced Terry's ACIS partnership distributions during this period. Had excess expenses not been paid and only the contractually capped expenses had been paid, Terry would have received additional ACIS profits distributions of \$1,755,481.00 for his 25% partnership interest in ACIS.

Arbitration Award at 20.

67. Finally, in its findings and conclusions, the arbitration panel stated: "ACIS [LP] and ACIS GP paid Highland Capital expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA." Arbitration Award at 22, ¶ 7.

68. On December 18, 2017, the 44th Judicial District Court of Dallas County, Texas, entered a final judgment confirming the Arbitration Award. Opinion ¶ 10. The judgment was abstracted in the Official Public Records of Dallas County, Texas, as Instrument No. 201800008611, and writs of garnishment were issued and served pursuant to the judgment.

69. Pursuant to the Arbitration Award, Highland Capital wrongly received at least \$7,021,924.00 (collectively, the "Expense Overpayments") in excess of the clear cap under Section 3.10(a) of the LPA.¹³ On information and belief, Highland Capital wrongfully received other overpayments of expenses for many years in excess of the express limitations contained in the LPA. The Expense Overpayments for which the Plaintiffs seek relief herein include all overpayments by Acis LP to Highland Capital in violation of the expense cap pursuant to the LPA whether or not addressed in the Arbitration Award. The Plaintiffs seek a declaratory judgment that such Expense Overpayments to Highland Capital and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable. The Plaintiffs also seek to recover from Highland Capital all such Expense Overpayments, which rightfully belong to Acis LP, as set forth below.

E. Modifications to the Sub-Advisory Agreement and Shared Services Agreement

70. The Sub-Advisory Agreement has been amended from time to time. The first iteration the Sub-Advisory Agreement by and between Acis LP and Highland Capital dated January 1, 2011 (the "Original Sub-Advisory Agreement") provided that Acis LP was to pay Highland Capital certain amounts for assisting Acis LP with the advisory services required by the PMAs. Under the Original Sub-Advisory Agreement, Acis LP paid Highland Capital 5 bps

¹³ If \$1,755,481.00 represents 25% of the amount overpaid to Highland Capital, then the total amount paid to Highland Capital in excess of the 20% cap would be at least \$7,021,924.00.

of the management fees received by Acis LP pursuant to the various PMAs for the sub-advisory services provided to Acis LP by Highland Capital.

71. On July 29, 2016, the Sub-Advisory Agreement was modified to increase the sub-advisory fee from 5 basis points to 20 basis points (the "Second Amended Sub-Advisory Agreement"). The effective date of the Second Amended Sub-Advisory Agreement was also back-dated to January 1, 2016. The fourfold increase in the sub-advisory fees via the Second Amended Sub-Advisory Agreement siphons off the funds of Acis LP and effectively gifts the additional amounts to Highland Capital. Highland Capital was already contractually obligated to provide the sub-advisory services for the lower 5 basis points fee and no legitimate justification for this fourfold increase was ever presented. Notably, Terry was unjustifiably terminated from Acis in June 2016, roughly one month before Acis and Highland Capital amended the Sub-Advisory Agreement to increase the fee paid fourfold. Further, Dondero consented to the increased sub-advisory fee on behalf of *both* Acis LP and Highland Capital. Dondero signed the Second Amended Sub-Advisory Agreement as president of Highland Capital's general partner, Strand Advisors, Inc., and as president of Acis GP, the general partner of Acis LP.¹⁴

72. The Shared Services Agreement has also been amended from time to time. The first iteration of the shared services agreement, the Shared Services Agreement by and between Acis LP and Highland Capital, dated January 1, 2011 (the "Original Shared Services Agreement"), provided that Acis LP was to pay Highland Capital certain amounts for providing Acis LP with the back-office services such as book keeping, compliance, human resources and marketing. Under the Original Shared Services Agreement, Acis LP reimbursed Highland Capital for amounts directly attributable to Acis LP for these services. The Shared Services

¹⁴ Dondero also signed the Third Amended and Restated Sub-Advisory Agreement, entered into on March 17, 2017, on behalf of both parties (Acis LP and Highland Capital) to the agreement; this amendment retained the 20 bps fee put in place by the Second Amended Sub-Advisory Agreement.

Agreement was later amended to provide compensation to Highland Capital of 15 to 20 basis points, depending on the nature of the fund for which services were provided. Thus, shortly after Terry was terminated by Acis in June 2016, Acis was paying Highland Capital a total of 35 to 40 basis points for the sub-advisory and shared services it provided.

73. Due to the retroactive nature of the amendments to the Sub-Advisory Agreement and Shared Services Agreement, Highland, at all times relevant to this proceeding, held an antecedent debt related to Acis.

74. Finally, as the Court has already found and as described in more detail below, Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor and Highland Holdings) entered into numerous other transactions through the Fall of 2017 in an attempt to take control of Acis's assets and effectively take over Acis's business. The combination of all of these actions evidence a clear pattern of behavior by Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor, Highland Management, and Highland Holdings)¹⁵ to hinder, delay or defraud Terry as a creditor and appropriate the going-concern business of Acis LP for the Highlands. Opinion, Section 1.C. (pp. 16-23).

F. Highland Capital's Mismanagement of the CLOs and the Trustee's Engagement of Brigade Capital Management, L.P.

75. During the pendency of these Bankruptcy Cases, while acting as sub-advisor, Highland Capital grossly mismanaged the CLOs. Following the Trustee's appointment in these Bankruptcy Cases, in disregard of its duties under the Sub-Advisory Agreement, Highland

¹⁵ The Debtors were also under Highland Capital and Dondero's control at this time and were active participants in all of Highland Capital and Dondero's schemes to denude the Debtors and make them "judgment proof" as the Debtors' own counsel, Jamie Welton, later boasted. In fact, Highland Funding has admitted that the Debtors were "no more than shell entities" in pleadings recently filed with the Court. Highland Funding's *Motion to Dissolve Preliminary Injunction and Lift the Automatic Stay* at page 21, Docket # 639 in Case No. 18-30264.

Capital failed to purchase a single loan for the CLOs. Yet, at the same time, in an apparent tactical move to accumulate cash in the CLOs (prior to an attempted liquidation), Highland Capital ordered that the Trustee sell numerous loans. Indeed, during this time, Highland Capital's own analysis showed that 19.7% to 32.4% of available loans were eligible for consideration for purchase in the CLOs. Although the Trustee expressed his concerns to Highland Capital about the accumulation of cash in the CLOs and Highland Capital's failure to recommend purchases of eligible collateral in the CLOs, Highland Capital failed to make any change or correction in its sub-advisor role, in abrogation of its duties.

76. In July 2018, considering Highland Capital's mismanagement of the CLOs and the exorbitant amounts attempted to be charged to Acis for its services under the Sub Agreements, the Trustee solicited potential third parties to provide shared services and sub-advisory services to the Debtors. After contacting over 40 parties, the Trustee received bids from nine parties to perform the services provided by Highland Capital under the Sub Agreements. Through this process, the Trustee was able to locate Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland") to provide such services to the Debtors at a rate far less than that charged by Highland Capital. As set forth more fully in the *Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Case No. 18-30264, Docket No. 448] (the "Brigade Motion"), Brigade agreed to sub-advise the CLOs for 15 basis points. As further described by the Brigade Motion, Cortland agreed to provide middle and back office CLO outsourcing (previously provided by Highland Capital under the

Shared Services Agreement) for \$30,000 per month, \$250-\$350 per trade, and a one-time fee of \$75,000. Cortland's fee equates to roughly 3 basis points per month.¹⁶

77. On August 1, 2018, the Court granted the Brigade Motion, and Brigade and Cortland began performing the services previously provided by Highland Capital under the Sub Agreements. *See* Case No. 18-30264, Docket No. 464. Notably, on the record at the hearing on July 6, 2018, Highland offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that Highland had grossly overcharged Acis. *See* Case No. 18-30264, Docket No. 369 at 243-44.

78. From approximately August 2, 2018 through December 11, 2018, Brigade directed the purchase of approximately \$300 million in conforming loans for the CLOs. *See* Case No. 18-30264, Docket No.790 at 100-01 & 134.

G. The Highlands' Fraudulent Scheme to Take Over Acis's Business and Dismantle Acis's Assets.

79. After Terry received the Arbitration Award on October 20, 2017, the Highlands immediately began work to systematically transfer the assets of Acis LP to other Highlands. This was done to denude Acis LP of value and make the Debtors "judgment proof." This was also done to ensure that Acis LP's very valuable business as portfolio manager was taken over by other Highlands and remained under Highland Capital and Dondero's control.

80. Prior to the filing of the Bankruptcy Cases, the Highlands' scheme was accomplished through, *inter alia*, the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements (as each is defined

¹⁶ Thus, the Trustee was paying roughly 18 basis points, instead of the 35 to 40 basis points charged by Highland Capital starting shortly after Terry was terminated by Acis in June 2016, for the work previously performed by Highland Capital under the Sub Agreements. The definitive agreement between the Reorganized Debtors and Brigade removes Cortland and the Reorganized Debtors pay roughly 15 basis points to Brigade for essentially the same services previously provided by Highland Capital.

below), which all occurred in the three months between October 23 and December 19, 2017. Each of these transfers followed the same pattern: Highland Capital caused Acis LP to fraudulently convey valuable economic rights away from Acis LP to offshore (often newly created) Highland Capital affiliates that were not subject to Terry's Arbitration Award and judgment, thus, safely remaining under the control of Highland Capital and Dondero. Further, the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highlands or their representatives.

81. Reference to Acis LP's balance sheets right before and right after the Highlands began their campaign of fraud against Terry and Acis demonstrate just how effective their scheme was. On August 31, 2017—roughly 45 days before the Arbitration Award—Acis LP boasted \$15,441,551 in total assets (including nearly \$4 million in valuable portfolio management investments and the \$9.5 million note) as well as \$3,372,851 in total equity value.¹⁷ After the Arbitration Award and the judgment enforcing it, Acis presented the affidavit of David Klos, Highland Capital's Controller, to the State Court in furtherance of Highland Capital's efforts to get a pathetically small bond for Terry's judgment. The Klos affidavit and attached balance sheet demonstrate that as of February 1, 2018 (the day after the Involuntary Petitions were filed) Acis LP had only \$2,855,050 in total assets, no investment assets or notes, and a paltry \$35,709 in total equity value.¹⁸ Thus, the amount of value destruction and asset concealment caused by the Highlands' brazen fraud in just the few months immediately after the Arbitration Award is staggering.

82. Even the filing of the Bankruptcy Cases did not deter the Highlands from attempting to complete their goal of denuding Acis. During the Bankruptcy Cases, in disregard

¹⁷ The Balance Sheet as of August 31, 2017, is attached as Exhibit C.

¹⁸ The Declaration of David Klos concerning Defendants' net worth, is attached as Exhibit D.

of the automatic stay, on multiple occasions, the Highlands directed the Trustee to effectuate optional redemptions, which would result in the liquidation of the CLOs and render Acis incapable of reorganizing and paying its creditors.

1. *The ALF PMA Transfer and the ALF Share Transfer*

83. Prior to October 27, 2017, Acis LP—not ALF (or Highland Funding as it is currently named)—had authority to direct and effectuate an optional redemption and otherwise pervasively control ALF's assets. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit E**. A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit F**.

84. The Second ALF PMA granted Acis LP, as the portfolio manager of ALF, extensive rights and discretion to control and manage ALF's assets, including its interests in the Acis CLOs. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

(a) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (c) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by [ALF] . . . ; (n) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (q) vote Financial Instruments, participate in arrangements with creditors, the

institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

Second ALF PMA § 5(a)-(q) (emphasis added).¹⁹

85. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). The Second ALF PMA provided that Acis LP could be removed as portfolio manager only "for cause." *See* ALF PMA § 14(a)-(e).

86. On October 27, 2017, just seven days after Terry's Arbitration Award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and its valuable portfolio management rights—for no value—to Highland Advisor, an affiliate of Highland Capital.²⁰

87. This transfer of Acis LP's portfolio management rights to Highland Advisor was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland Advisor on October 27, 2017 (the "October 2017 PMA"), which empowered Highland Advisor with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct copy of the October 2017 PMA is attached hereto as **Exhibit G**.

88. As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and

¹⁹ The Highlands contend that the reference to "control" in Section 6 of the Second ALF PMA negates the broad language of Section 5 of the Second ALF PMA. The Plaintiffs disagree.

²⁰ Although purportedly a Cayman Islands entity, Highland Funding's 2017 Annual Report and Audited Financials lists Highland Advisor's address as Highland Capital's address in Dallas, Texas. This same document also discloses that Highland Capital is the sub-advisor for Highland Advisor, and thus is the party actually in control of Highland Funding's assets. Finally, this same document shows that all of Highland Funding's subordinated notes issued by the CLOs (the primary assets managed by Highland Advisor) are physically held at and are pledged to NexBank, a Dallas bank that is an affiliate of Highland Capital.

entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at 19 (footnotes omitted).

89. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, Dondero, on behalf of Acis LP, simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland Advisor under the October 2017 PMA. Acis received no consideration for this transfer.

90. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland Advisor, Highland Funding could not have attempted to liquidate the CLOs, by directing optional redemptions, and further deplete Acis's assets.²¹

91. On October 24, 2017, a mere four days after the Arbitration Award was entered, Waterhouse, on behalf of Acis LP, and Grant Scott, for CLO Holdco Ltd., entered into that certain special resolution whereby Highland Funding, then known as ALF, acquired back Acis's equity interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit H**. Pursuant the ALF Share Transfer, ALF paid Acis LP \$991,180.13 for all of its shares of ALF.

92. Thus, by virtue of the ALF PMA Transfer and the ALF Share Transfer, by October 31, 2017, Acis LP had given up all of its shares of ALF and all of its control of ALF.

²¹ After the ALF PMA Transfer, Highland Funding and Highland Advisor have issued at least three different optional redemption notices, in an attempt to terminate the PMAs and cut off the Debtors' primary source of cash. All three notices have been withdrawn and/or enjoined by this Court.

93. On November 15, 2017 – only days after the ALF Share Transfer and ALF PMA Transfer were completed – Highland Funding,²² Highland Advisor and CLO Holdco, Ltd. (another Highland Capital affiliate) entered into a subscription agreement whereby Highland Funding completed a private placement of its equity (including, upon information and belief, the equity acquired in the ALF Share Transfer) to third-party investors. The Plaintiffs believe both the ALF PMA Transfer and the ALF Share Transfer were concocted by Highland Capital and Highland Funding to complete this private placement, which was of great value to Highland Funding (then known as Acis Loan Funding, Ltd.) and Highland Capital, but after the transfers, of no value to Acis.²³ Without the ALF PMA Transfer and the ALF Share Transfer, control of Highland Funding's assets, and the Highland Funding stock held by Acis, would be vested in an entity (Acis LP) that was subject to a looming judgment based on Terry's recently acquired Arbitration Award. That would compromise the Highlands' control of Highland Funding.

2. *The Note Transfer*

94. On November 3, 2017, Acis LP, Highland Capital, and Highland Management (a newly created, offshore Highland Capital affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). A true and correct copy of the Note Assignment and Transfer Agreement is attached hereto as **Exhibit I**. The Note Assignment and Transfer Agreement, among other things, transferred the

²² ALF had changed its name to Highland Funding at this point.

²³ Highland Funding's (then Acis Loan Funding Ltd.) board of director minutes from October 6, 2017, disclose that the private placement investment would bring \$150 million in new investment in Highland Funding and that they were "confident that they could develop further interest and ... bring the total capital to up to around \$325 million." The Arbitration Award was issued against Acis LP exactly two weeks later, throwing a huge monkey wrench in Highland Funding's plans to raise hundreds of millions of dollars for Highland Capital and its cronies. Testimony in the bankruptcy case as well as the subscription agreement demonstrate that numerous Highland Capital executives, as well as Highland Capital itself, received Highland Funding stock in connection with this private placement. Thus, they were highly motivated to close this transaction and also deprive the Acis LP of any value in this transaction.

\$9.5 million promissory note executed by Highland Capital and payable to Acis LP (the "Note") from Acis LP to Highland Management (the "Note Transfer"). As noted in the Opinion:

The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.

The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses.

Opinion at 20.

95. Acis LP received no or insufficient consideration for the Note Transfer.

96. The Note Transfer was also of great benefit to Highland Capital because it transferred Highland Capital's liability under the Note away from Acis LP (and its legal woes with Terry) and allowed Highland Capital's liability under the Note, and any payments made thereunder, to stay well within the control of the Highlands. Just as importantly to Highland Capital and Dondero, and in furtherance to their ongoing feud with Terry, the Note Transfer took away the Note as an asset from which Terry could collect his judgment and allowed Highland Capital to argue (as repeatedly argued in the Bankruptcy Cases) that Terry got his judgment against the "wrong" entities and that Highland Capital has no liability related to Terry's claim.

97. Additionally, the Note Assignment and Transfer Agreement also purports to initiate the transfer of the PMAs between Acis and the CLOs to Highland Management.²⁴ Again,

²⁴ Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer (and on the exact day of the ALF PMA Transfer). Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the PMAs in an international forum that would be difficult for Terry to reach, similar

Acis LP was to receive no consideration for transferring its most significant assets, the PMAs. As the Court is aware, Acis LP did not in fact transfer the PMAs pursuant to the Note Assignment and Transfer Agreement, but it was clearly the plan as outlined in that agreement and further evidence of Highland Capital's intent to steal Acis LP's valuable going-concern business.

3. The Acis CLO 2017-7 Transfers

98. On December 19, 2017, Acis LP and Highland Holdings (another newly created, offshore Highland Capital affiliate)²⁵ entered into that certain Agreement for Assignment and Transfer (the "2017-7 Assignment and Transfer Agreement"). A true and correct copy of the 2017-7 Assignment and Transfer Agreement is attached hereto as **Exhibit J**. The 2017-7 Assignment and Transfer Agreement focused on Acis CLO Management, LLC ("Acis CLO Management"), which is an entity that had been formed to enter into a portfolio management agreement with Acis CLO 2017-7, Ltd. ("CLO 2017-7"). CLO 2017-7 is the last CLO the Highlands formed. Acis CLO Management was indirectly owned by Acis LP, and Acis LP and Acis CLO Management had entered into a Master Sub-Advisory Agreement and a Staff and Services Agreement (the "2017-7 Agreements") that allowed Acis LP to manage the CLO 2017-7 portfolio and collect management fees for CLO 2017-7.

99. The 2017-7 Assignment and Transfer Agreement, among other things, transferred to Highland Holdings all of Acis LP's interest in the 2017-7 Agreements. The 2017-7 Assignment and Transfer Agreement also transferred to Highland Holdings all of Acis LP's

to the transferees for the ALF PMA Transfer (Highland Advisor, a Cayman Island entity) the ALF Share Transfer (Highland Funding, a Guernsey entity) and the 2017-1 Assignment and Transfer Agreement (Highland Holdings, a Cayman Island entity). Thus, not only did Highland Capital and Dondero scheme to transfer Acis LP's assets away from it, but they also slyly chose entities in offshore jurisdictions that would be hard for a judgment creditor to reach.

²⁵ Like Highland Management, Highland Holdings was registered in the Cayman Islands on October 27, 2017.

equity interests in various entities that constituted Acis LP's indirect equity interests in Acis CLO Management (the "2017-7 Equity"). Thus, similar to the ALF PMA Transfer and the ALF Share Transfer that occurred roughly two months before, Acis LP was divested of both its ownership in Acis CLO Management and its control of Acis CLO Management (and related management fee stream) in one fell swoop on December 19, 2017, which is the day after Terry received his judgment based on the Arbitration Award. Also, importantly, the 2017-7 Assignment and Transfer Agreement rendered Acis non-compliant with relevant U.S. and European risk retention requirements.

100. Significantly, also on December 19, 2017, Highland Capital entered into an agreement with Highland Holdings that allowed Highland Capital to sub-advise and manage CLO 2017-7 and get paid the management fees that otherwise would have flowed to Acis LP. So, like the numerous transfers before it, Highland Capital effectuated the transfer of the 2017-7 Agreements and 2017-7 Equity to cut out Acis LP, while Highland Capital stayed in complete control of CLO 2017-7 and its stream of management fees.

101. As the Court noted in the Opinion:

On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017).

In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of \$5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a \$2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.

Opinion at 20-21.

102. The purported consideration for the 2017-7 Equity transferred in the 2017-7 Assignment and Transfer Agreement was the forgiveness of a \$2,804,870 payable allegedly owed by Acis LP to Highland Capital and transferred to Highland Funding sometime before the agreement was entered. According to Acis LP's financial statements, this payable to Highland Capital entirely comprises amounts due under the Sub-Advisory Agreement and Shared Services Agreement. Thus, the "consideration" provided in exchange for the 2017-7 Assignment and Transfer Agreement would suffer from the same defects as outlined throughout this Second Amended Complaint related to the Sub Agreements; i.e., Acis only "owed" Highland Capital these amounts because Highland Capital grossly overcharged Acis. Finally, like the Note Transfer, the 2017-7 Equity transfer allowed Highland Capital to effectively collect all of the \$2.8 million owed by Acis LP (assuming it is even a valid debt) through the use of an offshore intermediary.

103. Further, the 2017-7 Assignment and Transfer Agreement itself discloses that no consideration was provided for the transfer of the 2017-7 Agreements. Rather, the justification for the transfer of the 2017-7 Agreements is Highland Capital's self-serving refusal to continue to do business with Acis LP after the Arbitration Award and related judgment.

4. *Thwarted Attempts to Transfer the Universal/BVK Agreement and Force an Optional Redemption*

104. Highland Capital and the other Highlands did not stop with the transfers in the Fall of 2017. Immediately after the Involuntary Petitions were filed on January 30, 2018, Highland Capital conspired with Acis LP's own bankruptcy counsel in an effort to appropriate Acis LP's valuable sub-advisor rights under the Agreement for the Outsourcing of Asset Management (the "Universal/BVK Agreement") between Acis LP and Universal–Investment-

Luxembourg S.A. ("Universal"), which provided sub-advisory services for a German fund called BayVK R2 Lux S.A., SICAV-FIS ("BVK").²⁶ Like the many transfers before it, Highland Capital's plan (as clearly outlined in an email from Isaac Leventon to Mike Warner) was "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."²⁷ Immediately after Highland Capital sought (and presumably received) advice from Acis's own counsel, Highland Capital reached out to Universal and BVK to solicit their participation in Highland Capital's scheme. In fact, BVK acknowledged in its very first email with Highland Capital after Acis LP's bankruptcy filing that Highland Capital's plan was to replace Acis LP.

105. Over the several weeks leading up to this Court's ruling on the Orders for Relief, Highland Capital and Universal/BVK did, in fact, frequently discuss replacing Acis LP, conducted extensive due diligence in order to replace Acis LP and even negotiated and prepared a new asset management agreement between Highland Capital and Universal that was to take effect once Acis LP and its bankruptcy were out of the way. But even after the Orders for Relief were entered and the Debtors were under the control of a trustee, the communications did not stop. Among other things, Highland Capital volunteered to pay Universal and BVK's legal costs incurred in terminating Acis LP and making Highland Capital the new sub-advisor for Universal and BVK, Highland Capital repeatedly criticized the Trustee for his management of Acis, and Highland Capital repeatedly expressed its desire to negotiate with Universal and to "onboard" Highland Capital as Universal's new sub-advisor. And even after Highland Capital was fired by the Trustee as Acis LP's sub-advisor and replaced with Brigade and Cortland, the

²⁶ The Court held a lengthy hearing on the Universal/BVK Agreement and related lift stay issues on September 11, 2018.

²⁷ Email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer), attached as Exhibit K.

communications did not stop. Highland Capital's scheme to transfer the Universal/BVK Agreement to Highland Capital or its affiliate was apparently only prevented by this Court imposing 11 U.S.C. § 363, effectively taking away Acis LP's right to operate outside the ordinary course of business without Court authority under 11 U.S.C. § 303(f) and then later not immediately lifting the automatic stay as to the Universal/BVK Agreement.

106. Finally, Highland Advisor and its sub-manager Highland Capital, used its newly acquired management rights (by way of the ALF PMA Transfer) to attempt to destroy the Debtor, as further described below.

5. *The First Optional Redemption Notices*

107. On April 30, 2018, without requesting relief from the automatic stay, Highland Funding sent five notices purportedly requesting optional redemption pursuant to Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").²⁸ True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit L**.

108. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, an Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights, including, effectively, the PMAs.

²⁸ Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

109. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit M**.

6. *The Temporary Restraining Order Against the Highlands*

110. On May 30, 2018, Highland Capital and Highland Funding initiated this Adversary Proceeding and alleged, among other things, that the Trustee breached the PMAs by failing to effectuate an Optional Redemption pursuant to the First Optional Redemption Notices.

111. The next day, on May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including potentially all of Acis's creditors in full.

112. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a temporary restraining order, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

113. On June 6, 2018 the Court entered its *Temporary Restraining Order* (the "TRO"), whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

114. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. *See* Docket No. 275.

115. Also on June 11, 2018, Highland Funding filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). *See* Case No. 18-3264, Docket. No. 271. This pleading did not mention that Highland Capital apparently violated the TRO by initiating approximately \$23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its *sua sponte* TRO on May 31.

7. *The Second Optional Redemption Notices*

116. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, Highland Funding advised the Trustee that Highland Funding would withdraw the First Optional Redemption Notices. Highland Funding's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as Exhibit N and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that Highland Funding was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

117. On June 14, 2018, counsel for Highland Funding advised the Court that Highland Funding had withdrawn the First Optional Redemption Notices. Counsel for Highland Funding

further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.²⁹

118. On June 15, 2018, at 12:01 a.m., the TRO expired.

119. Later on June 15, 2018, despite the fact that Highland Funding had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, (again, without requesting relief from the automatic stay) Highland Funding gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit Q** and are incorporated herein for all purposes.

120. By the Second Optional Redemption Notices, Highland Funding directed the Issuers:

to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

121. On June 20, 2018, Highland Capital presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland Capital further stated:

²⁹ See Docket No. 298 at 7, ll. 16-22 (June 14, 2018 Hr'g Tr.).

In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline"). The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves its rights to seek appropriate protection and redress at law or in equity.³⁰

H. Preferential Transfers Made within One Year of the Petition Date

122. Acis's Statement of Financial Affairs [Case No. 18-30264, Docket No. 165] (the "SOFA")³¹ and its general ledger disclose more than two dozen payments totaling \$16,113,790.14 made to Highland Capital within one year of the Petition Date based on four categories (the "Prepetition Payments"):

- (i) Contractual Payments: \$5,011,836.72
- (ii) Services: \$7,672,145.25³²
- (iii) Unsecured Loan Repayments Including Interest: \$3,311,497.65
- (iv) Expense Reimbursement: \$118,311.32

123. The Prepetition Payments were made for the benefit of Highland Capital for or on account of an antecedent debt owed by the Debtors before the Prepetition Payments were made. Acis was insolvent at all times when the Prepetition Payments were made. Based on Terry's pending—or already decided—claims, as well as Highland Capital's absolute operational and financial control of Acis, Highland Capital was aware that Acis was insolvent or reasonably should have been aware Acis was insolvent at all times when the Prepetition Payments were made. The Prepetition Payments were made within one year of the Petition Date. At the time the

³⁰ Emphasis in original email correspondence.

³¹ The SOFA is sworn under penalty of perjury and signed by Issac Leventon, a Highland employee and associate general counsel.

³² The Statement of Financial Affairs, filed in the bankruptcy cases by Acis while under Highland Capital control, fails to list an additional \$1,868,203.44 in transfers to Highland Capital for "Services" that were made shortly before the Petition Date.

Prepetition Payments were made Highland Capital was an insider of the Debtors. The Prepetition Payments enabled Highland Capital to receive more than Highland Capital would have received if the cases were a case under chapter 7 of the Bankruptcy Code and if the Prepetition Payments had not been made. Highland Capital received the Prepetition Payments. *See Williams v. Mckesson Corp. (In re Quality Infusion Care, Inc.)*, Nos. 10-36675, 13-3056, 2013 Bankr. LEXIS 5044 (Bankr. S.D. Tex. Nov. 25, 2013) (citing *Palmer Clay Prods. Co. v. Brown*, 297 U.S. 227, 229 (1936) and stating the 547(b)(5) is to be analyzed as of the Petition Date).

124. Further, to the extent that the Acis LP payables that served as the consideration for the Note Transfer and the 2017-7 Equity transfer were valid, these transfers would also constitute preferential payments to Highland Capital, Highland Management and Highland Holdings. The SOFA discloses that Highland Management is an "affiliate" of the Debtors and the Note Transfer is included on the list of "payments, distributions, withdrawals credited, or given to insiders" within one year before filing the Bankruptcy Cases. *See* SOFA p. 12.

VI. CAUSES OF ACTION³³

Count 1: Declaratory Judgment that Expense Overpayments to Highland Capital Were Ultra Vires in Violation of the LPA [Against Highland Capital]

125. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

126. Under Delaware law, *ultra vires* corporate acts are either void or voidable. *See Klaassen v. Allegro Dev. Corp.*, C.A. No. 8626-VCL, 2013 Del. Ch. LEXIS 247, at *48-50 (Oct. 11, 2013); *see also Stephen A. Solomon v. Armstrong*, 747 A.2d 1098, 1114 n.45 (1999) (explaining the difference between void and voidable acts). Delaware courts apply the doctrine

³³ All causes of action asserted herein are also asserted as counterclaims to the Highland Capital Claims pursuant to section 16.069 of the Texas Civil Practice & Remedies Code and other applicable law.

of *ultra vires* to partnerships by analogy. See, e.g., *In re Mesa Ltd. P'ship Preferred Unitholders Litig.*, Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at *20 (Dec. 10, 1991).

127. Highland Capital invoiced Acis for, and received payments for, at least \$7,021,924.00 in excess of 20% of Revenues, in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA.

128. Such Expense Overpayments, and any agreements supporting such Expense Overpayments, were economically irrational, not in the interest of Acis LP, and are therefore void; however, if not void, such actions are voidable because they were done without the consent or ratification of all members of the Founding Partner Group. The payments to Highland Capital of the Expense Overpayments in the amount of at least \$7,021,924.00 and any agreements supporting such overpayments were unauthorized or *ultra vires* acts of the partnership in violation of the LPA, and are therefore void or voidable.

***Count 2: Turnover of Property of the Estate under 11 U.S.C. § 542(a)
for Unauthorized Overpayments
[Against Highland Capital]***

129. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

130. Under section 542(a) of the Bankruptcy Code, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

131. Under section 541(a) of the Bankruptcy Code, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Further, the "estate is comprised of [such] property, wherever located and by whomever held." *Id.*

132. Highland Capital wrongfully received Expense Overpayments of at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA.

133. The property, or value of such property, from the overpayment of funds wrongfully transferred to Highland Capital totaling at least \$7,021,924.00, in Highland Capital's possession, custody, or control is property of the estate, and the value of such property is not of inconsequential value or benefit to the estate.

134. Pursuant to section 542(a) of the Bankruptcy Code, Highland Capital must deliver to the Trustee the property or value of such property, totaling at least \$7,021,924.00, wrongfully transferred to Highland Capital.

135. Therefore, the Plaintiffs, now vested with all claims of the Trustee, seek turnover of the funds, totaling at least \$7,021,924.00, transferred to Highland Capital, to the extent allowed pursuant to section 542 of the Bankruptcy Code.

***Count 3: Money Had and Received for Overcharges and Unauthorized Overpayments
[Against Highland Capital]***

136. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. "An action for money had and received arises when the defendant obtains money which in equity and good conscience belongs to the plaintiff. This action . . . looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no pet.) (internal citations omitted).

138. Highland Capital invoiced Acis for, and received Expense Overpayments for, at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA. Highland

Capital was therefore unjustly enriched in the amount of the Expense Overpayments of at least \$7,021,924.00.

139. Highland Capital invoiced Acis and accepted such Expense Overpayments from Acis despite Highland Capital's knowledge of the LPA. This money rightfully belongs to Acis, and the overpayment creates a debt in favor of Acis. Therefore, the Plaintiffs are entitled to damages on behalf of Acis in the amount of at least \$7,021,924.00. In addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Services Agreement and is liable to Acis in the amount of these overcharges.

***Count 4: Conversion for Unauthorized Overpayments
[Against Highland Capital]***

140. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

141. "Conversion is defined as the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights." *Green Int'l v. Solis*, 951 S.W.2d 384, 391 (Tex. 1997).

142. Highland Capital wrongfully exercised dominion and control over at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, through the common control of Dondero, was aware that it was prohibited from receiving payment in excess of 20% of Revenues without the consent of all members of the Founding Partner Group. Highland Capital also had actual notice of the Arbitration Award through Dondero (who was represented at the arbitration proceeding) that Highland Capital was wrongfully in possession of such money. Despite Highland Capital's actual knowledge that the money does not rightfully belong to Highland Capital, Highland Capital continues to improperly retain the overpaid funds. Therefore, the Plaintiffs are entitled to damages in the amount of at least \$7,021,924.00. In

addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Shared Services Agreement and is liable to Acis in the amount of these overcharges.

***Count 5: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) related to
the Sub-Advisory Agreement
[Against Highland Capital]***

143. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

144. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

145. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments

thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.

- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
- (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
- (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
- (vi) the transfer/obligation incurred was to an insider.

146. Therefore, such modifications to the Sub-Advisory Agreements and payments to Highland Capital pursuant to such modifications should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 6: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) related to the Sub-Advisory Agreement [Against Highland Capital]

147. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

148. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

149. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.
- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
- (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
- (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
- (vi) The transfer/obligation incurred was to an insider.

150. Therefore, Acis's creditors have the right to avoid the Sub-Advisory Agreement and payments thereunder under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs, now vested with all claims of the Trustee, can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 7: Constructive Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(B) related to the Sub-Advisory Agreement [Against Highland Capital]

151. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

152. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

153. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder;
- (ii) was or became insolvent as the result of the modifications to the Sub-Advisory Agreement and payments made thereunder; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

154. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B).

***Count 8: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) related to the Sub-Advisory Agreement
[Against Highland Capital]***

155. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

156. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

157. As described above, Acis LP did not receive reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, and creditors at the time of such modifications and payments could have avoided such modifications and payments under section 24.005(a)(2) of the Texas Business and Commerce Code.

158. At the time of the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

159. Moreover, as described above, Acis was insolvent or became insolvent by the modifications to the Sub-Advisory Agreement and payments made thereunder.

160. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 9: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]***

161. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

162. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or

defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

163. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP;
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;
- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

164. Therefore, the ALF PMA Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 10: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]***

165. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

166. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

167. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

168. Therefore, Acis's creditors have the right to avoid the ALF PMA Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 11: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]***

169. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

170. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

171. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF PMA Transfer;
- (ii) was insolvent on the date the ALF PMA Transfer was made or became insolvent as the result of the ALF PMA Transfer;

- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

172. Therefore, ALF PMA Transfer is avoidable under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 12: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]***

173. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

174. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the

Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

175. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF PMA Transfer, and creditors at the time of the ALF PMA Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

176. At the time of the ALF PMA Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

177. Moreover, as described above, Acis was insolvent or was rendered insolvent by the ALF PMA Transfer.

178. The ALF PMA Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 13: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the ALF Share Transfer
[Against Highland Capital and Highland Funding]***

179. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

180. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

181. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

182. Therefore, the ALF Share Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 14: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)
for the ALF Share Transfer
[Against Highland Capital and Highland Funding]***

183. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

184. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

185. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

186. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 15: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the ALF Share Transfer
[Against Highland Capital and Highland Funding]***

187. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

188. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

189. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF Share Transfer;
- (ii) was insolvent on the date the ALF Share Transfer was made or became insolvent as the result of the ALF Share Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

190. Therefore, ALF Share Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 16: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF Share Transfer [Against Highland Capital and Highland Funding]

191. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

192. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

193. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF Share Transfer, and creditors at the time of the ALF Share Transfer could

have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

194. At the time of the ALF Share Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

195. Moreover, as described above, Acis was insolvent or rendered insolvent by the ALF Share Transfer.

196. The ALF Share Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 17: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the Note Transfer
[Against Highland Capital and Highland Management]***

197. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

198. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

199. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

200. Therefore, the Note Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 18: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)
for the Note Transfer
[Against Highland Capital and Highland Management]***

201. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

202. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

203. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;
- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

204. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code..

***Count 19: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the Note Transfer
[Against Highland Capital and Highland Management]***

205. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

206. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

207. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the Note Transfer;
- (ii) was insolvent on the date the Note Transfer was made or became insolvent as the result of the Note Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

208. Therefore, Note Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 20: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the Note Transfer [Against Highland Capital and Highland Management]

209. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

210. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

211. As described above, Acis LP did not receive reasonably equivalent value in exchange for the Note Transfer, and creditors at the time of the Note Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

212. At the time of the Note Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they

became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

213. Moreover, as described above, Acis was insolvent or rendered insolvent by the Note Transfer.

214. The Note Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 21: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the 2017-7 Equity and 2017-7 Agreement Transfers
[Against Highland Capital and Highland Holdings]***

215. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

216. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

217. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7

Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Holdings) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

218. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity should be avoided under section 548(a)(1)(A) of the Bankruptcy Code.

Count 22: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

219. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

220. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

221. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7 Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;
- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfers.

222. Therefore, Acis's creditors have the right to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 23: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the 2017-7 Equity and 2017-7 Agreement Transfers
[Against Highland Capital and Highland Holdings]***

223. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

224. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

225. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (ii) was insolvent on the date the transfers of the 2017-7 Agreements and the 2017-7 Equity were made or became insolvent as the result of the transfers;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

226. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 24: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

227. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

228. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

229. As described above, Acis LP did not receive reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity, and creditors at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

230. At the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

231. Moreover, as described above, Acis was insolvent or rendered insolvent by the transfers of the 2017-7 Agreements and the 2017-7 Equity.

232. The transfers of the 2017-7 Agreements and the 2017-7 Equity are therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 25: Preferential Transfers to Highland Capital, Highland Holdings and Highland Management under 11 U.S.C. § 547(b) and Texas Business and Commerce Code § 24.006(b) [Against Highland Capital, Highland Holdings, and Highland Management]

233. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

234. Section 547(b) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property (i) to or for the benefit of a creditor; (ii) for or on account of an antecedent debt; (iii) made while the debtor was insolvent; (iv) made within one year to an insider; and (v) that enables such creditor to receive more than such creditor would receive in a hypothetical chapter 7 liquidation.

235. Likewise, section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.006(b) provides that a current creditor may avoid a

transfer if the debtor made the transfer to an insider for an antecedent debt, the debtor was insolvent, and the insider had reasonable cause to believe that the debtor was insolvent. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis pursuant to Texas Business and Commerce Code section 24.006(b).

236. Within one year of the Petition Date, Highland Capital received the Prepetition Payments in the amount \$16,113,790.14 from Acis on account of purported debt claims owed by Acis. To the extent that the Prepetition Payments satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

237. Similarly, the 2017-7 Equity transfer and the Note Transfer are purportedly in satisfaction of payables owed by Acis LP to Highland Capital (later conveyed to Highland Holdings and Highland Management). To the extent that these transfers satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

***Count 26: Liability for Avoided Transfers under 11 U.S.C. § 550
[Against All Defendants]***

238. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

239. Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under section 544, 547 or 548, the trustee may recover the property transferred or the value of the property transferred from (i) the initial transferee of such transfer or (ii) the entity for whose benefit such transfer was made.

240. Highland Capital is an initial transferee of all transfers sought to be avoided in Counts 5 – 8 and 25 above. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Capital pursuant to section 550, specifically including any transfers made in connection with any obligations avoided through Counts 5 – 8 above.

241. Highland Advisor is an initial transferee of all transfers sought to be avoided in Counts 9 – 12 above, and Highland Capital are entities for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Advisor, Highland Funding, and Highland Capital pursuant to section 550.

242. Highland Funding is an initial transferee of all transfers sought to be avoided in Counts 13 – 16 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Funding and Highland Capital pursuant to section 550.

243. Highland Management is an initial transferee of all transfers sought to be avoided in Counts 17 – 20 and 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Management and Highland Capital pursuant to section 550.

244. Highland Holdings is an initial transferee of all transfers sought to be avoided in Counts 21 – 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Holdings and Highland Capital pursuant to section 550.

***Count 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers
[Against Highland Capital, Highland Advisor, Highland Management, and Highland
Holdings]***

245. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

246. Highland Capital, Highland Advisor, Highland Management, Highland Holdings, Dondero, and Waterhouse (collectively, the "Highland Enterprise")³⁴ sought to engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business.

247. The Highland Enterprise, which is comprised of two or more business entities and individuals, had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

248. The fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer, constitute one or more unlawful, overt acts.

249. The Debtors and the Debtors' estates suffered damages as a proximate result of the fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

250. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for the Highland Enterprise's conspiracy.

³⁴ This is without limitation to other entities or individuals that may ultimately be shown to be part of Highland Enterprise.

***Count 28: Tortious Interference with the Universal/BVK Agreement
[Against Highland Capital]***

251. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

252. Under Texas law, a claim for tortious interference with contract requires: "(1) an existing contract subject to interference, (2) a willful and intentional act of interference with the contract, (3) that proximately caused the plaintiff's injury, and (4) caused actual damages or loss." *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320 *7 (N.D. Tex.) (J. Boyle) (quoting *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The fact that a contract is an at-will agreement is no defense to a tortious interference claim. *Id.*

253. The Universal/BVK Agreement is an existing contract to which Acis LP is a party. The Universal/BVK Agreement is an existing contract that is subject to interference.

254. From nearly day one of these Bankruptcy Cases, Highland Capital has sought to terminate Acis LP as the manager under the Universal/BVK Agreement, and replace Acis LP with Highland Capital or one of its affiliates. Highland Capital's actions involve communications over many months with Universal and BVK, including numerous communications after Highland Capital was terminated as sub-advisor on August 1, 2018 and no longer had any legitimate reason to communicate with Universal or BVK. Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way.

255. Acis LP and its estate have suffered and will suffer actual damages as a proximate result of the interference of Highland Capital.

256. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for Highland Capital's tortious interference with the Universal/BVK Agreement.

***Count 29: Breach of Contract by Highland Capital under the Sub-Advisory Agreement and Shared Services Agreement
[Against Highland Capital]***

257. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

258. Under Texas law, to prevail on a breach of contract claim, a party must show: "(1) the existence of a valid contract; (2) the plaintiff performed or tendered performance as the contract required; (3) the defendant breached the contract by failing to perform or tender performance as the contract required; and (4) the plaintiff sustained damages as a result of the breach." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018).

259. The Sub-Advisory Agreement is a valid contract between Acis LP and Highland Capital, under which Highland Capital was obligated to, *inter alia*:³⁵

- (i) make recommendations to Acis LP for the purchase, retention, or sale of specific loans or assets in the CLOs;
- (ii) place orders with respect to the purchase or sale of specific loans or assets for the CLOs, upon instruction from Acis LP;
- (iii) identify, evaluate, recommend to Acis LP, and, if applicable, negotiate the structure or terms of investment opportunities for the CLOs;
- (iv) assist Acis LP in performing its due diligence on prospective investments for the CLOs; and

³⁵ Although the Plaintiffs plead herein that certain provisions of the Sub-Advisory Agreement, which are in violation of the LPA, are unauthorized and *ultra vires*, section 15 of the Sub-Advisory Agreement provides that any such invalid provision does not affect or render "invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part."

(v) provide information to Acis LP regarding any investments in the CLOs, and, if requested by Acis LP, provide information to assist in monitoring and servicing investments by the CLOs.

See Sub-Advisory Agreement § 1(b). Further, "[n]otwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, [Acis LP]." *Id.*

260. Section 4(a) of the Sub-Advisory Agreement specifically provides:

[T]he Sub-Advisor will perform its obligations [under the Sub-Advisory Agreement] in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios[.]

261. Since at least the time the Trustee was appointed in these Bankruptcy Cases, while acting as sub-advisor, Highland Capital failed to purchase a single loan for the CLOs, and only provided for the sale of loans, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP. Such practice is inconsistent with the practices and procedures followed by institutional managers of national standing, such as Brigade, relating to assets of the nature and character of the CLOs. Highland Capital's activities are, however, completely consistent with the Highlands' ultimate goal to take away Acis LP's valuable assets and take over Acis LP's valuable business as portfolio manager of the CLOs.

262. Highland Capital grossly mismanaged the CLOs, in abrogation of its duties and disregard of the standard of care under the Sub-Advisory Agreement. Accordingly, Highland Capital has breached its obligations under the Sub-Advisory Agreement, and such breach caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

263. Further, to the extent any of the above-mentioned acts constitute services Highland Capital asserts it provided pursuant to the Shared Services Agreement, such services failed to meet the "Standard of Care" set forth in the Shared Services Agreement and were committed in bad faith or were the result of gross negligence, fraud, and/or willful misconduct. Highland Capital's breach of the Shared Services Agreement caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

***Count 30: Breach of Fiduciary Duties by Highland Capital
[Against Highland Capital]***

264. The Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

265. Pursuant to the Sub-Advisory Agreement, a principal-agent relationship existed between Acis LP and Highland Capital. As its investment adviser, Highland Capital owed Acis LP fiduciary duties. *See Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248. 17, C.F.R. Part 276 (June 5, 2019). Further, based on Highland Capital's role as sub-advisor and investment adviser to Acis LP, a special relationship of trust and confidence existed between Acis LP and Highland Capital. *See W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 373-74 (Tex. App.—Fort Worth 2007, no pet.). Accordingly, in its capacity of sub-advisor to Acis LP, Highland Capital owed fiduciary duties to Acis LP.

266. Highland Capital, while acting as sub-advisor for Acis LP, purposefully engaged in conduct that was detrimental to Acis LP in order to enrich itself. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates and amounts in

excess of the compensation limits of the LPA. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the Fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as Acis's own counsel later boasted, and in order to ensure that Terry would never receive payment on his judgment, as Dondero has threatened. These transfers, while very damaging to Acis LP, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, Highland Capital sought to transfer the Universal/BVK Agreement away from Acis LP and to itself or an affiliate, including while Highland Capital was serving as sub-advisor (and as a fiduciary) for such agreement.

267. By its actions, Highland Capital specifically intended to cause harm to Acis LP by denuding it of its assets and enriching Highland Capital. In doing so, Highland Capital breached its fiduciary duties to Acis LP.

268. As a consequence, the Plaintiffs, now vested with all claims of the Trustee, are entitled to an award of punitive damages against Highland Capital in an amount to be determined by the Court.

***Count 31: Punitive Damages
[Against All Defendants]***

269. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

270. The Highlands, led by Highland Capital and Dondero, engaged in fraud against Acis and its creditors, acted with malice toward Acis and its creditors, and were, at best, grossly negligent in their dealings with Acis.

271. Further, Plaintiffs are entitled to punitive damages in connection with Highland Capital's: (i) breach of fiduciary duties to Acis due to its fraudulent conduct, (ii) tortious interference, and (iii) violations of TUFTA. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W. 3d 213, 232 (Tex. 2019) (fiduciary duties); *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 210 (Tex. 1996) (tortious interference); *Mullins v. Testamerica, Inc.*, CIV.A. 3:02-CV-0106-, 2006 WL 2167401, at *10 (N.D. Tex. Aug. 2, 2006) (TUFTA).

272. Thus, the Plaintiffs, now vested with all claims of the Trustee, are entitled to punitive damages, and the Plaintiffs plead for such damages in connection with each Count pleaded herein that will support a claim for punitive damages.

***Count 32: Disregarding the Corporate Form/Alter Ego/Collapsing Doctrine/Unjust
Enrichment
[Against All Defendants]***

273. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

274. Under Texas law, ignoring the separateness of business entities and holding affiliated entities liable for all debts of the fraudulent enterprise is appropriate "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp.*, 275 S.W.3d 444, 451 (Tex. 2008); *see also Flores v. Bodden*, 488 Fed. App'x 770, 775-76 (5th Cir. 2012) (listing "six situations in which a court may disregard the corporate form"); *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (finding alter ego present).³⁶

³⁶ To the extent Delaware law applies to any of the alter ego claims, Delaware also recognizes alter ego on similar grounds. "Delaware does, however, recognize the traditional alter ego doctrine as grounds to pierce the corporate veil in cases involving the members of a corporate group. To state an alter ego claim under Delaware law, the [plaintiff] must plead (1) that [the] defendants 'operated as a single economic entity' and (2) that an 'overall element

275. Highland Capital, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero. Each of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others. Further, each of the Alter Egos should be held liable for any debts of the Debtors, as they are also the alter ego of the Debtors.

276. In this case, the Alter Egos unquestionably used the corporate form as a means of perpetuating the fraudulent scheme set forth above. For example, creating shell corporations in the Cayman Islands days after the Arbitration Award in order to avoid payment of Acis's creditors is precisely the type fraud or injustice that warrants disregarding the corporate form. Such actions satisfy, at a minimum, the first three situations in which a court may disregard the corporate form.

277. Further, "multistep transactions can be collapsed when the steps of the transaction are `part of one integrated transaction.'" *In re Yazoo Pipeline Co., L.P.*, 448 B.R. 163, 187 (Bankr. S.D. Tex. 2011) (J. Isgur) (internal citations omitted). The Supreme Court likewise has held that a bankruptcy court, as a court of equity, may look through form to substance when determining the true nature of a transaction as it relates to the rights of parties against a bankrupt's estate. *Pepper v. Litton*, 308 U.S. 295, 304-05 (1939).

278. The ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements should be collapsed and recognized for what they are: Highland Capital using offshore entities to take over Acis LP's assets and business while Highland Capital maintains absolute control over such assets and business, and even using

of injustice or unfairness' is present. *Precht v. Global Tower LLC*, No. 2:14-CV-00743, 2016 U.S. Dist. LEXIS 177910, at *9 (W.D. La. Dec. 22, 2016) (internal citations omitted).

alleged debt owed to Highland Capital as the purported consideration for these transactions in order to mask Highland Capital's otherwise clear liability for avoidable transfers.

279. Finally, unjust enrichment is an equitable theory of recovery holding that one who receives benefits unjustly should make restitution for those benefits. *Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 927 (Tex. App.--Fort Worth 1994). A party is unjustly enriched when it obtains a "benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992).

280. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits.

***Count 33: Willful Violation of the Automatic Stay
[Against Highland Capital and Highland Funding]***

281. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

282. A willful violation of the automatic stay does not require a specific intent.

Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.

Campbell v. Countrywide Home Loan, Inc., 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005).

283. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate." *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

284. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees. *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009). The term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. *See Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, *inter alia*, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

285. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. *See United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990).

286. Highland Capital knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including when it demanded on June 20, 2018, that the Trustee take actions to effectuate the optional redemption by June 21, 2018.

287. Highland Funding knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including each occasion described herein when it sent the Trustee the Optional Redemption Notices.

288. Pursuant to section 362(k)(1), the Plaintiffs seek recovery of damages commensurate with its injury, due to Highland Capital's and Highland Funding's violations of the automatic stay. Further, given Highland Capital's and Highland Funding's blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiffs seek attorneys' fees, punitive damages, and sanctions, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

***Count 34: Attorneys' Fees and Costs,
Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases
[Against All Defendants]***

289. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

290. Pursuant to Texas Business and Commerce Code section 24.013, Civil Practice and Remedies Code section 38.001, TUFTA, and any other applicable law, the Plaintiffs may recovery attorneys' fees and costs incurred in bringing this Adversary Proceeding.

291. Plaintiffs further seek recovery from Highland Capital of all allowed professionals' fees and expenses in the Bankruptcy Cases, which were losses to Acis resulting from Highland Capital's breach of fiduciary duties to Acis. *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

VII. REQUEST FOR DISGORGEMENT

292. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

293. "Under the equitable remedy of disgorgement or fee forfeiture, a person who renders service to another in a relationship of trust may be denied compensation for his service if he breaches that trust." *McCullough v. Scarbrough, Medlin & Assocs.*, 435 S.W.3d 871, 904-05 (Tex. App.—Dallas 2014) (citing *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999)). "The remedy essentially returns to the principal the value of what it paid for because it did not receive the trust or loyalty." *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237-38).

"The amount of disgorgement is within the trial court's discretion; the court may 'deny him all compensation or allow him a reduced compensation or allow him full compensation.'" *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237 (quoting RESTATEMENT (SECOND) OF TORTS § 243 (1959))).

294. "Equitable disgorgement is distinct from an award of actual damages in that the disgorgement award 'serves a separate function of protecting fiduciary relationships.'" *McCullough*, 435 S.W.3d at 905 (quoting *Saden v. Smith*, 415 S.W.3d 450, 469 (Tex. App.—Houston [1st] Dist. 2013, pet. denied)); *see also Burrow*, 997 S.W.2d at 238 ("[T]he central purpose of the equitable remedy of [disgorgement] is to protect relationships of trust by discouraging agent's disloyalty.").

295. The basis for the disgorgement award against Highland Capital stems from its liability in connection with its breach of fiduciary duty, as pleaded herein, and should be "phrased in terms of the salary, profits or other income [Highland Capital] received during the time [it] committed the tortious conduct." *McCullough*, 435 S.W.3d at 905 (internal quotation marks omitted).

296. Accordingly, Plaintiffs request disgorgement of all funds received by Highland Capital, who breached its fiduciary duties to Acis.

VIII. REQUEST FOR IMPOSITION OF CONSTRUCTIVE TRUST

297. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

298. "A constructive trust is not a cause of action under Texas law." *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010). Rather, "[a] constructive trust is an equitable remedy used to prevent unjust enrichment." *Baxter v. PNC Bank Nat'l Ass'n*, 541 Fed. App'x 395, 398 (5th Cir. 2013) (citing *Everett v. TK-Taito, LLC*, 178 S.W.3d 844, 859 (Tex. App.—Fort Worth 2005, no pet.)); *see also Messier v. Messier*, 458 S.W.3d 155, 164 (Tex. App.—Houston [14th Dist.] 2015,

no pet.) ("A constructive trust is imposed when one party holds property that legally belongs to the other."). "In order to establish a constructive trust, the proponent must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and, (3) tracing to an identifiable res." *Baxter*, 541 Fed. App'x at 398; *accord Clapper v. Am. Realty Inv'rs, Inc.*, 3:14-CV-2970-D, 2015 U.S. Dist. LEXIS 71543, at *26 (N.D. Tex. June 3, 2015).

299. As described herein, Highland Capital breached its fiduciary duties to Acis, and the Highlands acted in concert to perpetrate the series of fraudulent transfers in order to strip Acis of its assets for the benefit of Highlands.

300. The Highlands were unjustly enriched because they benefitted from the "fraud [and] the taking of an undue advantage" against Acis. *See Heldenfels Bros.*, 832 S.W.2d at 41. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the property transferred, which is traceable and identified herein, as a result of the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee.

301. Further, Highland Capital, who breached its fiduciary duties to Acis, was unjustly enriched in connection with the Expense Overpayments as well as by the payments received as a result of the modifications to the Sub Agreements, and such benefits may be traced and identified by the payments from Acis LP to Highland Capital under the modified Sub Agreements.

302. Accordingly, the Plaintiffs requests that a constructive trust is established for those benefits unjustly received by the Highlands.

IX. OBJECTIONS TO HIGHLAND CAPITAL PROOFS OF CLAIM

303. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

304. The Highland Capital Claims are allegedly based on claims arising from the Sub-Advisory Agreement and the Shared Services Agreement. The Highland Capital Claims³⁷ are summarized as follows:

Alleged Pre-Petition Claim³⁸	Alleged Claim Amount
Sub-Advisory Agreement	\$1,605,362.41
Shared Services Agreement	\$1,017,213.62
Total alleged Pre-Petition Claim	\$2,622,576.03
Alleged 502(f) Claim³⁹	Alleged 502(f) Claim Amount
Sub-Advisory Agreement	\$1,170,147.06
Shared Services Agreement	\$ 879,417.29
Total alleged 502(f) Claim	\$2,049,564.35
Total Claim Amount	\$4,672,140.38

³⁷ Highland Capital filed identical claims against both Acis LP and Acis GP. Acis GP is not a party to the Sub-Advisory Agreement or the Shared Services Agreement. Presumably, Highland Capital is relying on Delaware partnership law to argue that Acis GP is also liable under the Sub-Advisory Agreement and Shared Services Agreement. See 6 Del. C. § 17-403(b) ("Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to the partnership and to the other partners."); see also 6 Del. C. § 15-306(a) ("(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law"). If this is the case, Acis does not dispute this basic tenet of partnership law; however, Acis disputes the Highland Capital Claims for the reasons set forth herein. Accordingly, all arguments set forth herein are applicable to both Highland Capital Claims.

³⁸ The Alleged Pre-Petition Claim relates to Highland Capital's alleged claim arising prior to the Petition Date.

³⁹ The Alleged 502(f) Claim relates to Highland Capital's alleged claim arising after the Petition Date and prior to April 13, 2018, the date the Court entered the Orders for Relief.

The Highland Capital Claims also include contingent indemnity claims arising under the Sub Agreements.

305. The Highland Capital Claims should be disallowed under (i) section 502(b)(1) of the Bankruptcy Code; (ii) section 502(b)(4) of the Bankruptcy Code; (iii) and section 502(d) of the Bankruptcy Code. The Highland Capital Claims are unenforceable against the Debtors under the LPA and applicable law. The Highland Capital Claims are for services of an insider of the Debtors and exceed the reasonable value of the services. As set forth above, Plaintiffs have asserted avoidance actions against Highland Capital such that the Highland Capital Claims should be disallowed. Finally, to the extent allowed at all, the Highland Capital Claims should be equitably subordinated under section 510(c) of the Bankruptcy Code.

306. Pursuant to section 502(b) and (d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3007, the Plaintiffs seek entry of an order disallowing and expunging the Highland Capital Claims from the Debtors' claims registers.

A. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(1).

307. "Section 502(b)(1) provides that a claim is allowed except to the extent it is unenforceable under applicable law." *In re White*, No. 06-50247-RLJ-13, 2008 Bankr. LEXIS 167, at *17-18 (Bankr. N.D. Tex. Jan. 28, 2008). "[T]he the validity of a creditor's claims against the debtor at the time the bankruptcy petition is filed 'is to be determined by reference to state law.'" *Carrieri v. Jobs.com, Inc.*, 393 F.3d 508, 529 (5th Cir. 2004) (quoting *Kellogg v. United States (In re W. Tex. Mktg. Co.)*, 54 F.3d 1194, 1196 (5th Cir. 1995)).

308. As set forth more fully above, the Highland Capital Claims are based entirely on amounts alleged to be due pursuant to the Sub Agreements. As outlined in the causes of action above, there are significant amounts due to Acis LP by Highland Capital under or in connection with the Sub Agreements, which constitute a right of recoupment and/or offset to the entirety of

the Highland Capital Claims. Further, any portion of the Highland Capital Claims that are based on *ultra vires* acts, as alleged in Count 1 above, are void or voidable. Accordingly, the Highland Capital Claims are not enforceable under applicable law, and the Highland Capital Claims should therefore be disallowed.

B. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(4).

309. The Highland Capital Claims are claims for services by an insider, Highland Capital, and the Highland Capital Claims exceed the reasonable value of the services provided by Highland Capital. Section 502(b)(4) of the Bankruptcy Code provides, in relevant part, that a claim for services of an insider or attorney of a debtor shall not be allowed to the extent that "such claim exceeds the reasonable value of such services."

310. The purpose of section 502(b)(4) is: "(1) to prevent insiders of a debtor from extracting inflated compensation from the debtor at the expense of the debtor's creditors; and (2) to prevent over-generosity of a debtor prior to a bankruptcy filing." *Faulkner v. Canada (In re Heritage Org., L.L.C.)*, Case No. 04-35574-BJH-11, Adv. No. 04-3338, 2006 Bankr. LEXIS 4662, at *22-23 (Bankr. N.D. Tex. Jan. 5, 2006); *see also In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("The purpose underlying 11 U.S.C. § 502(b)(4) is to prevent officers and directors (insiders) of a debtor from extracting inflated amounts for their services at the expense of the creditors.").

1. Highland Capital is an Insider of the Debtors.

311. Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, etc. Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See In re Missionary Baptist Foundation of Am., Inc.*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly

known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018).

312. The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992).

313. Highland Capital is a statutory insider, a non-statutory insider, an admitted insider, and an adjudicated insider. The statutory definition of "insider" includes an "affiliate" of the debtor. 11 U.S.C § 101(31)(E). Prior to the entry of the Orders for Relief, Highland Capital met the statutory definition of "affiliate" because Highland Capital "operate[d] the business or substantially all of the property of the [D]ebtor under a[n] . . . operating agreement." *See* 11 U.S.C § 101(2)(D). Under the Sub Agreements, Acis LP effectively ceded control over its operations to Highland Capital.⁴⁰

314. Highland Capital is a non-statutory insider because Dondero controlled both Acis and Highland Capital prior to the date the Court entered the Orders for Relief. The closeness of the Highland Capital-Acis relationship is demonstrated by the fact that both companies are under Dondero's common control, Acis had no employees and Acis was operated exclusively by Highland Capital employees. Transactions were not conducted at arm's length. Indeed, Dondero

⁴⁰ For purposes of section 502(b)(4), courts examine whether a party is an "insider" on the date the operative document was executed. Here, it is indisputable that Highland Capital was an insider when the Sub-Advisory Agreement and the Shared Services Agreement were executed, and Highland Capital was an insider on the Petition Date. *See Faulkner*, 2006 Bankr. LEXIS 4662, at *17 ("The determination of insider status is made as of the time the claimant provided services to the debtor."); *In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("[T]he relevant time for determining one's status as an insider, under 11 U.S.C. § 502(b)(4), is the time services were rendered and when the compensation contracts for such services were formed[.]").

signed both the Sub-Advisory Agreement and the Shared Services Agreement for Highland Capital and Acis.

315. Highland Capital is an admitted insider and an adjudicated insider. During the trial on the involuntary petitions, the Debtors, controlled by Highland Capital, admitted that Highland Capital is an insider of the Debtors.⁴¹ Acis LP's SOFA lists payments to Highland Capital in the section titled "Payments or transfers of property made within 1 year before the filing of this case that benefited any insider." The SOFA is signed by Isaac Leventon, an employee of Highland Capital (who, on information and belief, had no official title or position with the Debtors). Additionally, this Court has found that Highland Capital is an insider of the Debtors, stating: "the court believes it necessary to remove certain *insider* creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code. *This would clearly include Highland Capital* (the Alleged Debtors do not dispute this)." Opinion ¶ 38 (footnotes omitted) (emphasis added).

2. The Highland Capital Claims Exceed the Reasonable Value of the Services Provided.

316. "In analyzing the reasonableness of a claim for services under § 502(b)(4), a court should consider the totality of the circumstances involved at the time that the services were rendered." *Faulkner*, 2006 Bankr. LEXIS 4662, at *23 (citing *In re Gutierrez*, 309 B.R. 488, 493 (Bankr. W.D. Tex. 2004)). "Reasonable value" under Section 502(b)(4) is "synonymous with 'market value.'" *In re Delta Air Lines, Inc.*, No. 05-17923 (cgm), 2010 Bankr. LEXIS 233, at *22 (Bankr. S.D.N.Y. Feb. 3, 2010). "The burden of proof on reasonableness under

⁴¹ Transcript of Hearing on Emergency Motion to Abrogate or Modify 11 U.S.C Section 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C Section 363 Filed by Petitioning Creditor Joshua Terry (3); Emergency Motion to Set Hearing (related to Document (8) Motion to Dismiss Case Filed by Alleged Debtor Acis Capital Management, LP (9) (Case Nos. 18-30264-SGJ7 & 18-30264-SGJ7) (the "2-7-18 Transcript"), at 246: 8-9 ("[T]here are no insiders other than Highland on the list of eighteen[.]").

§ 502(b)(4) ultimately lies with the insider." *Id.* at 24. Thus, Highland Capital has the burden to establish the reasonableness of its claims. Further, when the validity of an insider's contract with a corporation is at issue, the burden is on the insider "not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein." *In re Marquam Inv. Corp.*, 942 F.2d 1462, 1465 (9th Cir. 1991) (quoting *Pepper v. Litton*, 308 U.S. 295, 306 (1939)).

317. Together, the Sub Agreements (as amended) charge Acis LP fees far exceeding the market value of the services provided under such agreements. First, the Trustee's professionals engaged in a marketing process in connection with the Brigade Motion. After conducting a diligent search of the market, the Trustee located a replacement for Highland Capital that provided the services Highland Capital previously provided the Debtor for roughly half the cost Highland Capital charged Acis LP. The Sub Agreements also significantly contributed to rendering Acis insolvent. In fact, the General Counsel of Highland Capital, Scott Ellington, admitted that as of February 7, 2018—one week after the Petition Date—Acis was insolvent or close to insolvent.⁴²

318. Highland Capital cannot show that the exorbitant fees charged under the Sub Agreements are reasonable or that entry into such agreements was in good faith and demonstrates inherent fairness. Therefore, pursuant to section 502(b)(4), the Highland Capital Claims should be disallowed in their entirety.

C. Highland Capital Received Voidable Transfers and Holds Property of the Estate, and the Trustee is Entitled to Setoff under Section 502(d) of the Bankruptcy Code.

319. As set out more fully in the causes of action above, the Plaintiffs seek: (i) avoidance of actual and constructively fraudulent transfers and obligations pursuant to sections

⁴² 2-7-18 Transcript at 219: 22-25 (THE COURT: Do you think Acis is in the zone of insolvency? THE WITNESS: I don't know the answer to that, but I would -- I would assume that it was -- that it's close.")

544 and 548 of the Bankruptcy Code, (ii) avoidance of preferential transfers pursuant to section 547 of the Bankruptcy Code; (iii) turnover of property the estate pursuant to section 542 of the Bankruptcy Code; and (iv) liability for the foregoing under section 550 of the Bankruptcy Code.

320. "Under section 502(d), 'the court shall **disallow** any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544 [or 548] of this title, unless such . . . transferee has paid the amount, or turned over any such property.'" *In re Consol. Capital Equities Corp.*, 143 B.R. 80, 84 (Bankr. N.D. Tex. 1992) (quoting 11 U.S.C. § 502(d)) (emphasis in original).⁴³ Application of section 502(d) is not restricted to cases where a fraudulent transfer has already been avoided, but rather applies to pending fraudulent transfer claims as well. In other words, the statute does not require that the transfer actually be avoided, only that it be "avoidable." *Id.* As a result, once a fraudulent transfer claim has been asserted, the mandatory language of section 502(d) requires bankruptcy courts to consider the fraudulent transfer issue as a component of the claims allowance process. *U.S. Bank N.A. v. Verizon Communs., Inc.*, 761 F.3d 409, 419 (5th Cir. 2014) (finding mandatory language of section 502(d) precluded the court from resolving claims where the trustee alleged the claimant was the transferee of a fraudulent transfer). Moreover, the Court may disallow the Highland Capital Claims before adjudicating the causes of action set forth herein. *See In re Heritage Org., L.L.C.*, 375 B.R. 230, 288-289 (Bankr. N.D. Tex. 2007) (finding a court order avoiding a transfer is not a prerequisite to disallowance of a claim).

321. Thus, pursuant to section 502(d) of the Bankruptcy Code, the Court should disallow the Highland Capital Claims.

⁴³ "Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title [11 USCS § 542, 543, 550, or 553] or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title." 11 U.S.C. § 502(d)

D. The Highland Capital Claims Should be Equitably Subordinated.

322. Section 510(c) of the Bankruptcy Code expressly authorizes subordination of the allowed claim of one creditor to the allowed claims of other creditors "under principles of equitable subordination."

323. In *In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977), the Fifth Circuit articulated what has become the most commonly accepted standard for equitable subordination of a claim. Under the *Mobile Steel* standard, a claim can be subordinated if the claimant engaged in some type of inequitable conduct that resulted in injury to creditors (or conferred an unfair advantage on the claimant) and if equitable subordination of the claim is consistent with the provisions of the Bankruptcy Code.

324. During the time it completely dominated control of Acis, Highland Capital clearly engaged in abundant inequitable conduct related to Acis, as well as conferring numerous unfair advantages to itself, which resulted in injury to Acis's creditors. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates. This has resulted in a grossly inflated claim for Highland Capital as well as significant overpayments to Highland Capital for whatever services and value it did provide to Acis under these agreements.

325. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as

Acis's own counsel later boasted,⁴⁴ and in order to ensure that Terry and other creditors would never receive payment on his judgment, as Dondero has threatened.⁴⁵ These transfers, while very damaging to Acis LP and its creditors, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, even during the Bankruptcy Cases, Highland Capital has attempted to transfer and take over Acis LP's very lucrative Universal/BVK Agreement.

326. To the extent the Highland Capital Claims are allowed in any amount, they are subject to equitable subordination and should be subordinated below all other allowed unsecured claims in the bankruptcy case.

X. OBJECTIONS TO HIGHLAND CAPITAL'S ADMINISTRATIVE CLAIM

A. Highland Capital's Administrative Claim is Subject to Disallowance for the Same Reasons the Highland Capital Claims Should be Disallowed.

1. Prevailing on the Causes of Action Set Forth Herein Mandates the Disallowance of Highland Capital's Administrative Claim.

327. In its Application, without specifically citing the causes of actions or making any reference whatsoever to the objections to the Highland Capital Claims contained herein (as they were previously asserted in the Amended Counterclaims), Highland Capital asserts that the Trustee "apparently has furthered a theory that Highland overcharged the Debtors," but must "provide evidence, not simply allegations, to rebut the prima facie case that Highland is entitled to an administrative claim." Application ¶ 33. Highland Capital then rashly contends that the Trustee "has provided no such evidence" and that "the Contracts speak for themselves and are the best evidence of the validity of the claim asserted by Highland." *Id.* A simple review of the

⁴⁴ See Plaintiff's Motion for Expedited Discovery, Ex. 1 (Declaration of Rogge Dunn) ¶ 4, *Terry v. Acis Capital Mgmt., L.P.*, Cause No. DC-17-15244, 44th District Court of Dallas County, Texas ("On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone. In that call, Mr. Welton stated that Acis is 'judgment proof.'").

⁴⁵ See June 28, 2017 Dondero Dep. Tr. 262:2-8 (Ex. 101 from the involuntary trial) ("Nobody's going to let a dime go out of the firm that we don't have to pay ever to – to Josh, period. I mean, it's . . . I think it's personal[.]").

causes of action herein (as well as evidence presented in connection with the involuntary hearings, confirmation hearings, and other hearings during these Bankruptcy Cases) belies its position and demonstrates otherwise.

328. As is discussed below, Highland Capital must demonstrate that the services provided conferred a direct and substantial benefit on the Debtors' estates. And before Highland Capital can ask the Court to assess whether its services provided the required direct and substantial benefit, it must first demonstrate that it had the right to even charge the Debtors the amount set forth in the agreements. The causes of action asserted against Highland Capital herein, which dispute the amounts charged by Highland Capital, directly implicate the validity of, and support the disallowance of, the Administrative Claim (just as they refute Highland Capital's purported prepetition claims). The Plaintiffs therefore expressly incorporate Counts 1, 5 – 8, and 27 – 30 herein and specifically raises such Counts as objections to the Administrative Claim asserted by Highland Capital in its Application.

329. If the Plaintiffs prevail on the causes of action against Highland Capital as set forth herein, the basis for allowance of the Administrative Claim would also be invalidated. Moreover, as discussed below, based on such causes of action, the Plaintiffs are entitled to recover millions of dollars in damages, all of which may be offset against the Administrative Claim.

2. Highland Capital's Administrative Claim is Also Subject to Disallowance under Section 502(d).

330. Because Highland Capital is alleged to have received fraudulent transfers, its Administrative Claim is also subject to disallowance under section 502(d) until the property or its value has been returned to the Debtors.

331. Although Highland Capital's Application involves an administrative claim, nothing in section 502(d) limits its application to prepetition claims. *MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.)*, 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Section 502(d) by its terms applies to "any claim" and the definition of a "claim" in section 101(5) is sufficiently broad to include requests for payment of expenses of administration. *Id.* Because the objective of section 502(d) is to encourage transferees to return avoidable transfers to the estate, a number of courts have held that section 502(d) applies to administrative claims. *See, e.g., id.* at 508-12; *In re Georgia Steel*, 38 B.R. 829, 839-40 (Bankr. M.D. Ga. 1984) (applying section 502(d) and stating, "[t]he fact that [the] claim is for an administrative expense has no bearing").

332. The Plaintiffs acknowledge that courts are split on the issue of whether section 502(d) applies to administrative expenses. *Compare MicroAge, Inc.*, 291 B.R. at 508-512 (considering split of authority and finding that "the better analysis is that § 502(d) may be raised in response to the allowance of an administrative claim"), *and Georgia Steel*, 38 B.R. at 839-40 (finding the fact that the claim "is for an administrative expense has no bearing" for purposes of section 502(d)), *with In re Plastech Engineered Prods.*, 394 B.R. 147, 164 (Bankr. E.D. Mich. 2008) (concluding that "§ 502(d) does not apply to the allowance and payment of administrative expenses under § 503(b)"). Although not binding on this Court, the Plaintiffs also note that one bankruptcy court in this district has found that section 502(d) does not apply to administrative claims. *Rand Energy Co. v. Del Mar Drilling Co. (In re Rand Energy Co.)*, 256 B.R. 712, 719 (Bankr. N.D. Tex. 2000) (Felsenthal, J.).

333. As described above, Highland Capital is the recipient of certain preferential payments and/or fraudulent transfers. Thus, while acknowledging the split of authority on the issue, the Plaintiffs assert that the plain language of section 502(d), as well as the policy

underlying section 502(d), requires that Highland Capital's Administrative Claim be disallowed in its entirety.

3. The Indemnity Provisions Relied on by Highland Capital Are Invalid and, in Any Event, Do Not Apply to Highland Capital's Intentional Torts.

334. In the Application, Highland Capital also asserts defenses against the causes of action brought herein pursuant to its purported indemnity rights against the Debtors under section 6.03 of the Shared Services Agreement and section 4(c) of the Sub-Advisory Agreement. Application ¶ 34. Any contention by Highland Capital that it is immune from liability arising from the causes of action brought against it herein due to the indemnity provisions of the Sub Agreements lacks merit. First, the indemnity provisions cited by Highland Capital were included only in the last iteration of the Sub Agreements, in March 2017. Thus, even if valid and applicable (which they are not), such provisions do not cover actions of Highland Capital prior to March 2017. Second, to the extent that the indemnity provisions in the Sub Agreements were included in an attempt to shield Highland Capital from liability in connection with its fraudulent scheme to denude Acis (and were added for no consideration), such provisions were themselves fraudulently incurred and should be avoided pursuant to section 548 of the Bankruptcy Code and sections 24.005 and 24.006 of TUFTA.⁴⁶ Further, the protection Highland Capital seeks is outside the scope of the indemnity provisions, which indemnify Highland Capital in connection with its actions taken as sub-advisor under the Sub Agreements—not in connection with torts and other wrongful conduct intentionally committed against Acis as part of Highland Capital's calculated scheme to denude the estate. Finally, it is against public policy for indemnity provisions in contract to shield a party from intentional tortious conduct. *See, e.g., Hamblin v.*

⁴⁶ Notably, all versions prior to the last iteration of the Sub-Advisory Agreement (before March 2017) contained no indemnity provision; also, it is telling that the indemnity provisions were added to the Sub-Advisory Agreement and significantly amended in the Shared Services Agreement only after arbitration had been ordered in state court.

Lamont, 433 S.W.3d 51, 55 (Tex. App.—San Antonio 2013, pet. denied); *In re Oil Spill by the Oil Rig*, 841 F. Supp. 2d 988, 1001-02 (E.D. La. 2012). Accordingly, such provisions are inapplicable as a defense to the causes of action asserted herein against Highland Capital.

B. Highland Capital Cannot Satisfy Its Burden of Proving Its Services Directly and Substantially Benefitted the Debtors' Estates.

1. Administrative Priority Status is Narrowly Construed and Only Awarded Upon a Showing of a Direct and Substantial Benefit to the Estate.

335. Under section 503(b)(1) of the Bankruptcy Code, an administrative expense claim shall be allowed for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The ultimate burden of proof is on Highland Capital to establish it is entitled to an administrative priority claim pursuant to 11 U.S.C. § 503(b). *See In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). Further, because section 503 administrative claims are priority claims, which are entitled to special treatment, section 503 must be narrowly construed. *See In re Templeton*, 154 B.R. 930, 934 (Bankr. W.D. Tex. 2009); *see also In re Federated Dep't Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001) ("Claims for administrative expenses under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants.").

336. At a minimum, Highland Capital must establish that "(1) the claim arises from a transaction with the [debtor]; and (2) the goods or services supplied enhanced the ability of the [debtor's] business to function." *See Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001) (citing *Transamerican*, 978 F.2d at 1416); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Claim under this section 'generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor's estate.'" (quoting *Jack/Wade Drilling*, 258 F.3d at 387)).

337. Moreover, the benefit is measured from the point of view of the bankruptcy estate, not that of the applicant. *In re Premium Well Drilling, Inc.*, 2012 Bankr. LEXIS 1554, at *9 (Bankr. W.D. Tex. Apr. 10, 2012). "The focus on allowance of administrative claims which enjoy priority over other creditors is to prevent unjust enrichment of the estate. It is *not* to compensate the creditor . . . for his or her loss." *In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 462 (Bankr. W.D. Tex. 2005) (emphasis in original).

2. Highland Capital Cannot Demonstrate It Conferred a Direct and Substantial Benefit on the Debtors' Estates.

338. As set forth herein, as it had done prior to these Bankruptcy Cases, following entry of the Orders for Relief, Highland Capital continued perpetrating its scheme to steal, and otherwise attempted to damage, Acis's business—in order to *minimize* value for creditors and ensure that Acis could not successfully reorganize—and to line its own pockets. Aside from Highland Capital's actions in sending notices of optional redemption to liquidate the CLOs (without Court approval and in violation of the automatic stay), following entry of the Orders for Relief, Highland Capital also actively mismanaged the Acis CLOs to undermine the business of the Debtors, as evidenced by, *inter alia*, the vast disparity between the trades made in CLOs 3, 4 5, and 6, as opposed to CLO 7, in 2018, as testified to by Terry at the second confirmation hearing. *See* Dec. 12, 2018 Hr'g Tr. (AM) at pp. 19-35.

339. Additionally, while mismanaging CLOs 3, 4 5, and 6, Highland Capital sought to carry out its plan "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."⁴⁷ As explained herein, Highland Capital's attempt to steal BVK's business from Acis began from nearly day one of these Bankruptcy Cases and continued

⁴⁷ *See Exhibit K* (email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer)).

even after Highland Capital was terminated as sub-advisor on August 1, 2018—when Highland Capital no longer had any legitimate reason to communicate with Universal or BVK.

340. Highland Capital's actions during the pendency of these Bankruptcy Cases demonstrate that Highland Capital did not service the Acis CLOs in a way that "enhanced the ability of the [debtor's] business to function." *Transamerican*, 978 F.2d at 1416. Indeed, Highland Capital acted to destroy the Debtors' business—therefore, Highland Capital's request for allowance of its Administrative Claim must be denied.

341. In its Application, Highland Capital essentially asserts that it provided services to the Debtors on a postpetition basis pursuant to various prepetition agreements and, therefore, the expenses are entitled to administrative priority. In order to qualify as an administrative expense, however, Highland Capital must show that its claim arose postpetition "as a result of actions by the trustee that benefitted the estate." *Id.* Further, although the terms of the Debtors' prepetition contracts may be probative of the reasonable value of postpetition services, they are not dispositive. *In re Am. Plumbing & Mech., Inc.*, 323 B.R. at 462. Indeed, "all that the estate is required to pay is the *reasonable value* of those services which were rendered." *Id.* (emphasis in original) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984)). Consequently, the provisions of the prepetition contracts do not automatically and dispositively translate into an allowed administrative claim. Highland Capital must still demonstrate a quantifiable benefit to the estate.

342. Highland Capital's assertion that its costs were incurred postpetition fails to satisfy its burden of proving entitlement to administrative priority. Specifically, aside from merely referencing the Sub-Agreements and the Universal/BVK Agreement, and contending that monies owed to it under such agreements are an administrative expense, Highland Capital fails to show that (i) such costs were necessary for the preservation of the Debtors' estate, and (ii) the

Debtors received any benefit, let alone a direct and substantial benefit, as a result of such services and expenses.

3. The Amount Charged by Highland Capital Was Inflated and Unnecessary.

343. Further, even if Highland Capital could show that, rather than undermining Acis's business, it provided postpetition services that enhanced the ability of Acis to function, to the extent the rates Highland Capital charged Acis were inflated or above market, the amounts charged to Acis under the Sub Agreements did not benefit the estates or its creditors, and such inflated amounts were therefore not necessary. *See NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991) ("Courts have construed the words 'actual' and 'necessary' narrowly: the debt must benefit the estate and its creditors."). Indeed, at the July 6, 2018 hearing, regarding approval of the break-up fee and replacement of Highland Capital as sub-servicer with Oaktree, J.P. Sevilla, assistant general counsel for Highland Capital, testified that Highland Capital would reduce its rates charged to Acis LP for sub-servicing from 35 basis points to 17.5 basis points, in order to match competing offers:

Q Okay. Would Highland be willing to reduce its fee during the pendency of the bankruptcy, maybe without its rights to assert the validity of the contract, but would Highland otherwise be willing to assert -- to reduce its fees during the pendency of the bankruptcy?

A I think at the very least Highland would match Saratoga or whatever the 17.5 bps offer is. Again, reserving all rights, but in order to stay in the deal and to establish Highland's commitment to this deal, we would do it for 17-1/2 basis points, no question.

July 6, 2018 Hr'g Tr. at pp. 243-44. Moreover, the effective rate for such services charged by Brigade and Cortland also approached 17.5 basis points.⁴⁸ Accordingly, notwithstanding the objections otherwise raised herein, and assuming the services provided to Acis LP enhanced,

⁴⁸ Pursuant to the Third Amended Joint Plan, Brigade agreed to provide sub-advisory and shared services to the Acis CLOs for 15 basis points (and decreasing after one year). *See* Docket No. 661 at pp. 28, 136; *see also* Dec. 11, 2018 (PM) Hr'g Tr. at 89 & Dec. 12, 2018 (AM) Hr'g Tr. at 62.

rather than undermined, the ability of Acis's business to function, such amounts should be reduced to reflect a rate of at most 17.5 basis points.

4. The Plaintiffs Dispute Highland Capital's Calculation of its Administrative Claim.

344. The Plaintiffs further object to Highland Capital's calculation of the amount of the Administrative Claim. Subject to the objections raised herein, in the *Amended Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 621] (the "Disclosure Statement"), the Trustee estimated that under the terms of the Sub Agreements, Highland Capital's alleged Administrative Claim would be approximately \$2,612,574.00, rather than \$3,007,678.41. Highland Capital fails to explain or substantiate this discrepancy. The Administrative Claim also includes \$543,545.88 for expenses. Highland Capital fails to show that these alleged expenses were incurred or payable under the Sub Agreements. *See In re Packard Props., Ltd.*, 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990) ("Since this claim is a request for payment of administrative expenses, the [creditor] carries the burden of proof throughout the entire proceeding."). Therefore, in addition to the objections herein, the Plaintiffs also object to Highland Capital's calculation of its purported Administrative Claim.

C. Highland Capital Is Not Entitled to Payment of Any Allowed Administrative Claim Because Acis's Right of Offset and Recoupment May Reduce or Eliminate Its Administrative Claim.

345. Even if the Court were to determine that Highland Capital is entitled to an allowed Administrative Claim, it should not be entitled to payment because Acis has rights of offset and recoupment that may be applied under section 558 of the Bankruptcy Code to reduce

or eliminate any allowed Administrative Claim.⁴⁹ As set forth above, Highland Capital charged Acis excessive and unreasonable fees for its services, and Acis has asserted a number of causes of action against Highland Capital for such overcharges, including for recovery of overcharges resulting from *ultra vires* actions, turnover of unauthorized payments, money had and received, conversion, fraudulent transfer, civil conspiracy, breach of contract, and breach of fiduciary duty. As a result of these overcharges, the Debtors' estates suffered many millions of dollars in damages which should be offset against any valid administrative claim awarded to Highland Capital. Indeed, the causes of action against Highland Capital may offset, or eliminate altogether, any right of recovery Highland Capital may have against the Debtors' estates on account of any Administrative Claim.

D. To the Extent Allowed, Highland Capital's Administrative Claim Should Also Be Equitably Subordinated.

346. In addition to applying equitable subordination to prepetition claims, courts have equitably subordinated administrative claims when the claimant acted in ways to harm the estate. *See, e.g., Principal Mut. Life Ins. Co. v. Langhorne (In re 848 Brickell Ltd.)*, 243 B.R.142, 149 (S.D. Fla. 1998) (holding that while "pursuit of one's legal rights may not be grounds for equitable subordination, the lower court's findings that [the claimant's] protracted and abusive litigation tactics harmed the estate by causing it to incur about \$400,000 in fees" justified equitable subordination of its administrative claim).

347. For the same reasons described above with respect to Highland Capital's prepetition claims, Highland Capital's Administrative Claim should also be equitably subordinated to the extent allowed. Further, during these Bankruptcy Cases, the Debtors' estates

⁴⁹ The Plan provided for the payment of allowed administrative claims on (i) the later of the effective date or the tenth business day after the administrative expense is allowed, or (ii) as otherwise agreed in writing between the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court. *See* Case No. 18-30264, Docket No. 660 at 11, § 3.01(b).

and the Reorganized Debtors have incurred substantial administrative fees in responding to the protracted and abusive litigation tactics of Highland Capital, including arguing for (and against) injunctive relief to prevent the liquidation of the CLOs and litigating the numerous appeals initiated by Highland Capital against the Trustee. Such litigation tactics by Highland Capital were attempts to thwart the reorganization of the Debtors, damage the estate, and harm its creditors. Accordingly, the Court should equitably subordinate Highland Capital's Administrative Claim. *See Principal Mut. Life Ins. Co.*, 243 B.R. at 149.

348. Thus, to the extent the Highland Capital's Administrative Claim is allowed in any amount, it should be subordinated below all other allowed claims in these Bankruptcy Cases.

VI. PRAYER

Plaintiffs respectfully request that the Court:

(i) enter judgment declaring that Expense Overpayments made to Highland Capital in excess of 20% of Revenue and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable;

(ii) enter judgment against Highland Capital for the recovery of any *ultra vires* payments made to Highland Capital;

(iii) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management for the avoidance and recovery of transfers fraudulently made and obligations fraudulently incurred and for civil conspiracy in connection with such fraudulent transfers and schemes;

(iv) enter judgment against Highland Capital, Highland Holdings, and Highland Management for avoidance and recovery of preferential transfers received;

(v) enter judgment against Highland Capital for tortious interference with contract;

(vi) enter judgment against Highland Capital for breach of contract;

(vii) enter judgment against Highland Capital for breach of its fiduciary duties and order disgorgement of all funds received by Highland Capital as a result of such breach;

(viii) enter judgment against Highland Capital and Highland Funding for willful violation of the automatic stay, pursuant to section 362(k) of the Bankruptcy Code;

(ix) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for punitive damages;

(x) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for pre- and post-judgment interest at the greatest amount permitted by law;

(xi) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for all attorneys' fees and costs incurred in connection with the prosecution of this Adversary Proceeding and for all allowed professionals' fees and expenses incurred by the estates in the Bankruptcy Cases;

(xii) establish a constructive trust for all benefits unjustly received by that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings;

(xiii) declare that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings are alter egos of each other, or that the corporate for should otherwise be disregarded, and each is fully liable for any judgment entered for the Plaintiffs in this Adversary Proceeding;

(xiv) disallow, expunge and/or subordinate the Highland Capital Claims;

(xv) deny, disallow, and/or subordinate Highland Capital's Administrative Claim; and

(xvi) grant any other such relief that the Plaintiffs may show themselves to be justly entitled in law or in equity.

Dated: June 20, 2019.

Respectfully submitted,

By: /s/Rakhee V. Patel

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

/s/ Annmarie Chiarello
One of Counsel

Exhibit 13

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**COUNSEL FOR HIGHLAND CAPITAL
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**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

IN RE:	§	Case No. 18-30264-SGJ-11
	§	Case No. 18-30265-SGJ-11
ACIS CAPITAL MANAGEMENT, L.P.	§	
AND ACIS CAPITAL MANAGEMENT	§	(Jointly Administered Under
GP, LLC,	§	Case No. 18-30264-SGJ-11)
	§	
DEBTORS.	§	Chapter 11

ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	
LLC,	§	Adversary No. 18-03078
	§	
PLAINTIFFS,	§	(Consolidated with Adversary
	§	Nos. 18-03212 & 19-03103)

VS.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P., HIGHLAND CLO FUNDING, LTD.	§	
F/K/A ACIS LOAN FUNDING, LTD.,	§	
HIGHLAND HCF ADVISOR, LTD.,	§	
HIGHLAND CLO MANAGEMENT, LTD.,	§	
HIGHLAND CLO HOLDINGS, LTD., CLO	§	
HOLDCO, LTD., NEUTRA, LTD., ACIS	§	
CLO 2014-3 LTD., ACIS CLO 2014-4	§	
LTD., ACIS CLO 2014-5 LTD., ACIS CLO	§	
2015-6 LTD., ACIS CLO 2014-3 LLC,	§	
ACIS CLO 2014-4 LLC, ACIS CLO 2014-5	§	
LLC, AND ACIS CLO 2015-6 LLC,	§	
	§	
DEFENDANTS.	§	

**HIGHLAND CAPITAL’S PARTIAL MOTION TO DISMISS
 THE SECOND AMENDED COMPLAINT AND BRIEF IN SUPPORT**

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**Highland Capital’s Partial Motion to
Dismiss the Second Amended Complaint and Brief in Support**

The plaintiffs in this action—Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP”) (collectively, “Plaintiffs,” “Acis,” or “Reorganized Debtors”)—have filed a Second Amended Complaint (“SAC”). Defendant Highland Capital Management, L.P. (“Highland Capital”) moves to dismiss most counts of that pleading¹ and respectfully shows as follows:

I. Introduction

1. The Court recently consolidated three adversary cases into this proceeding. Pursuant to that order, the Plaintiffs combined their claims in those cases into the Second Amended Complaint. The resulting pleading is long on boilerplate and short on substance. Most of the purported claims against Highland Capital should be dismissed because Plaintiffs have failed to properly allege basic elements of those claims.

II. Applicable pleading standards

2. “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief ... requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A claim is “plausible on its face,” and satisfies the requirements of Rule 12(b)(6), only when a “plaintiff pleads factual content that allows the court to draw the reasonable inference

¹ Highland Capital files this motion subject in all ways to the Motions to Withdraw the Reference filed in this proceeding.

that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “Conclusory allegations, unwarranted deductions, or legal conclusions’ are not ‘well-pleaded facts’ for purposes of evaluating a complaint.” *Alaska Electrical Pension Fund v. Flotek Indus., Inc.*, 915 F.3d 975, 981 (5th Cir. 2019).

3. Many of Plaintiffs’ claims are also subject to the requirements of Fed. R. Civ. P. 9(b). For allegations of fraud, that rule requires factual allegations of the “time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby.’ ... In other words, to properly allege fraud under Rule 9(b), the plaintiff must plead the who, what, when, where, and why as to the fraudulent conduct.” *Life Partners Creditors’ Trust v. Cowley*, 926 F.3d 103, 117 (5th Cir. 2019) (quoting *Tuchman v. DSC Comm’ns Corp.*, 14 F.3d 1061, 1066 (5th Cir. 1994)).

4. In particular, Highland contends that Rule 9(b) applies to Plaintiffs’ claims for actual and constructive fraudulent transfers. As to actual fraudulent transfer, while the Fifth Circuit has deferred ruling on the point, the three Circuits that have addressed it have all applied Rule 9(b) to such claims. *See Life Partners*, 926 F.3d at 117.² The reason is straightforward; the rule applies not only to claims of fraud but also to those that “sound[] in fraud,” which includes claims “premised upon a course of fraudulent

² (citing *In re: Lawson*, 791 F.3d 214, 217 & n.5 (1st Cir. 2015); *In re: Sharp Int’l Corp.*, 403 F.3d 43, 56 (2d Cir. 2005); and *Stoebner v. Opportunity Fin., LLC*, 909 F.3d 219, 225, 226 & n.6 (8th Cir. 2018))

conduct” such as a claim of actual fraudulent transfer. *See, e.g., Desmond v. Taxi Affiliation Servcs., LLC*, 344 F. Supp.3d 915, 923 (N.D. Ill. 2018).

5. The Fifth Circuit has also deferred ruling about Rule 9(b)’s application to constructive fraudulent transfer claims; here again, the two Circuits that have addressed the point “have held that constructive fraudulent transfer claims are subject to Rule 9(b).” *See Life Partners*, 926 F.3d at 120.³ Those opinions are well-taken and this Court should follow the majority approach of the circuits as to the pleading standards for these claims.⁴ In the briefing that follows, Highland Capital will identify the claims that implicate Rule 9(b) in addition to the baseline requirements of Rule 12(b)(6).

III. Argument and Authorities

A. Plaintiffs fail to plead viable claims for alleged overcharges. (Counts 1-4)

6. Plaintiffs’ first four causes of action involve alleged overcharges of Acis LP by Highland Capital. (SAC at 42-46, Counts 1-4.) Each of these claims rests on the factual allegations that “Highland Capital invoiced Acis for, and received payments for, at least \$7,021,924 in excess of Revenues, in violation of the [Acis LP] LPA” (SAC ¶¶ 127, 132, 138, 142), and that “Highland Capital, an Affiliate of Acis GP, accepted such funds in

³ (citing *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1078-79 (7th Cir. 1997) and *Stoebner*, 909 F.3d at 225, 226 & n.6).

⁴ *Life Partners* notes that district courts in the Fifth Circuit have taken different positions on both of these issues and describes their holdings. *See* 926 F.3d at 118, 120.

violation of Section 3.10 of the LPA” (SAC ¶¶ 126, 138.) Plaintiffs do not properly plead a claim based on these allegations.⁵

7. **“Ultra vires.”** Plaintiffs’ first claim is that these allegedly unauthorized payments are *ultra vires* because they exceeded the limitations set by Acis LP’s partnership agreement, making them “either void or voidable” under Delaware law. (SAC at 42-43 ¶ 126.) Plaintiffs fail to allege, however, why *they* have the right to seek such relief. For corporations, Delaware law clearly limits the right to assert an *ultra vires* claim to a handful of situations, none of which involve the entity itself seeking to recover damages for allegedly *ultra vires* transactions. *See* Del. Gen’l Corp. Code § 124; *Carsanaro v. Bloodhound Techs. Inc. Inc.*, 65 A.3d 618, 648 (Del. Ch. 2013). Plaintiffs cite nothing suggesting that the *ultra vires* doctrine applies to a limited partnership at all, much less without the limitations imposed on that doctrine by other Delaware corporate law. The absence of any allegation on this threshold point is fatal to Plaintiffs’ pleading of this claim, and Count 1 should be dismissed.

8. This claim also fails on the merits. Section 1.3 of the Limited Partnership Agreement for Acis LP says that the partnership may engage in “any business or activity that may be lawfully be conducted by a limited partnership . . . ,” which necessarily includes the power and capacity to enter contract and make payments under such contracts. (SAC Ex. A.) And section 4.01(c) of the LPA makes clear that HCM was entitled

⁵ These claims do not implicate the heightened-pleading requirements of Rule 9(b).

to rely on representations made to it by Acis about the power and authority of Acis to enter contracts. Plaintiff's complaint about contract prices is simply not a claim about an *ultra vires* act, and should be dismissed for that reason as well.

9. **"Turnover."** Plaintiffs' second claim seeks recovery of the alleged overcharges to section 542(a) of the Bankruptcy Code. (SAC at 43-44, Count 2.) Turnover actions, however, involve property that is indisputably property of the estate. *See, e.g., In re: Andrew Velez Constr., Inc.*, 373 B.R. 262, 273 (Bankr. S.D.N.Y. 2007). When the defendant disputes liability, as Highland Capital does here, "the estate's property is the claim for damages itself, which is not subject to turnover." *See, e.g., In re: Heller Ehrman LLP*, 461 B.R. 606, 608 (Bankr. N.D. Cal. 2011). This claim, on its face, is a nonstarter as a matter of law and Count 2 should be dismissed.

10. **"Money Had and Received" and "Conversion."** Plaintiffs' third and fourth counts plead themselves out of court. Their third claim purports to be for "money had and received." (SAC at 44-45.) The factual basis for this claim is the alleged violation of the LPA for Acis LP described above, as well as alleged interest overcharges under two sub-servicing agreements. (SAC ¶¶ 139, 142.) Because these factual allegations are about express contracts, they defeat the legal basis for this claim, which assumes the lack of such a contract. *See, e.g., MGA Ins. Co. v. Chesnutt*, 358 S.W.3d 808, 815 (Tex. App.—Dallas 2012, no pet.) ("Generally, when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory. The quasi-

contractual action for money had and received is a cause of action for a debt not evidenced by a written contract between the parties.” (citations omitted)). Count 3 should be dismissed.

11. Plaintiffs’ fourth count is for conversion. (SAC at 45-46.) It has the same problem. Plaintiffs allege that Highland Capital improperly has “money,” “overpaid funds” and “overcharges” in its possession. (SAC at 45-46 ¶ 142.) These allegations cannot support a conversion claim under Texas law, under which: “[A]n action for conversion of money arises only where the money can be identified as a specific chattel, meaning it is (1) defined for safe keeping; (2) intended to be kept segregated; (3) substantially in the form in which it is received or an intact fund; and (4) not the subject of a title claim by the keeper.” *Lawyers Title Co. v. J.G. Cooper Dev., Inc.*, 424 S.W.3d 713, 718 (Tex. App. – Dallas 2014, pet. denied) (citations omitted). *See also Rente Co. v. Truckers Express, Inc.*, 116 S.W.3d 326, 332 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (“[T]hese sums of money are not identifiable, specific chattels capable of being converted; rather, they are alleged indebtedness that may be discharged by the payment of money generally. Therefore, [Plaintiff’s] claim for conversion as to amounts of money allegedly owed by [Defendants] fails as a matter of law.” (citations omitted)). Count 4 should be dismissed.

12. Counts 3 and 4 should also be dismissed because they fall outside of the statute of limitations under applicable state law. Those claims are subject to a two-year

statute of limitations under Texas law. *Merry Homes, Inc. v. Luc Dao*, 359 S.W.3d 881, 882 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (citing Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a)). Plaintiffs allege that Highland Capital wrongly received at least \$7,021,924.00 in violation of Section 3.10(a) of the LPA (SAC at 22 ¶ 69). The claim for money had and received accrued when Highland accepted the payments, which occurred “during the years of 2013, 2014, 2015, and from January until May 2016.”⁶ Section 108(a) provides:

If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) two years after the order for relief.

11 U.S.C. § 108(a).

13. The Court entered orders for relief on April 13, 2018. *See* Bankruptcy Case Doc. Nos. 118 and 119. Under the applicable statute of limitations as tolled by Bankruptcy Code section 108(a), on April 13, 2018, Plaintiffs, at most, may seek to recover purported Payments made two years before entry of the orders for relief, *i.e.* April 13, 2016. Therefore, any claims related to Payments preceding April 13, 2016, are barred by the two-year limitations period.

14. Counts 1-4 are also barred by the voluntary payment rule. “The voluntary payment rule precludes a party from ‘pay[ing] out his money, leading the other party to

⁶ *See* Brief in Support of Trustee’s Amended Motion for Partial Summary Judgment [“Trustee’s Brief”] (Docket 88) at ¶ 1 (Nov. 30, 2018).

act as though the matter were closed, and then be in the position to change his mind and invoke the aid of the courts to get it back.” *Miga v. Jensen*, 299 S.W.3d 98, 103 (Tex. 2009). The Trustee – Plaintiffs’ predecessor-in-interest – has admitted that “[Acis LP] contracted out certain of its administrative functions and portfolio management responsibilities to [Highland] pursuant to that certain Sub-Advisory Agreement, originally dated to be effective as of January 1, 2011 . . . and that certain Shared Services Agreement, originally dated to be effective as of January 1, 2011.”⁷ He stated that Highland invoiced Acis LP, and Acis LP paid money to Highland. *Id.* The Plaintiffs do not contend that Acis LP or Acis GP was unaware of the terms of the LPA.

B. Plaintiffs fail to plead viable fraudulent transfer claims. (Counts 5-24)⁸

1. Sub-Advisory Agreement claims. (Counts 5-8).

15. In Counts 5-8, Plaintiffs allege actual and constructive fraudulent transfers about modifications to the Sub-Advisory Agreement. These claims fail for two reasons. First, while Plaintiffs make threadbare claims that Acis was insolvent when these contract modifications were made, the SAC cites no facts on that topic. And the SAC concedes that these contract modifications were made shortly after Terry was terminated in 2016 but before any litigation had begun. Simply reciting a key element of a fraudulent transfer claim—here, insolvency—does not satisfy Rule 9(b).

⁷ Trustee’s Brief, *supra*, at ¶ 11.

⁸ All of these fraudulent transfer claims implicate Rule 9(b). *See supra* at 6-7.

16. Second, Plaintiffs fail to plead that the modifications amounted to a transfer. Bankruptcy Code section 101(54)(C) defines a transfer to include “each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing with or parting with [property or an interest in property].” Plaintiffs make no effort to establish how a property right or interest in property was “disposed or parted with” in relation to the Sub-Advisory Agreement modifications. At most, the SAC alleges that fees became more expensive over time. The mere fact that expenses rise over time, and a debtor thus pays more for services, does not establish that anything of value was “transferred” from the debtor—“disposed of” in the terminology of the statute. Counts 5-8 do not comport with the statute and should be dismissed.

2. *“ALF PMA Transfer” (Counts 9-12)*

17. Plaintiffs allege actual and constructive fraudulent transfer claims about the “ALF PMA Transfer.” (SAC ¶¶ 51-55, Counts 9-12.) Plaintiffs identify a Portfolio Management Agreement (“PMA”) between Acis LP and ALF, under which Acis LP had certain rights to manage ALF assets. (SAC ¶¶ 83-84.) Plaintiffs allege that in October 2017, Acis LP terminated that agreement and entered a new management agreement with Highland Advisor. (SAC ¶¶ 86-89.)

18. To hold Highland Capital liable for a fraudulent transfer under section 550(a) of Bankruptcy Code, Plaintiffs must show either that Highland Capital was an “initial transferee,” or an “immediate or mediate transferee of such initial transferee”

as to estate property. TUFTA has a similar requirement. *See* Tex. Bus. & Com. Code § 24.009(b) (“[J]udgment may be entered against ... the first transferee of the asset ... [or] any subsequent transferee”). Plaintiffs do not allege that Highland Capital received anything, immediately or subsequently, as part of the ALF PMA Transfer. They thus fail to plead viable fraudulent transfer claims against Highland Capital about that transaction and Counts 9-12 should be dismissed.

3. “ALF Share Transfer” (Counts 13-16)

19. Plaintiffs also allege actual and constructive fraudulent transfers about the “ALF Share Transfer.” (SAC at 57-61, Counts 13-16.) They describe this transaction as ALF’s repurchase of its own stock from Acis LP, for \$991,180.13, in October 2017. (SAC at 30 ¶ 91.) They do not allege that Highland Capital received anything, immediately or subsequently, as part of this transaction. They thus fail to plead viable fraudulent transfer claims against Highland Capital about that transaction and Counts 13-16 should be dismissed.

4. “Note Transfer” (Counts 17-20)

20. Plaintiffs define the “Note” as a \$9.5 million promissory note, executed by Highland Capital as obligor, and payable to Acis LP. (SAC at 31-32 ¶ 94.) They allege that in November 2017, Acis LP transferred the Note to Highland Management for inadequate consideration (SAC at 31-32 ¶¶ 94-95), and from there, allege actual and fraudulent transfer claims about that transfer. (SAC at 61-66, Counts 17-20.)

21. Plaintiffs allege that Highland Capital was a party to the agreement by which the Note was transferred. (SAC at 31 ¶ 94.) But they do not allege that Highland Capital received anything as a result of the transfer. To the contrary, they admit that Highland Capital continued to be the obligor of the Note. (*See id.*) Because Plaintiffs do not allege that Highland Capital received anything, immediately or subsequently, as part of this transaction, they fail to plead viable fraudulent transfer claims about that transaction and Counts 17-20 should be dismissed.

22. Plaintiffs speculate about the benefit to Highland Capital of having its liability “transferred ... away from Acis LP (and its legal woes with Terry),” as well as other potential tactical benefits in the ongoing litigation. (SAC at 32 ¶ 96.) Those speculations, however, have nothing to do with fraudulent transfer liability. There is no way for a court to order the avoidance of a “legal woe” or litigation tactic. These spurious allegations do not cure the fundamental problem with Plaintiffs’ pleading of this claim.

5. *“CLO 2017-7 Equity and 2017-7 Agreement Transfers” (Counts 21-24)*

23. Plaintiffs allege that in December 2017, Acis LP transferred its equity interests related to a CLO entity called “2017-7,” along with certain contracts involving that entity, to Highland Management. (SAC at 33-34 ¶ 99.) Plaintiffs then challenge this transaction as an actual and constructive fraudulent transfer, as well as avoidable preferences. (SAC at 66-71, Counts 21-24.)

24. Plaintiffs again fail to allege that Highland Capital received anything, immediately or subsequently, as part of this transaction. In fact, they plead the opposite,

alleging that part of the consideration for the transaction was forgiveness of a note owed by Acis LP to Highland Capital. (SAC at 35 ¶ 102.) These claims are not properly pleaded and Counts 21-24 should be dismissed.

C. Plaintiffs fail to plead a viable claim for civil conspiracy for fraud, including fraudulent transfers. (Count 27)

25. Because the Bankruptcy Code does not address civil conspiracy, this Court looks to state law about that claim. Under Texas law, “An action for civil conspiracy has five elements: (1) a combination of two or more persons; (2) the persons seek to accomplish an object or course of action; (3) the persons reach a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts are taken in pursuance of the object or course of action; and (5) damages occur as a proximate result.” *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 222 (Tex. 2017). “This inherently requires a meeting of the minds on the object or course of action.” *Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex. 1996). Therefore, to satisfy Rule 12(b)(6), a civil conspiracy claim must include factual allegations as to when the parties agreed to pursue the conspiracy, including the “specific time, place, or person involved.” *Berry v. Bryan Cave LLP*, No. 3:08-CV-2035-B, 2010 U.S. Dist. LEXIS 46572, at *23 (N.D. Tex. 2010) (quoting *Twombly*, 550 U.S. 544, 565 n.10 (2007)).

26. The bankruptcy court in the Western District of Texas recently addressed the pleading of a civil conspiracy claim under Delaware law⁹ in *Xtreme Power Plan Trust v. Schindler, et al. (In re Xtreme Power Inc.)*, 563 B.R. 614 (Bank. W.D. Tex. 2016). The plaintiff alleged that the defendants “engaged in a confederation or combination of two or more persons; performed at least one unlawful act in furtherance of the conspiracy; acted pursuant to a common scheme; and caused actual damage to [the plaintiff.]” *Id.* at 648. The court granted the defendants’ motion to dismiss, noting that the complaint lacked “any facts actually pled in support” of the conspiracy claim, and that “the [plaintiff] merely recited the elements of the claim and asked the court to infer from said elements an actionable conspiracy.” *Id.*

27. Plaintiffs’ civil conspiracy claim (SAC 73-74, Count 27) is functionally identical to the pleading in *Xtreme Power*. The allegations supporting the claim are nothing more than a rote recitation of the elements. Plaintiffs assert that the “Highland Enterprise . . . had a meeting of the minds on the object or course of action” (SAC at 74 ¶ 247), that its actions “constitute one or more unlawful, overt acts,” and that Acis suffered damages as a result. The pleading lacks “any facts actually pled” to support the Trustee’s conspiracy claim. Nor does it establish when the alleged co-conspirators formed the conspiracy, what the object of the conspiracy was, or how Highland participated in it.

⁹ As noted in *Xtreme Power*, Delaware law has fewer elements than Texas law. *See id.* at 646 (noting that Delaware law defines civil conspiracy as (1) a confederation of two or more persons; (2) who engage in an unlawful act done in furtherance of a conspiracy; (3) that causes actual damages to a plaintiff).

28. Plaintiffs will certainly answer that they have “incorporate[d] the preceding paragraphs” by reference, about “the foregoing fraudulent transfers and schemes.” (SAC at 73 ¶ 245, 247 ¶ 247.) But that response defeats itself, because a common-law civil conspiracy claim has no place in the detailed system established by the federal and state fraudulent transfer statutes. As this Court has recognized:

[I]t is perfectly true that ‘the general rule under [the Bankruptcy Code or the old Act] is that one who did not actually receive any of the property fraudulently transferred (or any part of a “preference”) will not be liable for its value, even though he may have participated or conspired in the making of the fraudulent transfer (or preference)’

In re TOCFHBI, Inc., 413 B.R. 523, 535 (Bankr. N.D. Tex. 2009) (quoting *Mack v. Newton*, 737 F.2d 1343, 1357 (5th Cir. 1984)).

29. The referenced *Mack* case explains the reasoning for this rule, first developed under the Bankruptcy Act:

The purpose of those sections of the Bankruptcy Act is clearly to preserve the assets of the bankrupt; ***they are not intended to render civilly liable all persons who may have contributed in some way to the dissipation of those assets.*** The Act carefully speaks of conveyances of property as being ‘null and void,’ and authorizes suit by the trustee to ‘reclaim and recover such property or collect its value.’ The actions legislated against are not ‘prohibited’; those persons whose actions are rendered ‘null and void’ are not made ‘liable’; and terms such as ‘damages’ are not used. The legislative history is cancellation, not the creation of liability for the consequences of a wrongful act.

737 F.2d at 1358 (emphasis added); see also *Ingalls v. Beutel*, 2007 WL 9718103, at *4 (W.D. Tex. Nov. 28, 2007) (observing that while Bankruptcy Code section 544(a)(1) gives a trustee the status of a judgment creditor, the Fifth Circuit knew of that statute and still,

in such circumstances, “denied trustees a cause of action for civil conspiracy”); *Sherman v. FSC Realty LLC (In re Brentwood Lexford Partners, LLC)*, 292 B.R. 255, 275 (Bankr. N.D. Tex. 2003) (“[T]he court does not consider the fraudulent transfer under the civil conspiracy claim. To do so could lead to a result that expands remedies beyond [Bankruptcy Code] § 550.”).

30. “[C]ivil conspiracy is a theory of vicarious liability and not an independent tort.” *Agar Corp. v. Electro Circuits, Int’l, LLC*, ___ S.W.3d ___, No. 17-0630, 2019 WL 1495211 at *4 (Tex. April 5, 2019). A fraudulent transfer claim cannot serve as that underlying tort. Yet alleged fraudulent transfers are the only alleged wrongs identified in Plaintiffs’ civil conspiracy claim. (See SAC at 74 ¶¶ 246-49.) Count 27 thus fails as a matter of law and should be dismissed for failure to state a claim.

D. Plaintiffs fail to allege a viable claim for tortious interference. (Count 28)

31. Count 28 alleges that Highland has interfered with an outsourcing contract between Acis LP and “Universal/BVK.” (SAC at 75.) The alleged interference is “communications over many months”; Plaintiffs particularly complain that “Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way.” (SAC at 75 ¶ 254; *see also* SAC at 35-37 ¶¶ 104-105.) Acknowledging the undisputed point that the

contract is at-will,¹⁰ Plaintiffs further plead that “[t]he fact that a contract is an at-will agreement is no defense to a tortious interference claim.” (SAC at 75 § 252.)

32. Tortious interference with contract is a tort recognized in Texas and evaluated by state and federal courts under Texas state law. *See In re Dexterity Surgical, Inc.*, 365 B.R. 690, 700 (Bankr. S.D. Tex. 2007). To present a valid claim of tortious interference in Texas, the Trustee must prove the tort’s four elements: (1) an existing contract subject to interference; and (2) a willful and intentional act of interference with the contract; (3) that proximately caused the Trustee’s injury; and (4) caused actual damages or loss. *See Jacked Up, LLC*, 854 F.3d 797, 813 (5th Cir. 2017) (citing *Prudential Ins. Co. of Am. V. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The Plaintiff has not pled the elements under Texas law because they do not exist. The Trustee willingly entered into a post-bankruptcy agreement with Universal/BVK to terminate the automatic stay of 11 U.S.C. § 362 for the express purpose of allowing Universal/BVK to terminate the outsourcing contract, and the bankruptcy court entered into an agreed order lifting the stay (Case No. 18-30264, Doc. No. 726). The Plaintiff is thus judicially estopped from claiming tortious interference. *See, e.g., U.S. ex. rel. Long v. GSDM Idea City, L.L.C.*, 798 F.3d 265, 271-72 (5th Cir. 2015) (applying judicial estoppel when “(1) the party against whom judicial estoppel is sought has asserted a legal position which is plainly

¹⁰ *See* Hr’g Tr (Dec. 11, 2018) (PM) 46:8-11 (“Q: And was the BVK contract an at-will contract? A: That’s my understanding.”).

inconsistent with a prior position; (2) a court accepted the prior position; and (3) the party did not act inadvertently” (citations omitted)).

33. To be sure, at-will status is not an automatic bar to a tortious interference claim. But it is highly relevant to the controlling principle of Texas law—that a claim for tortious interference cannot lie where the actor, furthering its own legitimate interests, merely induces a third party to cease its contractual relations when the third party has the right to do so. *See C.E. Servs., Inc. v. Control Data Corp.*, 759 F.2d 1241, 1248 (5th Cir. 1985) (discussing the “competitors rule” set forth in section 786 of the Restatement (Second) of Torts); *see also Spectrum Creations, L.P. v. Carolyn Kinder Int’l, L.L.C.*, 514 F. Supp. 934, 944 (W.D. Tex. 2007) (summarizing cases since *C.E. Servs.*). Plaintiffs do not identify a single word in the alleged “communications” that was inconsistent with this principle, and their pleading of this claim fails as a result.

34. This pleading has two other fatal problems. First, it is not in dispute that the parties’ contractual relationships waived conflicts, thus letting Highland compete against Acis LP. *See infra* Part E. A tortious interference claim cannot lie where the counterparty affirmatively acknowledged and contracted away any claim of conflict. Second, Plaintiffs make no attempt to plead damages, aside of a one-line throwaway in paragraph 75. That is because those facts do not exist, as explained above. Count 28 fails as a matter of law and should be dismissed.

E. Plaintiffs fail to allege a viable claim for breach of fiduciary duty. (Count 30)

35. Count 30 purports to allege a claim for breach of fiduciary duty, arising from two sources: the Sub-Advisory Agreement between HCM and Acis LP, and the general obligations of an investment adviser. (SAC at 78 ¶ 265.) Neither alleged source creates such a duty and this claim should be dismissed.¹¹

36. As the parties' contracts, it is well-settled that contracts executed at the same time in the course of the same transaction should be construed together. *See, e.g., In re: Houston Progressive Radiology Assocs., PLLC*, 474 S.W.3d 435, 443-44 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding) (citing *Jones v. Kelley*, 614 S.W.2d 95, 98 (Tex. 1981) and *Harris v. Rowe*, 593, S.W.2d 303, 306 (Tex. 1979)). And here, the parties' Shared Service Agreement speaks directly to the parties' duties to one another—independent contractor rather than agency (§ 8.11), to act with reasonable care (*id.* § 6.01), and without other “duties or obligation” unless expressly agreed upon. (*Id.* § 2.06). (Ex. “A” hereto.)¹² The parties' contractual relationship does not create the claimed fiduciary duty.

37. Neither does the law of investment advisers. Any duty owed by an investment adviser runs only to the subject of—investments. *See generally Greenberg Traurig v. Nat'l Am. Ins. Co.*, 448 S.W.3d 115, 120 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (“Although the relationship between the parties may be fiduciary in character,

¹¹ This claim is subject to Rule 9(b) because it is based on allegedly fraudulent conduct. *See Life Partners*, 926 F.3d at 124 (citing *Brown v. Bilek*, 401 F. App'x 889, 893 (5th Cir. 2010)).

¹² The parties Shared Service Agreements – this one and predecessors – are cited several times in the SAC, making it appropriate for consolidation in this Motion.

their fiduciary duties extend only to dealings within the scope of the underlying relationship of the parties.” (citing, *inter alia*, *Rankin v. Naftalis*, 557 S.W.2d 940, 944 (Tex. 1977)). Nothing about the “series of fraudulent schemes” summarized in Plaintiffs’ pleading (SAC at 79 § 266) is tied to that subject, and thus that alleged duty. The pleading is thus fatally deficient.

38. Plaintiffs also allege a relationship of “trust and confidence” from the combined effect of the parties’ contracts and investment-adviser law. (SAC at 78 § 265.) Since those alleged sources of obligation do not create the claimed duties, this argument necessarily fails. Additionally, “[t]o impose an informal fiduciary duty in a business transaction, the special relationship of trust and confidence must exist prior to, and apart from, the agreement made the basis of the suit.” *Meyer v. Cathey*, 167 S.W.3d 327, 331 (Tex. 2005). Plaintiffs cannot claim a relationship of “trust and confidence” from the very contract that they purport to sue on, and this part of Count 30 should be dismissed as well.

F. Plaintiffs fail to allege a viable claim for “disregarding the corporate form/alter ego/collapsing doctrine/unjust enrichment.” (Count 32)

39. In Count 32, Plaintiffs allege that defendant “should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others,” as well as pre-bankruptcy Acis LP. (SAC at 81 ¶ 275.) As

signaled by the unusual, slash-separated heading for this Count, this pleading does not coherently describe any recognized legal basis for such a result.¹³

40. The Count has seven substantive paragraphs. The first (SAC at 80 ¶ 274) cites to *SSP Partners v. Gladstrong Inv. (USA) Corp.*, in which the Texas Supreme Court mentions the possibility of using a corporate structure to perpetrate a fraud. 275 S.W.3d 444, 454 (Tex. 2008) (discussing *Castleberry v. Branscum*, 721 S.W.2d 270 (Tex. 1986)).¹⁴ But *SSP Partners* rejects a “single enterprise” theory of liability, such as Plaintiffs appear to be trying to plead here. *See Burchinal v. PJ Trailers-Seminole Mgmt. Co.*, 372 S.W.3d 200, 200-01 (Tex. App.—Texarkana 2012, no pet.). The next two paragraphs claim that the defendants “are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero,” and that new offshore entities were created after the award issued in the Terry arbitration (SAC at 81 ¶¶ 275, 276) – allegations that bear only on that rejected theory. And substantively, “mere affiliation . . . is insufficient to pierce to veil.” *Licea v. Curacao Drydock Co.*, 627 F. App’x 343, 349 (5th Cir. 2015). Inadequate allegations about an invalid theory do not satisfy Plaintiffs’ pleading requirement. *See Emke v. Compana, LLC*, No. 3:06-CV-1416-L, 2007 WL 2781661, at *7 (N.D. Tex. Sept 25, 2007) (dismissing alter ego complaint unsupported by factual allegations).

¹³ Rule 9(b) applies. *See Goodman v. H.I.G. Capital, LLC*, 491 B.R. 747, 761 (Bankr. W.D. La. 2013) (“Rule 9(b) applies not only to fraud claims, but also to ‘non-fraud’ claims that are based upon allegations of fraud.”).

¹⁴ *Castleberry* was subsequently superseded by statute on other grounds. *See Fidelity & Deposit of Md. Commercial Cas. Consultants, Inc.*, 976 F.2d 272, 275 (5th Cir. 1992).

41. The fourth and fifth paragraphs observe that “multistep transactions can be collapsed when the steps of the transaction are part of one integrated transaction,” citing two cases, one of which is from 1939. (SAC at 81-82 ¶¶ 277-78.) The “step transaction” doctrine has nothing to do with *parties*, and neither of the cited cases applies that doctrine to create vicarious liability. The doctrine focuses entirely on *transactions*, asking whether a particular step of a business deal was “included for no other purpose than to avoid U.S. taxes,” for example. *See Del Commercial Props., Inc. v. Commissioner*, 251 F.3d 210, 213 (D.C. Cir. 2001). It has nothing to do with the relief that Plaintiffs purport to seek in this part of their amended pleading.

42. Plaintiffs’ last two paragraphs cite the general principle that restitution is a potential remedy for unjust enrichment. (SAC at 81-82 ¶¶ 279-80.) That principle has a role to play when a party has established a liability claim and is considering what remedy to elect. But it has nothing to do with vicarious liability among parties, and no case Plaintiff cites suggests that it does.

43. In sum, Plaintiffs cite two doctrines—step transaction and unjust enrichment— that have nothing to do with Highland Capital’s responsibility for damages awarded against any other defendant. And while *SSP* relates to that general topic, Plaintiffs do not plead a coherent statement about what that case holds or what facts are relevant to the application of that holding. *Twombly* and *Iqbal* are intended to remove precisely such vacuous claims from the courts. Count 32 should be dismissed.

G. Plaintiffs lack standing to assert claims for damages for alleged stay violations.

44. Section 362(k) provides that “an *individual* injured by any willful violation of a stay provided by [section 362] shall recover actual damages, including costs and attorney’s fees, and, in appropriate circumstances, may recover punitive damages.” 11 U.S.C. § 362(k)(1) (emphasis added). “[I]t is well settled that a corporation is not entitled to recover damages for violation of the automatic stay.” *E.g., In re MD Promenade, Inc.*, 2009 WL 80203, at *12 (Bankr. N.D. Tex. Jan. 8, 2009) (Jernigan, J.).

45. In *MD Promenade*, the Chapter 7 trustee pursued damages under section 362(k). 2009 WL 80203, at *12. The court held that “[t]he court may not award [the trustee] damages pursuant to section 362(k) because, although he is an individual, a natural person, he is acting as the representative of the estate of a debtor *corporation* and therefore cannot be considered an individual for purposes of section 362(k).” *Id.* (citing *In re Amberjack Interests, Inc.*, 326 B.R. 379, 386 n.1 (Bankr. S.D. Tex. 2005) (finding that a trustee suing on behalf of a debtor corporation “cannot be considered an individual for purposes of obtaining standing under section 362(h) [now 362(k)]”). Other courts have agreed. *See, e.g., Garner v. Knoll*, 2014 WL 172276 (Bankr. N.D. Tex. 2014) (holding that “in order to recover under section 362(k), the Trustee must be an ‘individual’ within the meaning of the statute,” and applying *St. Paul Fire & Marine Insurance Company v. Labuzan*, 579 F.3d 533, 545 (5th Cir. 2009)).

46. Further, limited partnerships, like corporations, are not entitled to relief under section 362(k) because they are not individuals. *See, e.g., In re Rafter Seven Ranches L.P.*, 414 B.R. 722, 732-33 (10th Cir. BAP 2009) (finding that “in defining ‘person,’ Congress used the word ‘individual’ to distinguish natural persons from corporations and partnerships” to hold that the limited partnership debtor is not entitled to an award of damages under section 362(k)); *Jove Engineering, Inc. v. I.R.S.*, 92 F.3d 1539, 1551 (11th Cir. 1996) (analyzing that partnerships are not entitled to relief under section 362(k) of the Bankruptcy Code because “Congress used the word ‘individual’ to distinguish natural persons from corporations and partnerships.” These holdings are consistent with this Court’s precedent that “relief under section [362(k)] is limited to individuals.” *In re: Freemyer Industrial Pressure, Inc.*, 281 N.R. 262, 268 (Bankr. N.D. Tex. 2002). Plaintiffs are not entitled to relief under section 362(k) of the Bankruptcy Code, and Count 33 should be dismissed.

H. Plaintiffs fail to allege viable claims for equitable relief.

47. The Second Amended Complaint concludes with a “Request for Disgorgement” and a “Request for Imposition of a Constructive Trust.” (SAC at 84 § VII, 85 § VIII.) Both are pleaded as remedies for Plaintiffs’ claim for breach of fiduciary duty (SAC at 85 § 295, 86 § 301). If that claim is dismissed, then these requests must necessarily be dismissed as well.

48. Plaintiffs' request for a constructive trust also purports to seek that remedy because of "the series of fraudulent transfers" described previously (*see* SAC at 86 §§ 299-300)—"and in particular Highland Capital and Highland Funding ... even if they were not the direct transferee." (SAC at 86 § 300) For the same reasons that civil conspiracy is not available in a fraudulent transfer case, *see supra* Part C, a constructive trust is not available as a remedy against parties who are "not the direct transferee." The relevant statutes carefully define who is, and who is not, liable for a fraudulent transfer, and a free-floating "indirect" equitable remedy has no place in that detailed statutory system.¹⁵

49. As set forth above, the majority of Plaintiffs' claims, including, without limitation, Counts 1-4, 5-24, 27-28, 30 and 32 must be dismissed. Once these claims are dismissed from this lawsuit, no recovery is possible under Section 550 of the Bankruptcy Code. As such, Count 26 of the SAC, which seeks liability for avoided transfers, should also be dismissed as to Highland Capital.

IV. Conclusion

For the foregoing reasons, the specified portions of the Second Amended Complaint should be dismissed with prejudice, along with all other relief to which Highland Capital may be justly entitled that is consistent with that disposition.

¹⁵ Similarly, Counts 26, 31, and 34, which seek certain remedies, but do not contain separate claims for relief, should be dismissed to the extent the underlying claims are dismissed.

DATED: July 22, 2019

Respectfully submitted,

/s/ Michael K. Hurst

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**ATTORNEYS FOR HIGHLAND
CAPITAL MANAGEMENT, L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via ECF on July 22, 2019 on all parties of record.

/s/Michael K. Hurst

Michael K. Hurst

Exhibit 14

Fill in this information to identify the case: Exhibit Entry Page 2 of 11

Debtor 1 Highland Capital Management, L.P.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 19-34054

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

<p>1. Who is the current creditor?</p>	<p><u>Acis Capital Management L.P. and Acis Capital Management GP, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p> <p><u>Acis Capital Management, L.P. and Acis Capital Management GP, LLC</u> <u>c/o Winstead PC Attn: Annmarie Chiarello</u> Name</p> <p><u>500 Winstead Building, 2728 N. Harwood Street</u> Street Number Street</p> <p><u>Dallas TX 75201</u> City State ZIP Code</p> <p>Contact phone <u>(214) 745-5410</u></p> <p>Contact email <u>achiarello@winstead.com</u></p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>	<p>Where should payments to the creditor be sent? (if different)</p> <p><u>Acis Capital Management, L.P. and Acis Capital Management GP, LLC</u> Name</p> <p><u>3110 Webb Ave., Suite 203</u> Street Number Street</p> <p><u>Dallas TX 75205</u> City State ZIP Code</p> <p>Contact phone <u>(214) 556-3405</u></p> <p>Contact email <u>josh@shorewoodmgmt.com</u></p>
<p>4. Does this claim amend one already filed?</p>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? At least \$75,000,000.00
 (see attached addendum) Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
Various litigation claims (See attached addendum)

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.

Nature of property:

Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

Motor vehicle

Other. Describe: See attached addendum

Basis for perfection: See attached addendum
 Attach redacted copies of document, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of Property: See attached addendum

Amount of the claim that is secured: See attached addendum

Amount of the claim that is unsecured: See attached addendum

Amount necessary to cure any default as of the date of the petition: See attached addendum

Annual Interest Rate (when case was filed) See attached addendum

Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: See attached addendum

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? No Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)(2) that applies. \$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/31/2019
MM / DD / YYYY

Signature 

Print the name of the person who is completing and signing this claim:

Name	<u>Joshua</u>	<u>N.</u>	<u>Terry</u>
	First name	Middle name	Last name
Title	<u>President of Acis Capital Management GP, LLC, General Partner of Acis Capital Management L.P.</u>		
Company	<u>Acis Capital Management GP, LLC, General Partner of Acis Capital Management L.P.</u> Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>3110 Webb Ave., Suite 203</u>		
	<u>Dallas</u>	<u>TX</u>	<u>75205</u>
	City	State	ZIP Code
Contact phone	<u>(214) 556-3405</u>	Email	<u>josh@shorewoodmgmt.com</u>

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

HIGHLAND CAPITAL MANAGEMENT,
L.P.,

DEBTOR.

§
§
§
§
§
§
§
§

CASE NO. 19-34054

Chapter 11

**ADDENDUM TO PROOF OF CLAIM FILED BY
ACIS CAPITAL MANAGEMNT, L.P. AND
ACIS CAPITAL MANAGEMENT GP, LLC**

Claimant:

Acis Capital Management, L.P ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," together with Acis LP, "Acis") file this addendum in support of their proof of claim against Highland Capital Management, L.P (the "Debtor").

Basis, Description of Claim, and Amount of Claim:

On October 16, 2019 (the "Petition Date"), the Debtor commenced the above-styled and numbered bankruptcy case under Chapter 11 of 11 U.S.C §§ 101 *et seq.* (the "Bankruptcy Code")

Acis's claim against the Debtor, as of the Petition Date, consists of at least **\$75,000,000.00** as further described by the Complaint (as hereinafter defined) (the "Claim"). Post-petition interest, attorneys' fees, costs, and other expenses continue to accrue on the Claim against the Debtor to the extent allowable under applicable law. The Claim includes pre-judgment interest on certain claims asserted in the Complaint, interest on certain claims asserted in the Complaint, attorneys' fees, and punitive damages, as further described by the Complaint.

The Claim is based on the claims and causes of action asserted in the *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claims)* filed by Acis in Adversary No. 18-03078 pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (including all attachments referenced therein, the "Complaint"). A true and correct copy of the Complaint is attached hereto as **Exhibit "A."**¹

Other Rights:

¹ **Exhibit "A"** does not include the attachments to the Complaint as the attachments are voluminous. The attachments to the Complaint are incorporated by reference and can be found at Docket Nos. 157-159 in Adversary No. 18-03078 pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division or by contacting the undersigned counsel.

Acis reserves all rights with respect to recoupment and setoff, including, but not limited to, Acis's rights under Section 553 of the Bankruptcy Code. Acis's claim against the Debtor is accordingly secured to the extent permitted under Sections 506 and 553 of the Bankruptcy Code.

In addition to the foregoing claims, Acis reserves the right in the future to amend, if necessary, and assert any and all claims that Acis may have against the Debtor under both federal and state law, including, without limitation, any legal or equitable remedies to which Acis may be entitled. Acis additionally claims the benefit of (a) all renewals, extensions, ratifications, supplements, amendments, corrections, and other prior or subsequent documentation evidencing or relating to the claims of Acis; (b) all applicable rights under the Bankruptcy Code; and (c) any other filed or recorded documents. The filing of this Proof of Claim is not to be construed as an election of remedies.

Notices: All notices to Acis in connection with this Proof of Claim shall be sent to:

Annmarie Chiarello
WINSTEAD PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400 (Telephone)
achiarello@winstead.com

Payments: Please submit any payments and distributions to Acis with respect to this Proof of Claim to:

Acis Capital Management, L.P. and Acis Capital Management GP, LLC
Attention: Joshua N. Terry
3110 Webb Avenue, Suite 203
Dallas, Texas 75205

Amendments: Acis reserves the right to amend and/or supplement this Proof of Claim, the Addendum to the Proof of Claim, and any other attachments to its Proof of Claim.

DATED: December 31, 2019.

Counsel:

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COUNSEL FOR REORGANIZED DEBTORS

COUNSEL FOR REORGANIZED DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

In re:	§	Case No. 18-30264-SGJ-11
	§	Case No. 18-30265-SGJ-11
ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	(Jointly Administered Under Case
LLC,	§	No. 18-30264-SGJ-11)
	§	
Debtors.	§	Chapter 11
	§	

ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	
LLC, Reorganized Debtors,	§	
	§	Adversary No. 18-03078
Plaintiffs,	§	
	§	(To be consolidated with Adversary
vs.	§	Nos. 18-03212 & 19-03103)
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P., HIGHLAND CLO FUNDING, LTD.	§	
F/K/A ACIS LOAN FUNDING, LTD.,	§	
HIGHLAND HCF ADVISOR, LTD.,	§	
HIGHLAND CLO MANAGEMENT, LTD.,	§	
and HIGHLAND CLO HOLDINGS, LTD,	§	
	§	
Defendants.	§	

SECOND AMENDED COMPLAINT (INCLUDING CLAIM OBJECTIONS AND OBJECTIONS TO ADMINISTRATIVE EXPENSE CLAIM)

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors" or "Acis")¹ the reorganized debtors in the above-styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), and Plaintiffs in the in the above-styled adversary proceeding (the "Adversary Proceeding"), file this *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)* (this "Second Amended Complaint"), objections to the proofs of claims filed by Highland Capital Management, L.P. ("Highland Capital"), and objections to the administrative expense claim filed by Highland Capital, and respectfully state as follows:²

ANSWER AND AFFIRMATIVE DEFENSES

1. Pursuant to Federal Rule of Civil Procedure 41(a), incorporated by Federal Rule of Bankruptcy Procedure 7041, all claims asserted in the *Original Complaint and Request for Preliminary Injunction of Highland CLO Funding, Ltd. and Highland Capital Management Against Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 1] (the "Original Complaint") by Highland Capital and Highland CLO Funding, Ltd. ("Highland Funding") have been dismissed without prejudice. *See* Adv. No. 18-03078, Docket No. 79. Accordingly, such dismissal of Highland Capital's and Highland Funding's claims obviates the Trustee's, now Acis's, answer and affirmative defenses thereto;

¹ On February 15, 2019, the date upon which the Plan (defined below) became effective, Acis was substituted for Robin Phelan, the Chapter 11 Trustee, in the above-referenced consolidated adversary cases. *See* Case No. 18-30264, Docket Nos. 829, 830, & 863. Prior to the date upon which the Plan (defined below) became effective, Acis may be referred to as the "Debtors."

² As more fully described below in the Procedural Background, this Second Amended Complaint consolidates: (i) claims, counterclaims, third-party claims, and objections to Highland Capital's proofs of claim brought by the Chapter 11 Trustee, now Acis, in this Adversary No. 18-03078; (ii) claims brought by the Chapter 11 Trustee, now Acis, in Adversary No. 18-03212, which has been consolidated under this Adversary Proceeding; and (iii) objections of the Chapter 11 Trustee, now Acis, against Highland Capital's request for an administrative expense claim, which was converted to Adversary No. 19-03103 and was ordered consolidated under this Adversary Proceeding.

however, Acis reserves all rights with respect to answering or asserting affirmative defenses to any future-filed claims by any parties in this Adversary Proceeding.

2. Additionally, pursuant to Federal Rule of Civil Procedure 41(a)(2), such dismissal of Highland Capital's and Highland Funding's claims is without prejudice to any counterclaims asserted by the Trustee, now Acis, in the *Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims* [Adv. No. 18-03078, Docket No. 23] (the "Original Answer"), as may be amended, and such counterclaims remain pending for independent adjudication.

CLAIMS AND COUNTERCLAIMS

3. Acis hereby asserts the following claims for affirmative recovery against Highland Capital, Highland Funding, Highland HCF Advisor, Ltd. ("Highland Advisor"), Highland CLO Management Ltd. ("Highland Management"), and Highland CLO Holdings, Ltd. ("Highland Holdings"). Additionally, Acis asserts the following claims and counterclaims against Highland Capital and such claims and counterclaims shall also constitute recoupment or offset to any claim Highland Capital has against Acis.

I. JURISDICTION, VENUE, AND STATUTORY PREDICATE

4. This Court has subject matter jurisdiction over the Bankruptcy Cases and this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Adversary Proceeding in this district is proper under 28 U.S.C. § 1409.

5. This matter arises under the laws of the United States of America and state common law. The statutory predicates for the relief sought herein are pursuant to sections 362, 502, 503, 541, 542, 544, 547, 548, 550, and 558 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Texas Business & Commerce Code § 24.001 *et seq.* ("TUFTA"), and Federal Rules of Bankruptcy Procedure 3007(b) and 7001.

6. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Acis hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding. This Adversary Proceeding includes an objection to Highland Capital's proofs of claim pursuant to Federal Rule of Bankruptcy Procedure 3007(b), and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such proofs of claim, to the extent such claims are otherwise allowed. This Adversary Proceeding also includes an objection to Highland Capital's administrative expense claim, and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such administrative expense claim, to the extent such claims are otherwise allowed.

II. PARTIES

7. Acis LP is limited partnership and Acis GP is a limited liability company, both of which were organized under the laws of the State of Delaware, and both of which may be served with pleadings and process in this Adversary Proceeding through the undersigned counsel.

8. Highland Capital is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Highland Funding is an exempted company organized with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

10. Highland Advisor is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. See **Exhibit T** at 86. Highland Advisor may be served through its President, James Dondero, at 300 Crescent

Court, Suite 700 Dallas, Texas 75201. *See id.* at 89. Highland Advisor may be served through its Secretary, Scott Ellington, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Chief Compliance Officer, Thomas Surgent at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Executive Vice President, Mark Okada at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Treasurer, Frank Waterhouse at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Assistant Secretary, Lee "Trey" Parker at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Highland Advisor may also be served through its director John Cullinane at 24 Windjammer Quay, George Town Grand Cayman. Highland Advisor may also be served through its director at Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Advisor by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

11. Highland Management is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Upon information and belief, Highland Management principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. Highland Management may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Management by

any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

12. Highland Holdings is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Holding's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* at 103. Highland Holding's general or managing agent is James Dondero. *See id.* Highland Advisor may be served through its general or managing agent, James Dondero, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Acis reserves the right to serve Highland Holdings by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

III. JURISDICTIONAL BACKGROUND³

A. Highland Advisor Jurisdictional Background

13. Upon information and belief, on October 26, 2017, Jean Paul Sevilla ("Sevilla"), a Highland employee and associate general counsel, requested Maples and Calder create Highland Advisor. On information and belief, on October 27, 2017, Mr. Sevilla requested that Highland Advisor be established such that Highland is the 100% owner of the "high" share class of Highland Advisor.

14. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. *See Exhibit T* at 88. Highland Advisor is ultimately, directly or indirectly, owned or controlled by James Dondero

³ Any capitalized term not otherwise defined in this Jurisdictional Background shall have the meaning ascribed to it later in this Second Amended Complaint.

("Dondero") and Mark Okada ("Okada"), who ultimately, directly or indirectly, own or control Highland Capital. *See id.* at 89 and Opinion at 8.

15. Upon information and belief, the principals of Highland Capital, Dondero and Okada, serve as the president and executive vice president, respectively, of Highland Advisor. *See* Opinion at 8 and **Exhibit T** at 89. Other Highland Capital employees serve as officers of Highland Advisor including Scott Ellington, Lee "Trey" Parker, Thomas Surgent, and Frank Waterhouse. *See* **Exhibit T** at 89.

16. Dondero signed the November 15, 2017 Portfolio Management Agreement by and between Highland Advisor and Highland Funding (the "November 2017 PMA") on behalf of Highland Advisor. A true and correct copy of the November 2017 PMA is attached hereto as **Exhibit P**.

17. Attached hereto as **Exhibit Q** is the December 13, 2018 (A.M.) hearing transcript from *In re Acis Capital Management, L.P., et al.* At the December 13, 2018 hearing, Hunter Covitz, a Highland Capital employee, testified: "As I understand HCF Advisor is a relying advisor of Highland." *See* **Exhibit Q** at 78, ll. 15-16. Hunter Covitz further testified, "[b]ut HCF Advisor is Highland. . . . That's the distinction between Highland HCF Advisor could be well capitalized, the substance of Highland Capital, its office space, employees, balance sheet, back office, legal, what [have] you, would all be incorporated with HCF Advisor, where Acis with no employees is not looked at that way." *Id.* at 61, ll. 5 & 11-15. Finally, Hunter Covitz testified, "there's really no differentiation between HCF Advisor and Highland." *Id.* at 62, ll. 21-23.

18. Attached hereto as **Exhibit R** are meeting minutes of Acis Loan Funding, Ltd. and Highland Funding, which contain a Highland Funding Bates label and were produced in connection with the Bankruptcy Cases or related adversary case. These meeting minutes reflect that various Highland Capital employees, including Sevilla, Hunter Covitz, Tim Cournoyer,

David Wilmore, Issace Leventon, and Thomas Surgent appeared at Highland Funding's board meeting on behalf of Highland Advisor. The parties that conduct the day-to-day operations of Highland Advisor are Highland Capital employees that office in Dallas, Texas.

19. Attached hereto as **Exhibit S** is Highland Capital's 2017 Form ADV, which states that Highland Advisor is another business name of Highland Capital.

20. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201—Highland Capital's office and headquarters. Highland Capital's 2019 Form ADV also states that Highland Capital is a shareholder of Highland Advisor and that Highland Advisor is another business name of Highland Capital.

21. The Confirmation Opinion states that "Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland [Advisor]." Confirmation Opinion at 8. Additionally, the Confirmation Opinion states that "Highland [Advisor] (i.e., the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA)." Confirmation Opinion at 19. Additionally, the Confirmation Opinion states that Highland Advisor is an affiliate of Highland Capital. Confirmation Opinion at 21.

B. Highland Management Jurisdictional Background

22. Upon information and belief, on or about October 27, 2017 (7 days after the Arbitration Award), Highland Management was created at the direction of Sevilla, a Highland lawyer and employee, using the same structure as Highland Advisor. Upon information and belief, Highland Management's mailing address is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland's Dallas office and headquarters.

23. Upon information and belief, Highland Management is ultimately, directly or indirectly, owned or controlled by Dondero and Okada, who ultimately, directly or indirectly, own or control Highland Capital.

24. Additionally, in connection with the hearing on the involuntary petitions, Dondero testified at great length regarding the Note Transfer to Highland Management on behalf of Highland Management.⁴ Dondero testified upon direct examination by Acis's (at the time, a putative debtor) counsel about the Note Transfer, stating:

Q: Now, if there came a time with litigation costs and other expenses where Acis was unable to pay its expenses when they became due, what was your intent in signing this as to whether or not HCLOM [Highland Management] would honor this and make the payment?

A: We would -- we would honor it and -- and pay as appropriate.

See Exhibit U (March 23, 2018 Hr'g Tr., *In re Acis Capital Management, L.P., et al.* 146:7-12) (emphasis added). When Dondero says "we," Acis contends that he is speaking on behalf of Highland Capital and Highland Management. Additionally, Dondero testified that the Note Transfer was an "economic wash" for him as "it doesn't matter which pocket it goes into." *Id.* at 152:20-24.

25. The Opinion states that, "Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer... **it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach.**" Opinion at 20-21, n. 37 (emphasis added).

⁴ Dondero testified at the trial on the involuntary petitions only after Mr. Terry sought to compel Dondero's deposition and after this Court ordered Dondero to appear at the trial on the involuntary petitions.

26. Upon information and belief, Dondero is the managing or general agent of Highland Management.

27. The Confirmation Opinion states that Highland Management is "an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry's Arbitration Award)." Confirmation Opinion at 19. The Confirmation Opinion further states that "it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach." Opinion at 20-21, n.37. Finally, the Confirmation Opinion states that "Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017)." Confirmation Opinion at 24.

C. Highland Holdings Jurisdictional Background

28. The Confirmation Opinion states that Highland Holdings is "(yet another entity incorporated in the Cayman Island on October 27, 2017)." Confirmation Opinion at 19.

29. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Holding's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. **Exhibit T** at 103. Highland Capital's 2019 Form ADV also states that Highland Holdings is another business name of Highland Capital. Highland Capital's 2019 Form ADV further states Highland Capital, Dondero, and other Highland affiliates are "control persons" of Highland Holdings.

IV. PROCEDURAL BACKGROUND

30. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Terry"), as petitioning creditor, filed involuntary petitions under section 303 of the Bankruptcy Code against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

31. On April 13, 2018, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* in each of the Bankruptcy Cases [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Orders for Relief"). The Opinion is hereby incorporated by reference as if fully set forth herein.

32. On May 14, 2018, Robin Phelan (the "Trustee") was appointed chapter 11 trustee of the Debtors' bankruptcy estates in the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 213.

33. On May 30, 2018, Highland Capital and Highland Funding filed their Original Complaint, initiating this Adversary Proceeding, in which Highland Capital and Highland Funding asserted various claims for breach of contract, declaratory relief, and injunctive relief against the Trustee. *See* Adv. No. 18-03078, Docket No. 1.

34. On June 21, 2018, the Trustee filed his *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Docket No. 1] ("Complaint and Application for TRO"), initiating Adversary No. 18-03212, in which the Trustee sought, *inter alia*, injunctive relief to prevent Highland Capital, Highland Funding, and their affiliates from taking any action to effectuate an optional redemption (which would result in liquidation of the Acis CLOs (defined below)), as well as relief pursuant to 11 U.S.C. § 362(k) for willful violations of the automatic stay for actions taken by Highland Capital and its affiliates, including Highland Funding, in attempting to effectuate an optional

redemption.⁵ Highland Capital and Highland Funding subsequently filed their answers to the Trustee's Complaint and Application for TRO. *See* Adv. No. 18-03212, Docket Nos. 32 & 33.

35. On July 2, 2018, the Trustee filed his Original Answer in this Adversary Proceeding, in which the Trustee asserted certain counterclaims and third-party claims against Highland Capital, Highland Funding, Highland Advisor, and Highland Management (collectively and along with Highland Holdings, the "Highlands") in connection with the Highlands' scheme, described more fully below, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. *See* Adv. No. 18-03078, Docket No. 23.

36. On July 23, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Motion to Dismiss Counterclaims or, Alternatively, for a More Definite Statement* [Adv. No. 18-03078, Docket No. 42] ("Highland's Motion to Dismiss"), in which Highland Capital sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6).

37. Also on July 23, 2018, Highland Funding filed *Highland CLO Funding Ltd.'s Motion to Dismiss* [Adv. No. 18-03078, Docket No. 43] ("Highland Funding's Motion to Dismiss") and *Highland CLO Funding Ltd.'s Brief in Support of its Motion to Dismiss* [Adv. No. 18-03078, Docket No. 44], in which Highland Funding sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

38. On August 1, 2018, Highland Capital filed Proof of Claim No. 27 in the claims register for Case No. 18-30264 (the "Highland Acis LP Claim"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services."

⁵ Certain portions of the Complaint and Application for TRO were subsequently dismissed, ultimately leaving only: Count 1 for *Temporary Restraining Order and Preliminary Injunction* (which injunctive relief expired with confirmation of the Plan (defined below)); and Count 2 for *Willful Violation of the Automatic Stay* against Highland Capital and Highland Funding. *See* Adv. No. 18-03212, Docket Nos. 49 & 56.

39. Also on August 1, 2018, Highland Capital filed Proof of Claim No. 13 in the claims register for Case No. 18-30265 (the "Highland Acis GP Claim," together with the Highland Acis LP Claim, the "Highland Capital Claims"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services." The Highland Acis GP Claim is identical to the Highland Acis LP Claim.

40. On August 10, 2018, Highland Capital and Highland Funding filed *Highland Capital Management, L.P. and Highland CLO Funding Ltd.'s Motion for Leave to Amend Adversary Complaint and Brief in Support* [Docket No. 51] (the "Motion to Amend"), in which Highland Capital and Highland Funding sought to amend their Original Complaint to remove all claims against the Trustee, except for one claim by Highland Funding for a declaratory judgment that the Trustee cannot "sell or transfer Highland Funding's property without Highland Funding's consent."

41. On October 9, 2018, the Court heard Highland Capital's Motion to Dismiss, Highland Funding's Motion to Dismiss, and the Motion to Amend. Considering that the Trustee expressed his intent to amend his Original Answer, the parties agreed that all arguments made by Highland Capital and Highland Funding to dismiss the Trustee's counterclaims pursuant to Rule 12(b)(6) were moot. With respect to Highland Funding's argument to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the Court ruled that Highland Funding has minimum contacts with the United States, and that the Court, has personal jurisdiction over Highland Funding in this Adversary Proceeding, and exercising personal jurisdiction over Highland Funding would not violate any traditional notions of fair play and substantial justice. Further, the Court ruled that, even if sufficient minimum contacts did not exist, Highland Funding has waived personal jurisdiction in this Adversary Proceeding.

42. With respect to the Motion to Amend, due to the change in circumstances in the Bankruptcy Cases, Highland Capital and Highland Funding agreed to voluntarily dismiss all claims asserted in the Original Complaint, without prejudice.

43. On November 13, 2018, the Trustee filed his *Defendant's Amended Answer, Counterclaims (Including Claim Objections) and Third-Party Claims* [Adv. No. 18-03078, Docket No. 84] (the "Amended Counterclaims") in this Adversary Proceeding, in which the Trustee asserted numerous counterclaims and third-party claims against Highland Capital and various of its affiliates in connection with, *inter alia*, their scheme to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. Additionally, with the Amended Counterclaims, the Trustee included his objections to the Highland Claims pursuant to section 502(b)(1), (b)(4), and (d) of the Bankruptcy Code (the "Objections to Claim"), and further asserted that, to the extent allowed, the Highland Claims should be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code.

44. On December 11, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772] (the "Application") for approval of an administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code, in the amount of \$3,554,224.29 (the "Administrative Claim"), for purportedly providing postpetition services to the Debtors in connection with the Sub Agreements (defined below) and the Universal/BVK Agreement (defined below), which Highland Capital contends were actual, necessary costs and expenses of preserving the estate.

45. On January 10, 2019, the Trustee timely filed his *Objection to Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772].

46. On January 31, 2019, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (the "Confirmation Order") [Case No. 18-30264, Docket Nos. 829 & 830], which approves the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Plan") and is supplemented by the *Court's Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan* (the "Confirmation Opinion") [Case No. 18-30264, Docket No. 827]. The Confirmation Opinion is hereby incorporated by reference as if fully set forth herein.

47. On February 15, 2019 (the "Effective Date"), the Trustee filed the *Notice of February 15, 2019 Effective Date for the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 863]. On the Effective Date, Acis (as the Reorganized Debtors) became substituted for the Trustee in the above-referenced consolidated adversary cases pursuant to the Plan, which provides:

Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

Plan § 7.03.

48. On March 11, 2019, the Court entered its *Order Consolidating Adversary Case Nos. 18-03078 & 18-03212* [Adv. No. 18-03078, Docket No. 127; Adv. No. 18-03212, Docket No. 63], under which the Court ordered that Adversary Nos. 18-03078 and 18-03212 are

consolidated under Federal Rule of Civil Procedure 42(a), incorporated by Federal Rule of Bankruptcy Procedure 7042. The Court further directed the Clerk to caption the case *as Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., et al.*, resulting in the designation of the Trustee, now Acis, as the Plaintiff(s) and Highland Capital and its affiliates as Defendants in this Adversary Proceeding.

49. On May 1, 2019, the Court entered its *Order Addressing DE #825 and Directing that: (A) Highland Capital Management, L.P.'s Administrative Expense Request [DE #722] Be Converted from a Contested Matter to Adversary Proceeding; and (B) Counts 27-31 Be Transferred in Adversary Proceeding No. 18-03078 into a New Adversary Proceeding* [Case No. 18-30264, Docket No. 919], whereby the Court converted Highland Capital's Application into a new adversary proceeding, and thereby initiating Adversary No. 19-03103.

50. On June 10, 2019, the Court held a status conference and directed: (i) that Adversary No. 19-03103 should be consolidated under this Adversary No. 18-03078; and (ii) that Acis will file an amended complaint, consolidating all claims, counterclaims, third-party claims against Highland Capital and its affiliates, as well as any objections to the Highland Capital Claims and Administrative Claim, by June 20, 2019.

V. FACTUAL BACKGROUND

A. **The Debtors' Business**

51. Dondero, Okada, and Terry formed Acis LP in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").⁶ The CLOs are governed by certain indentures (the

⁶ The Acis CLOs include: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6").

"Indentures").⁷ Acis LP is the portfolio manager for the CLOs and generates revenue primarily through the management of the CLOs via certain portfolio management agreements ("PMAs").⁸ See Opinion ¶¶ 22-28. While Dondero made and approved the higher-level financial strategies and decisions of Acis, Terry was responsible for the day-to-day management of Acis.

52. Acis LP's business as portfolio manager for the CLOs has been incredibly successful. Between 2011 and 2017, Acis LP distributed profits of \$11,037,445.00 to Dondero, \$4,598,935.00 to Terry, and \$2,759,361.00 to Okada, its partners. Further, on August 31, 2017, right before Highland Capital began its campaign to denude Acis LP and take over its business, Acis LP also boasted millions of dollars in investment assets and total shareholder equity of roughly \$3.4 million. Without question, Acis LP's business as portfolio manager for the CLOs and others has been very valuable and lucrative.

53. As is common with the numerous Highland Capital affiliates, Acis LP contracted out certain of its administrative functions and portfolio management responsibilities to Highland Capital pursuant to that certain *Sub-Advisory Agreement*, originally dated January 1, 2011 (as amended, the "Sub-Advisory Agreement") and that certain *Shared Services Agreement*, originally dated January 1, 2011 (as amended, the "Shared Services Agreement," and together

⁷ The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture").

⁸ The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA").

with the "Sub Agreements"). The Sub-Advisory Agreement and Shared Services Agreement have each been amended multiple times.

54. As the Court explained in its Opinion:

Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office" personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at 14 (footnotes omitted).

55. Prior to entry of the Orders for Relief, Dondero directed, either himself or through Highland Capital employees, all actions taken by Acis. *See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

Id.

56. Highland Funding, formerly known as Acis Loan Funding, Ltd. ("ALF"),⁹ holds the subordinated notes issued by the CLOs and receives the "very last cash flow from the CLOs." Opinion at pp. 12-13. "It, in certain ways, controls the CLO vehicle . . . [and] was essentially the equity owner in the CLO special purpose entities." *Id.* Until the ALF PMA Transfer in the Fall of

⁹ On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. before October 30, 2017.

2017 (described below), Acis LP had complete control of Highland Funding and its valuable subordinated note rights to further enhance its successful portfolio management business.

B. Section 3.10(a) of the Limited Partnership Agreement

57. In order to form Acis LP, Acis GP, the general partner, and limited partners The Dugaboy Investment Trust¹⁰ (the "Trust"), Okada, and Terry entered into that certain *Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P.* (the "LPA"), dated to be effective as of January 21, 2011.¹¹ The LPA is attached hereto as **Exhibit A**. The LPA is governed by Delaware Law. LPA § 6.11. At all relevant times herein, the officers of Acis GP are Dondero, as President, and Frank Waterhouse ("Waterhouse")¹², as Treasurer. Further, at least between October 14, 2015, and December 19, 2017, Dondero was the sole member of Acis GP. *See* Case No. 18-30265, Docket No. 152.

58. Pursuant to the Sub Agreements, Highland Capital received compensation for providing services to Acis LP, but amounts of compensation were subject to certain terms of the LPA. Section 3.10 of the LPA directs compensation and reimbursement of the General Partner and contains subpart (a), which limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner without proper consent:

Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that the aggregate annual expenses of the Partnership, inclusive of such compensation, *may not exceed 20% of Revenues without the consent of all of the members of the Founding Partner Group.*

LPA § 3.10(a) (emphasis added).

¹⁰ Dondero was the trustee and owned 100% of the Trust, and he was President of Acis GP.

¹¹ The partnership interests of Acis LP were as follows: Acis GP owned .1%; the Trust owned 59.9%; Okada owned 15%; and Terry owned 25%.

¹² Waterhouse is a partner in Highland Capital and serves as Highland Capital's Chief Financial Officer.

59. An Affiliate under the LPA is defined as:

[A]ny [entity] that directly or indirectly controls, is controlled by, or is under common control with the [entity] in question. As used in this definition, the term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of [an entity], whether through ownership of voting Securities, by contract, or otherwise.

Id. § 2.01.

60. Highland Capital was at all times relevant to this Second Amended Complaint, an Affiliate of Acis GP and Acis LP. Further, Highland Capital was at all times relevant to this Second Amended Complaint, an insider of Acis GP and Acis LP.

C. State Court Litigation and Arbitration

61. In June 2016, Highland Capital advised Terry that he had been terminated.

62. In September 2016, Highland Capital sued Terry in the 162nd Judicial District Court of Dallas County, Texas (the "State Court") under a variety of legal theories and causes of action, including breach of fiduciary duty/self-dealing, disparagement, and breach of contract. Terry asserted his own claims against Highland Capital, as well as claims against the Debtors, Dondero, and others, and demanded arbitration. Opinion ¶ 8.

63. On September 28, 2016, the State Court stayed the litigation and ordered the parties to arbitrate. *Id.* The parties then participated in a ten-day arbitration proceeding before JAMS, styled as *Terry v. Highland*, JAMS Arbitration No. 1310022713.

D. The Arbitration Award

64. On October 20, 2017, Terry obtained an arbitration award (the "Arbitration Award") jointly and severally against the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. The Arbitration Award was based on theories of breach of contract and breach of fiduciary duties. The Arbitration Award is attached hereto as **Exhibit B**.

65. Under the Arbitration Award, the arbitration panel found that Terry's termination by Dondero/Highland Capital was without cause and that, among other things, Acis breached the LPA and breached fiduciary duties owed to Terry as Acis's limited partner. Importantly, the arbitration panel found that Highland Capital had been paid more than 20% of Revenues (as such term is understood under the LPA), without Terry's consent, in violation of Section 3.10(a) of the LPA:

It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA.

....

The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS's and ACIS GP's breach of contract and breach of fiduciary duty. Clearly, ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

Arbitration Award at pp. 15-16.

66. Additionally, in the analysis of Terry's damages, the arbitration panel stated:

The evidence establishes that ACIS and ACIS GP paid excess expenses to Highland during the years of 2013, 2014, 2015 and January through May 2016. These expenses paid exceeded the 20% of Revenues cap stated in Section 3.10(a) of the ACIS LPA. The payment of these excess expenses reduced Terry's ACIS partnership distributions during this period. Had excess expenses not been paid and only the contractually capped expenses had been paid, Terry would have received additional ACIS profits distributions of \$1,755,481.00 for his 25% partnership interest in ACIS.

Arbitration Award at 20.

67. Finally, in its findings and conclusions, the arbitration panel stated: "ACIS [LP] and ACIS GP paid Highland Capital expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA." Arbitration Award at 22, ¶ 7.

68. On December 18, 2017, the 44th Judicial District Court of Dallas County, Texas, entered a final judgment confirming the Arbitration Award. Opinion ¶ 10. The judgment was abstracted in the Official Public Records of Dallas County, Texas, as Instrument No. 201800008611, and writs of garnishment were issued and served pursuant to the judgment.

69. Pursuant to the Arbitration Award, Highland Capital wrongly received at least \$7,021,924.00 (collectively, the "Expense Overpayments") in excess of the clear cap under Section 3.10(a) of the LPA.¹³ On information and belief, Highland Capital wrongfully received other overpayments of expenses for many years in excess of the express limitations contained in the LPA. The Expense Overpayments for which the Plaintiffs seek relief herein include all overpayments by Acis LP to Highland Capital in violation of the expense cap pursuant to the LPA whether or not addressed in the Arbitration Award. The Plaintiffs seek a declaratory judgment that such Expense Overpayments to Highland Capital and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable. The Plaintiffs also seek to recover from Highland Capital all such Expense Overpayments, which rightfully belong to Acis LP, as set forth below.

E. Modifications to the Sub-Advisory Agreement and Shared Services Agreement

70. The Sub-Advisory Agreement has been amended from time to time. The first iteration the Sub-Advisory Agreement by and between Acis LP and Highland Capital dated January 1, 2011 (the "Original Sub-Advisory Agreement") provided that Acis LP was to pay Highland Capital certain amounts for assisting Acis LP with the advisory services required by the PMAs. Under the Original Sub-Advisory Agreement, Acis LP paid Highland Capital 5 bps

¹³ If \$1,755,481.00 represents 25% of the amount overpaid to Highland Capital, then the total amount paid to Highland Capital in excess of the 20% cap would be at least \$7,021,924.00.

of the management fees received by Acis LP pursuant to the various PMAs for the sub-advisory services provided to Acis LP by Highland Capital.

71. On July 29, 2016, the Sub-Advisory Agreement was modified to increase the sub-advisory fee from 5 basis points to 20 basis points (the "Second Amended Sub-Advisory Agreement"). The effective date of the Second Amended Sub-Advisory Agreement was also back-dated to January 1, 2016. The fourfold increase in the sub-advisory fees via the Second Amended Sub-Advisory Agreement siphons off the funds of Acis LP and effectively gifts the additional amounts to Highland Capital. Highland Capital was already contractually obligated to provide the sub-advisory services for the lower 5 basis points fee and no legitimate justification for this fourfold increase was ever presented. Notably, Terry was unjustifiably terminated from Acis in June 2016, roughly one month before Acis and Highland Capital amended the Sub-Advisory Agreement to increase the fee paid fourfold. Further, Dondero consented to the increased sub-advisory fee on behalf of *both* Acis LP and Highland Capital. Dondero signed the Second Amended Sub-Advisory Agreement as president of Highland Capital's general partner, Strand Advisors, Inc., and as president of Acis GP, the general partner of Acis LP.¹⁴

72. The Shared Services Agreement has also been amended from time to time. The first iteration of the shared services agreement, the Shared Services Agreement by and between Acis LP and Highland Capital, dated January 1, 2011 (the "Original Shared Services Agreement"), provided that Acis LP was to pay Highland Capital certain amounts for providing Acis LP with the back-office services such as book keeping, compliance, human resources and marketing. Under the Original Shared Services Agreement, Acis LP reimbursed Highland Capital for amounts directly attributable to Acis LP for these services. The Shared Services

¹⁴ Dondero also signed the Third Amended and Restated Sub-Advisory Agreement, entered into on March 17, 2017, on behalf of both parties (Acis LP and Highland Capital) to the agreement; this amendment retained the 20 bps fee put in place by the Second Amended Sub-Advisory Agreement.

Agreement was later amended to provide compensation to Highland Capital of 15 to 20 basis points, depending on the nature of the fund for which services were provided. Thus, shortly after Terry was terminated by Acis in June 2016, Acis was paying Highland Capital a total of 35 to 40 basis points for the sub-advisory and shared services it provided.

73. Due to the retroactive nature of the amendments to the Sub-Advisory Agreement and Shared Services Agreement, Highland, at all times relevant to this proceeding, held an antecedent debt related to Acis.

74. Finally, as the Court has already found and as described in more detail below, Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor and Highland Holdings) entered into numerous other transactions through the Fall of 2017 in an attempt to take control of Acis's assets and effectively take over Acis's business. The combination of all of these actions evidence a clear pattern of behavior by Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor, Highland Management, and Highland Holdings)¹⁵ to hinder, delay or defraud Terry as a creditor and appropriate the going-concern business of Acis LP for the Highlands. Opinion, Section 1.C. (pp. 16-23).

F. Highland Capital's Mismanagement of the CLOs and the Trustee's Engagement of Brigade Capital Management, L.P.

75. During the pendency of these Bankruptcy Cases, while acting as sub-advisor, Highland Capital grossly mismanaged the CLOs. Following the Trustee's appointment in these Bankruptcy Cases, in disregard of its duties under the Sub-Advisory Agreement, Highland

¹⁵ The Debtors were also under Highland Capital and Dondero's control at this time and were active participants in all of Highland Capital and Dondero's schemes to denude the Debtors and make them "judgment proof" as the Debtors' own counsel, Jamie Welton, later boasted. In fact, Highland Funding has admitted that the Debtors were "no more than shell entities" in pleadings recently filed with the Court. Highland Funding's *Motion to Dissolve Preliminary Injunction and Lift the Automatic Stay* at page 21, Docket # 639 in Case No. 18-30264.

Capital failed to purchase a single loan for the CLOs. Yet, at the same time, in an apparent tactical move to accumulate cash in the CLOs (prior to an attempted liquidation), Highland Capital ordered that the Trustee sell numerous loans. Indeed, during this time, Highland Capital's own analysis showed that 19.7% to 32.4% of available loans were eligible for consideration for purchase in the CLOs. Although the Trustee expressed his concerns to Highland Capital about the accumulation of cash in the CLOs and Highland Capital's failure to recommend purchases of eligible collateral in the CLOs, Highland Capital failed to make any change or correction in its sub-advisor role, in abrogation of its duties.

76. In July 2018, considering Highland Capital's mismanagement of the CLOs and the exorbitant amounts attempted to be charged to Acis for its services under the Sub Agreements, the Trustee solicited potential third parties to provide shared services and sub-advisory services to the Debtors. After contacting over 40 parties, the Trustee received bids from nine parties to perform the services provided by Highland Capital under the Sub Agreements. Through this process, the Trustee was able to locate Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland") to provide such services to the Debtors at a rate far less than that charged by Highland Capital. As set forth more fully in the *Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Case No. 18-30264, Docket No. 448] (the "Brigade Motion"), Brigade agreed to sub-advise the CLOs for 15 basis points. As further described by the Brigade Motion, Cortland agreed to provide middle and back office CLO outsourcing (previously provided by Highland Capital under the

Shared Services Agreement) for \$30,000 per month, \$250-\$350 per trade, and a one-time fee of \$75,000. Cortland's fee equates to roughly 3 basis points per month.¹⁶

77. On August 1, 2018, the Court granted the Brigade Motion, and Brigade and Cortland began performing the services previously provided by Highland Capital under the Sub Agreements. *See* Case No. 18-30264, Docket No. 464. Notably, on the record at the hearing on July 6, 2018, Highland offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that Highland had grossly overcharged Acis. *See* Case No. 18-30264, Docket No. 369 at 243-44.

78. From approximately August 2, 2018 through December 11, 2018, Brigade directed the purchase of approximately \$300 million in conforming loans for the CLOs. *See* Case No. 18-30264, Docket No.790 at 100-01 & 134.

G. The Highlands' Fraudulent Scheme to Take Over Acis's Business and Dismantle Acis's Assets.

79. After Terry received the Arbitration Award on October 20, 2017, the Highlands immediately began work to systematically transfer the assets of Acis LP to other Highlands. This was done to denude Acis LP of value and make the Debtors "judgment proof." This was also done to ensure that Acis LP's very valuable business as portfolio manager was taken over by other Highlands and remained under Highland Capital and Dondero's control.

80. Prior to the filing of the Bankruptcy Cases, the Highlands' scheme was accomplished through, *inter alia*, the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements (as each is defined

¹⁶ Thus, the Trustee was paying roughly 18 basis points, instead of the 35 to 40 basis points charged by Highland Capital starting shortly after Terry was terminated by Acis in June 2016, for the work previously performed by Highland Capital under the Sub Agreements. The definitive agreement between the Reorganized Debtors and Brigade removes Cortland and the Reorganized Debtors pay roughly 15 basis points to Brigade for essentially the same services previously provided by Highland Capital.

below), which all occurred in the three months between October 23 and December 19, 2017. Each of these transfers followed the same pattern: Highland Capital caused Acis LP to fraudulently convey valuable economic rights away from Acis LP to offshore (often newly created) Highland Capital affiliates that were not subject to Terry's Arbitration Award and judgment, thus, safely remaining under the control of Highland Capital and Dondero. Further, the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highlands or their representatives.

81. Reference to Acis LP's balance sheets right before and right after the Highlands began their campaign of fraud against Terry and Acis demonstrate just how effective their scheme was. On August 31, 2017—roughly 45 days before the Arbitration Award—Acis LP boasted \$15,441,551 in total assets (including nearly \$4 million in valuable portfolio management investments and the \$9.5 million note) as well as \$3,372,851 in total equity value.¹⁷ After the Arbitration Award and the judgment enforcing it, Acis presented the affidavit of David Klos, Highland Capital's Controller, to the State Court in furtherance of Highland Capital's efforts to get a pathetically small bond for Terry's judgment. The Klos affidavit and attached balance sheet demonstrate that as of February 1, 2018 (the day after the Involuntary Petitions were filed) Acis LP had only \$2,855,050 in total assets, no investment assets or notes, and a paltry \$35,709 in total equity value.¹⁸ Thus, the amount of value destruction and asset concealment caused by the Highlands' brazen fraud in just the few months immediately after the Arbitration Award is staggering.

82. Even the filing of the Bankruptcy Cases did not deter the Highlands from attempting to complete their goal of denuding Acis. During the Bankruptcy Cases, in disregard

¹⁷ The Balance Sheet as of August 31, 2017, is attached as Exhibit C.

¹⁸ The Declaration of David Klos concerning Defendants' net worth, is attached as Exhibit D.

of the automatic stay, on multiple occasions, the Highlands directed the Trustee to effectuate optional redemptions, which would result in the liquidation of the CLOs and render Acis incapable of reorganizing and paying its creditors.

1. *The ALF PMA Transfer and the ALF Share Transfer*

83. Prior to October 27, 2017, Acis LP—not ALF (or Highland Funding as it is currently named)—had authority to direct and effectuate an optional redemption and otherwise pervasively control ALF's assets. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit E**. A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit F**.

84. The Second ALF PMA granted Acis LP, as the portfolio manager of ALF, extensive rights and discretion to control and manage ALF's assets, including its interests in the Acis CLOs. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

- (a) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (c) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by [ALF] . . . ; (n) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (q) vote Financial Instruments, participate in arrangements with creditors, the

institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

Second ALF PMA § 5(a)-(q) (emphasis added).¹⁹

85. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). The Second ALF PMA provided that Acis LP could be removed as portfolio manager only "for cause." *See* ALF PMA § 14(a)-(e).

86. On October 27, 2017, just seven days after Terry's Arbitration Award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and its valuable portfolio management rights—for no value—to Highland Advisor, an affiliate of Highland Capital.²⁰

87. This transfer of Acis LP's portfolio management rights to Highland Advisor was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland Advisor on October 27, 2017 (the "October 2017 PMA"), which empowered Highland Advisor with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct copy of the October 2017 PMA is attached hereto as **Exhibit G**.

88. As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and

¹⁹ The Highlands contend that the reference to "control" in Section 6 of the Second ALF PMA negates the broad language of Section 5 of the Second ALF PMA. The Plaintiffs disagree.

²⁰ Although purportedly a Cayman Islands entity, Highland Funding's 2017 Annual Report and Audited Financials lists Highland Advisor's address as Highland Capital's address in Dallas, Texas. This same document also discloses that Highland Capital is the sub-advisor for Highland Advisor, and thus is the party actually in control of Highland Funding's assets. Finally, this same document shows that all of Highland Funding's subordinated notes issued by the CLOs (the primary assets managed by Highland Advisor) are physically held at and are pledged to NexBank, a Dallas bank that is an affiliate of Highland Capital.

entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at 19 (footnotes omitted).

89. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, Dondero, on behalf of Acis LP, simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland Advisor under the October 2017 PMA. Acis received no consideration for this transfer.

90. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland Advisor, Highland Funding could not have attempted to liquidate the CLOs, by directing optional redemptions, and further deplete Acis's assets.²¹

91. On October 24, 2017, a mere four days after the Arbitration Award was entered, Waterhouse, on behalf of Acis LP, and Grant Scott, for CLO Holdco Ltd., entered into that certain special resolution whereby Highland Funding, then known as ALF, acquired back Acis's equity interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit H**. Pursuant the ALF Share Transfer, ALF paid Acis LP \$991,180.13 for all of its shares of ALF.

92. Thus, by virtue of the ALF PMA Transfer and the ALF Share Transfer, by October 31, 2017, Acis LP had given up all of its shares of ALF and all of its control of ALF.

²¹ After the ALF PMA Transfer, Highland Funding and Highland Advisor have issued at least three different optional redemption notices, in an attempt to terminate the PMAs and cut off the Debtors' primary source of cash. All three notices have been withdrawn and/or enjoined by this Court.

93. On November 15, 2017 – only days after the ALF Share Transfer and ALF PMA Transfer were completed – Highland Funding,²² Highland Advisor and CLO Holdco, Ltd. (another Highland Capital affiliate) entered into a subscription agreement whereby Highland Funding completed a private placement of its equity (including, upon information and belief, the equity acquired in the ALF Share Transfer) to third-party investors. The Plaintiffs believe both the ALF PMA Transfer and the ALF Share Transfer were concocted by Highland Capital and Highland Funding to complete this private placement, which was of great value to Highland Funding (then known as Acis Loan Funding, Ltd.) and Highland Capital, but after the transfers, of no value to Acis.²³ Without the ALF PMA Transfer and the ALF Share Transfer, control of Highland Funding's assets, and the Highland Funding stock held by Acis, would be vested in an entity (Acis LP) that was subject to a looming judgment based on Terry's recently acquired Arbitration Award. That would compromise the Highlands' control of Highland Funding.

2. *The Note Transfer*

94. On November 3, 2017, Acis LP, Highland Capital, and Highland Management (a newly created, offshore Highland Capital affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). A true and correct copy of the Note Assignment and Transfer Agreement is attached hereto as **Exhibit I**. The Note Assignment and Transfer Agreement, among other things, transferred the

²² ALF had changed its name to Highland Funding at this point.

²³ Highland Funding's (then Acis Loan Funding Ltd.) board of director minutes from October 6, 2017, disclose that the private placement investment would bring \$150 million in new investment in Highland Funding and that they were "confident that they could develop further interest and ... bring the total capital to up to around \$325 million." The Arbitration Award was issued against Acis LP exactly two weeks later, throwing a huge monkey wrench in Highland Funding's plans to raise hundreds of millions of dollars for Highland Capital and its cronies. Testimony in the bankruptcy case as well as the subscription agreement demonstrate that numerous Highland Capital executives, as well as Highland Capital itself, received Highland Funding stock in connection with this private placement. Thus, they were highly motivated to close this transaction and also deprive the Acis LP of any value in this transaction.

\$9.5 million promissory note executed by Highland Capital and payable to Acis LP (the "Note") from Acis LP to Highland Management (the "Note Transfer"). As noted in the Opinion:

The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.

The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses.

Opinion at 20.

95. Acis LP received no or insufficient consideration for the Note Transfer.

96. The Note Transfer was also of great benefit to Highland Capital because it transferred Highland Capital's liability under the Note away from Acis LP (and its legal woes with Terry) and allowed Highland Capital's liability under the Note, and any payments made thereunder, to stay well within the control of the Highlands. Just as importantly to Highland Capital and Dondero, and in furtherance to their ongoing feud with Terry, the Note Transfer took away the Note as an asset from which Terry could collect his judgment and allowed Highland Capital to argue (as repeatedly argued in the Bankruptcy Cases) that Terry got his judgment against the "wrong" entities and that Highland Capital has no liability related to Terry's claim.

97. Additionally, the Note Assignment and Transfer Agreement also purports to initiate the transfer of the PMAs between Acis and the CLOs to Highland Management.²⁴ Again,

²⁴ Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer (and on the exact day of the ALF PMA Transfer). Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the PMAs in an international forum that would be difficult for Terry to reach, similar

Acis LP was to receive no consideration for transferring its most significant assets, the PMAs. As the Court is aware, Acis LP did not in fact transfer the PMAs pursuant to the Note Assignment and Transfer Agreement, but it was clearly the plan as outlined in that agreement and further evidence of Highland Capital's intent to steal Acis LP's valuable going-concern business.

3. The Acis CLO 2017-7 Transfers

98. On December 19, 2017, Acis LP and Highland Holdings (another newly created, offshore Highland Capital affiliate)²⁵ entered into that certain Agreement for Assignment and Transfer (the "2017-7 Assignment and Transfer Agreement"). A true and correct copy of the 2017-7 Assignment and Transfer Agreement is attached hereto as **Exhibit J**. The 2017-7 Assignment and Transfer Agreement focused on Acis CLO Management, LLC ("Acis CLO Management"), which is an entity that had been formed to enter into a portfolio management agreement with Acis CLO 2017-7, Ltd. ("CLO 2017-7"). CLO 2017-7 is the last CLO the Highlands formed. Acis CLO Management was indirectly owned by Acis LP, and Acis LP and Acis CLO Management had entered into a Master Sub-Advisory Agreement and a Staff and Services Agreement (the "2017-7 Agreements") that allowed Acis LP to manage the CLO 2017-7 portfolio and collect management fees for CLO 2017-7.

99. The 2017-7 Assignment and Transfer Agreement, among other things, transferred to Highland Holdings all of Acis LP's interest in the 2017-7 Agreements. The 2017-7 Assignment and Transfer Agreement also transferred to Highland Holdings all of Acis LP's

to the transferees for the ALF PMA Transfer (Highland Advisor, a Cayman Island entity) the ALF Share Transfer (Highland Funding, a Guernsey entity) and the 2017-1 Assignment and Transfer Agreement (Highland Holdings, a Cayman Island entity). Thus, not only did Highland Capital and Dondero scheme to transfer Acis LP's assets away from it, but they also slyly chose entities in offshore jurisdictions that would be hard for a judgment creditor to reach.

²⁵ Like Highland Management, Highland Holdings was registered in the Cayman Islands on October 27, 2017.

equity interests in various entities that constituted Acis LP's indirect equity interests in Acis CLO Management (the "2017-7 Equity"). Thus, similar to the ALF PMA Transfer and the ALF Share Transfer that occurred roughly two months before, Acis LP was divested of both its ownership in Acis CLO Management and its control of Acis CLO Management (and related management fee stream) in one fell swoop on December 19, 2017, which is the day after Terry received his judgment based on the Arbitration Award. Also, importantly, the 2017-7 Assignment and Transfer Agreement rendered Acis non-compliant with relevant U.S. and European risk retention requirements.

100. Significantly, also on December 19, 2017, Highland Capital entered into an agreement with Highland Holdings that allowed Highland Capital to sub-advise and manage CLO 2017-7 and get paid the management fees that otherwise would have flowed to Acis LP. So, like the numerous transfers before it, Highland Capital effectuated the transfer of the 2017-7 Agreements and 2017-7 Equity to cut out Acis LP, while Highland Capital stayed in complete control of CLO 2017-7 and its stream of management fees.

101. As the Court noted in the Opinion:

On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017).

In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of \$5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a \$2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.

Opinion at 20-21.

102. The purported consideration for the 2017-7 Equity transferred in the 2017-7 Assignment and Transfer Agreement was the forgiveness of a \$2,804,870 payable allegedly owed by Acis LP to Highland Capital and transferred to Highland Funding sometime before the agreement was entered. According to Acis LP's financial statements, this payable to Highland Capital entirely comprises amounts due under the Sub-Advisory Agreement and Shared Services Agreement. Thus, the "consideration" provided in exchange for the 2017-7 Assignment and Transfer Agreement would suffer from the same defects as outlined throughout this Second Amended Complaint related to the Sub Agreements; i.e., Acis only "owed" Highland Capital these amounts because Highland Capital grossly overcharged Acis. Finally, like the Note Transfer, the 2017-7 Equity transfer allowed Highland Capital to effectively collect all of the \$2.8 million owed by Acis LP (assuming it is even a valid debt) through the use of an offshore intermediary.

103. Further, the 2017-7 Assignment and Transfer Agreement itself discloses that no consideration was provided for the transfer of the 2017-7 Agreements. Rather, the justification for the transfer of the 2017-7 Agreements is Highland Capital's self-serving refusal to continue to do business with Acis LP after the Arbitration Award and related judgment.

4. *Thwarted Attempts to Transfer the Universal/BVK Agreement and Force an Optional Redemption*

104. Highland Capital and the other Highlands did not stop with the transfers in the Fall of 2017. Immediately after the Involuntary Petitions were filed on January 30, 2018, Highland Capital conspired with Acis LP's own bankruptcy counsel in an effort to appropriate Acis LP's valuable sub-advisor rights under the Agreement for the Outsourcing of Asset Management (the "Universal/BVK Agreement") between Acis LP and Universal–Investment-

Luxembourg S.A. ("Universal"), which provided sub-advisory services for a German fund called BayVK R2 Lux S.A., SICAV-FIS ("BVK").²⁶ Like the many transfers before it, Highland Capital's plan (as clearly outlined in an email from Isaac Leventon to Mike Warner) was "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."²⁷ Immediately after Highland Capital sought (and presumably received) advice from Acis's own counsel, Highland Capital reached out to Universal and BVK to solicit their participation in Highland Capital's scheme. In fact, BVK acknowledged in its very first email with Highland Capital after Acis LP's bankruptcy filing that Highland Capital's plan was to replace Acis LP.

105. Over the several weeks leading up to this Court's ruling on the Orders for Relief, Highland Capital and Universal/BVK did, in fact, frequently discuss replacing Acis LP, conducted extensive due diligence in order to replace Acis LP and even negotiated and prepared a new asset management agreement between Highland Capital and Universal that was to take effect once Acis LP and its bankruptcy were out of the way. But even after the Orders for Relief were entered and the Debtors were under the control of a trustee, the communications did not stop. Among other things, Highland Capital volunteered to pay Universal and BVK's legal costs incurred in terminating Acis LP and making Highland Capital the new sub-advisor for Universal and BVK, Highland Capital repeatedly criticized the Trustee for his management of Acis, and Highland Capital repeatedly expressed its desire to negotiate with Universal and to "onboard" Highland Capital as Universal's new sub-advisor. And even after Highland Capital was fired by the Trustee as Acis LP's sub-advisor and replaced with Brigade and Cortland, the

²⁶ The Court held a lengthy hearing on the Universal/BVK Agreement and related lift stay issues on September 11, 2018.

²⁷ Email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer), attached as Exhibit K.

communications did not stop. Highland Capital's scheme to transfer the Universal/BVK Agreement to Highland Capital or its affiliate was apparently only prevented by this Court imposing 11 U.S.C. § 363, effectively taking away Acis LP's right to operate outside the ordinary course of business without Court authority under 11 U.S.C. § 303(f) and then later not immediately lifting the automatic stay as to the Universal/BVK Agreement.

106. Finally, Highland Advisor and its sub-manager Highland Capital, used its newly acquired management rights (by way of the ALF PMA Transfer) to attempt to destroy the Debtor, as further described below.

5. *The First Optional Redemption Notices*

107. On April 30, 2018, without requesting relief from the automatic stay, Highland Funding sent five notices purportedly requesting optional redemption pursuant to Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").²⁸ True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit L**.

108. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, an Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights, including, effectively, the PMAs.

²⁸ Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

109. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit M**.

6. *The Temporary Restraining Order Against the Highlands*

110. On May 30, 2018, Highland Capital and Highland Funding initiated this Adversary Proceeding and alleged, among other things, that the Trustee breached the PMAs by failing to effectuate an Optional Redemption pursuant to the First Optional Redemption Notices.

111. The next day, on May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including potentially all of Acis's creditors in full.

112. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a temporary restraining order, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

113. On June 6, 2018 the Court entered its *Temporary Restraining Order* (the "TRO"), whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

114. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. *See* Docket No. 275.

115. Also on June 11, 2018, Highland Funding filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). *See* Case No. 18-3264, Docket. No. 271. This pleading did not mention that Highland Capital apparently violated the TRO by initiating approximately \$23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its *sua sponte* TRO on May 31.

7. *The Second Optional Redemption Notices*

116. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, Highland Funding advised the Trustee that Highland Funding would withdraw the First Optional Redemption Notices. Highland Funding's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as **Exhibit N** and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that Highland Funding was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

117. On June 14, 2018, counsel for Highland Funding advised the Court that Highland Funding had withdrawn the First Optional Redemption Notices. Counsel for Highland Funding

further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.²⁹

118. On June 15, 2018, at 12:01 a.m., the TRO expired.

119. Later on June 15, 2018, despite the fact that Highland Funding had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, (again, without requesting relief from the automatic stay) Highland Funding gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit Q** and are incorporated herein for all purposes.

120. By the Second Optional Redemption Notices, Highland Funding directed the Issuers:

to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

121. On June 20, 2018, Highland Capital presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland Capital further stated:

²⁹ See Docket No. 298 at 7, ll. 16-22 (June 14, 2018 Hr'g Tr.).

In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline"). The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves it rights to seek appropriate protection and redress at law or in equity.³⁰

H. Preferential Transfers Made within One Year of the Petition Date

122. Acis's Statement of Financial Affairs [Case No. 18-30264, Docket No. 165] (the "SOFA")³¹ and its general ledger disclose more than two dozen payments totaling \$16,113,790.14 made to Highland Capital within one year of the Petition Date based on four categories (the "Prepetition Payments"):

- (i) Contractual Payments: \$5,011,836.72
- (ii) Services: \$7,672,145.25³²
- (iii) Unsecured Loan Repayments Including Interest: \$3,311,497.65
- (iv) Expense Reimbursement: \$118,311.32

123. The Prepetition Payments were made for the benefit of Highland Capital for or on account of an antecedent debt owed by the Debtors before the Prepetition Payments were made. Acis was insolvent at all times when the Prepetition Payments were made. Based on Terry's pending—or already decided—claims, as well as Highland Capital's absolute operational and financial control of Acis, Highland Capital was aware that Acis was insolvent or reasonably should have been aware Acis was insolvent at all times when the Prepetition Payments were made. The Prepetition Payments were made within one year of the Petition Date. At the time the

³⁰ Emphasis in original email correspondence.

³¹ The SOFA is sworn under penalty of perjury and signed by Issac Leventon, a Highland employee and associate general counsel.

³² The Statement of Financial Affairs, filed in the bankruptcy cases by Acis while under Highland Capital control, fails to list an additional \$1,868,203.44 in transfers to Highland Capital for "Services" that were made shortly before the Petition Date.

Prepetition Payments were made Highland Capital was an insider of the Debtors. The Prepetition Payments enabled Highland Capital to receive more than Highland Capital would have received if the cases were a case under chapter 7 of the Bankruptcy Code and if the Prepetition Payments had not been made. Highland Capital received the Prepetition Payments. *See Williams v. Mckesson Corp. (In re Quality Infusion Care, Inc.)*, Nos. 10-36675, 13-3056, 2013 Bankr. LEXIS 5044 (Bankr. S.D. Tex. Nov. 25, 2013) (citing *Palmer Clay Prods. Co. v. Brown*, 297 U.S. 227, 229 (1936) and stating the 547(b)(5) is to be analyzed as of the Petition Date).

124. Further, to the extent that the Acis LP payables that served as the consideration for the Note Transfer and the 2017-7 Equity transfer were valid, these transfers would also constitute preferential payments to Highland Capital, Highland Management and Highland Holdings. The SOFA discloses that Highland Management is an "affiliate" of the Debtors and the Note Transfer is included on the list of "payments, distributions, withdrawals credited, or given to insiders" within one year before filing the Bankruptcy Cases. *See* SOFA p. 12.

VI. CAUSES OF ACTION³³

Count 1: Declaratory Judgment that Expense Overpayments to Highland Capital Were Ultra Vires in Violation of the LPA [Against Highland Capital]

125. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

126. Under Delaware law, *ultra vires* corporate acts are either void or voidable. *See Klaassen v. Allegro Dev. Corp.*, C.A. No. 8626-VCL, 2013 Del. Ch. LEXIS 247, at *48-50 (Oct. 11, 2013); *see also Stephen A. Solomon v. Armstrong*, 747 A.2d 1098, 1114 n.45 (1999) (explaining the difference between void and voidable acts). Delaware courts apply the doctrine

³³ All causes of action asserted herein are also asserted as counterclaims to the Highland Capital Claims pursuant to section 16.069 of the Texas Civil Practice & Remedies Code and other applicable law.

of *ultra vires* to partnerships by analogy. See, e.g., *In re Mesa Ltd. P'ship Preferred Unitholders Litig.*, Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at *20 (Dec. 10, 1991).

127. Highland Capital invoiced Acis for, and received payments for, at least \$7,021,924.00 in excess of 20% of Revenues, in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA.

128. Such Expense Overpayments, and any agreements supporting such Expense Overpayments, were economically irrational, not in the interest of Acis LP, and are therefore void; however, if not void, such actions are voidable because they were done without the consent or ratification of all members of the Founding Partner Group. The payments to Highland Capital of the Expense Overpayments in the amount of at least \$7,021,924.00 and any agreements supporting such overpayments were unauthorized or *ultra vires* acts of the partnership in violation of the LPA, and are therefore void or voidable.

***Count 2: Turnover of Property of the Estate under 11 U.S.C. § 542(a)
for Unauthorized Overpayments
[Against Highland Capital]***

129. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

130. Under section 542(a) of the Bankruptcy Code, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

131. Under section 541(a) of the Bankruptcy Code, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Further, the "estate is comprised of [such] property, wherever located and by whomever held." *Id.*

132. Highland Capital wrongfully received Expense Overpayments of at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA.

133. The property, or value of such property, from the overpayment of funds wrongfully transferred to Highland Capital totaling at least \$7,021,924.00, in Highland Capital's possession, custody, or control is property of the estate, and the value of such property is not of inconsequential value or benefit to the estate.

134. Pursuant to section 542(a) of the Bankruptcy Code, Highland Capital must deliver to the Trustee the property or value of such property, totaling at least \$7,021,924.00, wrongfully transferred to Highland Capital.

135. Therefore, the Plaintiffs, now vested with all claims of the Trustee, seek turnover of the funds, totaling at least \$7,021,924.00, transferred to Highland Capital, to the extent allowed pursuant to section 542 of the Bankruptcy Code.

***Count 3: Money Had and Received for Overcharges and Unauthorized Overpayments
[Against Highland Capital]***

136. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. "An action for money had and received arises when the defendant obtains money which in equity and good conscience belongs to the plaintiff. This action . . . looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no pet.) (internal citations omitted).

138. Highland Capital invoiced Acis for, and received Expense Overpayments for, at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA. Highland

Capital was therefore unjustly enriched in the amount of the Expense Overpayments of at least \$7,021,924.00.

139. Highland Capital invoiced Acis and accepted such Expense Overpayments from Acis despite Highland Capital's knowledge of the LPA. This money rightfully belongs to Acis, and the overpayment creates a debt in favor of Acis. Therefore, the Plaintiffs are entitled to damages on behalf of Acis in the amount of at least \$7,021,924.00. In addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Services Agreement and is liable to Acis in the amount of these overcharges.

***Count 4: Conversion for Unauthorized Overpayments
[Against Highland Capital]***

140. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

141. "Conversion is defined as the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights." *Green Int'l v. Solis*, 951 S.W.2d 384, 391 (Tex. 1997).

142. Highland Capital wrongfully exercised dominion and control over at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, through the common control of Dondero, was aware that it was prohibited from receiving payment in excess of 20% of Revenues without the consent of all members of the Founding Partner Group. Highland Capital also had actual notice of the Arbitration Award through Dondero (who was represented at the arbitration proceeding) that Highland Capital was wrongfully in possession of such money. Despite Highland Capital's actual knowledge that the money does not rightfully belong to Highland Capital, Highland Capital continues to improperly retain the overpaid funds. Therefore, the Plaintiffs are entitled to damages in the amount of at least \$7,021,924.00. In

addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Shared Services Agreement and is liable to Acis in the amount of these overcharges.

Count 5: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) related to the Sub-Advisory Agreement [Against Highland Capital]

143. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

144. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

145. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments

- thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.
- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
 - (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
 - (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
 - (vi) the transfer/obligation incurred was to an insider.

146. Therefore, such modifications to the Sub-Advisory Agreements and payments to Highland Capital pursuant to such modifications should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 6: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) related to the Sub-Advisory Agreement [Against Highland Capital]

147. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

148. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

149. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.
- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
- (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
- (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
- (vi) The transfer/obligation incurred was to an insider.

150. Therefore, Acis's creditors have the right to avoid the Sub-Advisory Agreement and payments thereunder under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs, now vested with all claims of the Trustee, can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 7: Constructive Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(B) related to the Sub-Advisory Agreement [Against Highland Capital]

151. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

152. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

153. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder;
- (ii) was or became insolvent as the result of the modifications to the Sub-Advisory Agreement and payments made thereunder; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

154. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B).

Count 8: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) related to the Sub-Advisory Agreement [Against Highland Capital]

155. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

156. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

157. As described above, Acis LP did not receive reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, and creditors at the time of such modifications and payments could have avoided such modifications and payments under section 24.005(a)(2) of the Texas Business and Commerce Code.

158. At the time of the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

159. Moreover, as described above, Acis was insolvent or became insolvent by the modifications to the Sub-Advisory Agreement and payments made thereunder.

160. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 9: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]***

161. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

162. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or

defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

163. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP;
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;
- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

164. Therefore, the ALF PMA Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

*Count 10: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]*

165. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

166. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

167. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

168. Therefore, Acis's creditors have the right to avoid the ALF PMA Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 11: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]***

169. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

170. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

171. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF PMA Transfer;
- (ii) was insolvent on the date the ALF PMA Transfer was made or became insolvent as the result of the ALF PMA Transfer;

- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

172. Therefore, ALF PMA Transfer is avoidable under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 12: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]***

173. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

174. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the

Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

175. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF PMA Transfer, and creditors at the time of the ALF PMA Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

176. At the time of the ALF PMA Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

177. Moreover, as described above, Acis was insolvent or was rendered insolvent by the ALF PMA Transfer.

178. The ALF PMA Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 13: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the ALF Share Transfer
[Against Highland Capital and Highland Funding]***

179. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

180. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

181. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

182. Therefore, the ALF Share Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 14: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)
for the ALF Share Transfer
[Against Highland Capital and Highland Funding]***

183. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

184. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

185. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

186. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 15: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the ALF Share Transfer
[Against Highland Capital and Highland Funding]***

187. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

188. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

189. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF Share Transfer;
- (ii) was insolvent on the date the ALF Share Transfer was made or became insolvent as the result of the ALF Share Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

190. Therefore, ALF Share Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 16: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF Share Transfer [Against Highland Capital and Highland Funding]

191. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

192. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

193. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF Share Transfer, and creditors at the time of the ALF Share Transfer could

have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

194. At the time of the ALF Share Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

195. Moreover, as described above, Acis was insolvent or rendered insolvent by the ALF Share Transfer.

196. The ALF Share Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 17: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the Note Transfer
[Against Highland Capital and Highland Management]***

197. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

198. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

199. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

200. Therefore, the Note Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 18: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)
for the Note Transfer
[Against Highland Capital and Highland Management]***

201. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

202. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

203. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;
- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

204. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code..

*Count 19: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the Note Transfer
[Against Highland Capital and Highland Management]*

205. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

206. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

207. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the Note Transfer;
- (ii) was insolvent on the date the Note Transfer was made or became insolvent as the result of the Note Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

208. Therefore, Note Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 20: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the Note Transfer [Against Highland Capital and Highland Management]

209. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

210. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

211. As described above, Acis LP did not receive reasonably equivalent value in exchange for the Note Transfer, and creditors at the time of the Note Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

212. At the time of the Note Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they

became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

213. Moreover, as described above, Acis was insolvent or rendered insolvent by the Note Transfer.

214. The Note Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 21: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the 2017-7 Equity and 2017-7 Agreement Transfers
[Against Highland Capital and Highland Holdings]***

215. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

216. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

217. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7

Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Holdings) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

218. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity should be avoided under section 548(a)(1)(A) of the Bankruptcy Code.

Count 22: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

219. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

220. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

221. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7 Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;
- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfers.

222. Therefore, Acis's creditors have the right to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 23: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the 2017-7 Equity and 2017-7 Agreement Transfers
[Against Highland Capital and Highland Holdings]***

223. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

224. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

225. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (ii) was insolvent on the date the transfers of the 2017-7 Agreements and the 2017-7 Equity were made or became insolvent as the result of the transfers;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

226. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 24: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

227. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

228. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

229. As described above, Acis LP did not receive reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity, and creditors at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

230. At the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

231. Moreover, as described above, Acis was insolvent or rendered insolvent by the transfers of the 2017-7 Agreements and the 2017-7 Equity.

232. The transfers of the 2017-7 Agreements and the 2017-7 Equity are therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 25: Preferential Transfers to Highland Capital, Highland Holdings and Highland Management under 11 U.S.C. § 547(b) and Texas Business and Commerce Code § 24.006(b) [Against Highland Capital, Highland Holdings, and Highland Management]

233. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

234. Section 547(b) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property (i) to or for the benefit of a creditor; (ii) for or on account of an antecedent debt; (iii) made while the debtor was insolvent; (iv) made within one year to an insider; and (v) that enables such creditor to receive more than such creditor would receive in a hypothetical chapter 7 liquidation.

235. Likewise, section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.006(b) provides that a current creditor may avoid a

transfer if the debtor made the transfer to an insider for an antecedent debt, the debtor was insolvent, and the insider had reasonable cause to believe that the debtor was insolvent. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis pursuant to Texas Business and Commerce Code section 24.006(b).

236. Within one year of the Petition Date, Highland Capital received the Prepetition Payments in the amount \$16,113,790.14 from Acis on account of purported debt claims owed by Acis. To the extent that the Prepetition Payments satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

237. Similarly, the 2017-7 Equity transfer and the Note Transfer are purportedly in satisfaction of payables owed by Acis LP to Highland Capital (later conveyed to Highland Holdings and Highland Management). To the extent that these transfers satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

***Count 26: Liability for Avoided Transfers under 11 U.S.C. § 550
[Against All Defendants]***

238. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

239. Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under section 544, 547 or 548, the trustee may recover the property transferred or the value of the property transferred from (i) the initial transferee of such transfer or (ii) the entity for whose benefit such transfer was made.

240. Highland Capital is an initial transferee of all transfers sought to be avoided in Counts 5 – 8 and 25 above. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Capital pursuant to section 550, specifically including any transfers made in connection with any obligations avoided through Counts 5 – 8 above.

241. Highland Advisor is an initial transferee of all transfers sought to be avoided in Counts 9 – 12 above, and Highland Capital are entities for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Advisor, Highland Funding, and Highland Capital pursuant to section 550.

242. Highland Funding is an initial transferee of all transfers sought to be avoided in Counts 13 – 16 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Funding and Highland Capital pursuant to section 550.

243. Highland Management is an initial transferee of all transfers sought to be avoided in Counts 17 – 20 and 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Management and Highland Capital pursuant to section 550.

244. Highland Holdings is an initial transferee of all transfers sought to be avoided in Counts 21 – 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Holdings and Highland Capital pursuant to section 550.

***Count 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers
[Against Highland Capital, Highland Advisor, Highland Management, and Highland
Holdings]***

245. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

246. Highland Capital, Highland Advisor, Highland Management, Highland Holdings, Dondero, and Waterhouse (collectively, the "Highland Enterprise")³⁴ sought to engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business.

247. The Highland Enterprise, which is comprised of two or more business entities and individuals, had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

248. The fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer, constitute one or more unlawful, overt acts.

249. The Debtors and the Debtors' estates suffered damages as a proximate result of the fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

250. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for the Highland Enterprise's conspiracy.

³⁴ This is without limitation to other entities or individuals that may ultimately be shown to be part of Highland Enterprise.

***Count 28: Tortious Interference with the Universal/BVK Agreement
[Against Highland Capital]***

251. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

252. Under Texas law, a claim for tortious interference with contract requires: "(1) an existing contract subject to interference, (2) a willful and intentional act of interference with the contract, (3) that proximately caused the plaintiff's injury, and (4) caused actual damages or loss." *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320 *7 (N.D. Tex.) (J. Boyle) (quoting *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The fact that a contract is an at-will agreement is no defense to a tortious interference claim. *Id.*

253. The Universal/BVK Agreement is an existing contract to which Acis LP is a party. The Universal/BVK Agreement is an existing contract that is subject to interference.

254. From nearly day one of these Bankruptcy Cases, Highland Capital has sought to terminate Acis LP as the manager under the Universal/BVK Agreement, and replace Acis LP with Highland Capital or one of its affiliates. Highland Capital's actions involve communications over many months with Universal and BVK, including numerous communications after Highland Capital was terminated as sub-advisor on August 1, 2018 and no longer had any legitimate reason to communicate with Universal or BVK. Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way.

255. Acis LP and its estate have suffered and will suffer actual damages as a proximate result of the interference of Highland Capital.

256. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for Highland Capital's tortious interference with the Universal/BVK Agreement.

**Count 29: Breach of Contract by Highland Capital under the Sub-Advisory Agreement and Shared Services Agreement
[Against Highland Capital]**

257. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

258. Under Texas law, to prevail on a breach of contract claim, a party must show: "(1) the existence of a valid contract; (2) the plaintiff performed or tendered performance as the contract required; (3) the defendant breached the contract by failing to perform or tender performance as the contract required; and (4) the plaintiff sustained damages as a result of the breach." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018).

259. The Sub-Advisory Agreement is a valid contract between Acis LP and Highland Capital, under which Highland Capital was obligated to, *inter alia*:³⁵

- (i) make recommendations to Acis LP for the purchase, retention, or sale of specific loans or assets in the CLOs;
- (ii) place orders with respect to the purchase or sale of specific loans or assets for the CLOs, upon instruction from Acis LP;
- (iii) identify, evaluate, recommend to Acis LP, and, if applicable, negotiate the structure or terms of investment opportunities for the CLOs;
- (iv) assist Acis LP in performing its due diligence on prospective investments for the CLOs; and

³⁵ Although the Plaintiffs plead herein that certain provisions of the Sub-Advisory Agreement, which are in violation of the LPA, are unauthorized and *ultra vires*, section 15 of the Sub-Advisory Agreement provides that any such invalid provision does not affect or render "invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part."

(v) provide information to Acis LP regarding any investments in the CLOs, and, if requested by Acis LP, provide information to assist in monitoring and servicing investments by the CLOs.

See Sub-Advisory Agreement § 1(b). Further, "[n]otwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, [Acis LP]." *Id.*

260. Section 4(a) of the Sub-Advisory Agreement specifically provides:

[T]he Sub-Advisor will perform its obligations [under the Sub-Advisory Agreement] in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios[.]

261. Since at least the time the Trustee was appointed in these Bankruptcy Cases, while acting as sub-advisor, Highland Capital failed to purchase a single loan for the CLOs, and only provided for the sale of loans, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP. Such practice is inconsistent with the practices and procedures followed by institutional managers of national standing, such as Brigade, relating to assets of the nature and character of the CLOs. Highland Capital's activities are, however, completely consistent with the Highlands' ultimate goal to take away Acis LP's valuable assets and take over Acis LP's valuable business as portfolio manager of the CLOs.

262. Highland Capital grossly mismanaged the CLOs, in abrogation of its duties and disregard of the standard of care under the Sub-Advisory Agreement. Accordingly, Highland Capital has breached its obligations under the Sub-Advisory Agreement, and such breach caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

263. Further, to the extent any of the above-mentioned acts constitute services Highland Capital asserts it provided pursuant to the Shared Services Agreement, such services failed to meet the "Standard of Care" set forth in the Shared Services Agreement and were committed in bad faith or were the result of gross negligence, fraud, and/or willful misconduct. Highland Capital's breach of the Shared Services Agreement caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

***Count 30: Breach of Fiduciary Duties by Highland Capital
[Against Highland Capital]***

264. The Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

265. Pursuant to the Sub-Advisory Agreement, a principal-agent relationship existed between Acis LP and Highland Capital. As its investment adviser, Highland Capital owed Acis LP fiduciary duties. *See Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248. 17, C.F.R. Part 276 (June 5, 2019). Further, based on Highland Capital's role as sub-advisor and investment adviser to Acis LP, a special relationship of trust and confidence existed between Acis LP and Highland Capital. *See W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 373-74 (Tex. App.—Fort Worth 2007, no pet.). Accordingly, in its capacity of sub-advisor to Acis LP, Highland Capital owed fiduciary duties to Acis LP.

266. Highland Capital, while acting as sub-advisor for Acis LP, purposefully engaged in conduct that was detrimental to Acis LP in order to enrich itself. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates and amounts in

excess of the compensation limits of the LPA. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the Fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as Acis's own counsel later boasted, and in order to ensure that Terry would never receive payment on his judgment, as Dondero has threatened. These transfers, while very damaging to Acis LP, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, Highland Capital sought to transfer the Universal/BVK Agreement away from Acis LP and to itself or an affiliate, including while Highland Capital was serving as sub-advisor (and as a fiduciary) for such agreement.

267. By its actions, Highland Capital specifically intended to cause harm to Acis LP by denuding it of its assets and enriching Highland Capital. In doing so, Highland Capital breached its fiduciary duties to Acis LP.

268. As a consequence, the Plaintiffs, now vested with all claims of the Trustee, are entitled to an award of punitive damages against Highland Capital in an amount to be determined by the Court.

Count 31: Punitive Damages
[Against All Defendants]

269. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

270. The Highlands, led by Highland Capital and Dondero, engaged in fraud against Acis and its creditors, acted with malice toward Acis and its creditors, and were, at best, grossly negligent in their dealings with Acis.

271. Further, Plaintiffs are entitled to punitive damages in connection with Highland Capital's: (i) breach of fiduciary duties to Acis due to its fraudulent conduct, (ii) tortious interference, and (iii) violations of TUFTA. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W. 3d 213, 232 (Tex. 2019) (fiduciary duties); *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 210 (Tex. 1996) (tortious interference); *Mullins v. Testamerica, Inc.*, CIV.A. 3:02-CV-0106-, 2006 WL 2167401, at *10 (N.D. Tex. Aug. 2, 2006) (TUFTA).

272. Thus, the Plaintiffs, now vested with all claims of the Trustee, are entitled to punitive damages, and the Plaintiffs plead for such damages in connection with each Count pleaded herein that will support a claim for punitive damages.

Count 32: Disregarding the Corporate Form/Alter Ego/Collapsing Doctrine/Unjust Enrichment [Against All Defendants]

273. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

274. Under Texas law, ignoring the separateness of business entities and holding affiliated entities liable for all debts of the fraudulent enterprise is appropriate "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp.*, 275 S.W.3d 444, 451 (Tex. 2008); *see also Flores v. Bodden*, 488 Fed. App'x 770, 775-76 (5th Cir. 2012) (listing "six situations in which a court may disregard the corporate form"); *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (finding alter ego present).³⁶

³⁶ To the extent Delaware law applies to any of the alter ego claims, Delaware also recognizes alter ego on similar grounds. "Delaware does, however, recognize the traditional alter ego doctrine as grounds to pierce the corporate veil in cases involving the members of a corporate group. To state an alter ego claim under Delaware law, the [plaintiff] must plead (1) that [the] defendants 'operated as a single economic entity' and (2) that an 'overall element

275. Highland Capital, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero. Each of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others. Further, each of the Alter Egos should be held liable for any debts of the Debtors, as they are also the alter ego of the Debtors.

276. In this case, the Alter Egos unquestionably used the corporate form as a means of perpetuating the fraudulent scheme set forth above. For example, creating shell corporations in the Cayman Islands days after the Arbitration Award in order to avoid payment of Acis's creditors is precisely the type fraud or injustice that warrants disregarding the corporate form. Such actions satisfy, at a minimum, the first three situations in which a court may disregard the corporate form.

277. Further, "multistep transactions can be collapsed when the steps of the transaction are `part of one integrated transaction.'" *In re Yazoo Pipeline Co., L.P.*, 448 B.R. 163, 187 (Bankr. S.D. Tex. 2011) (J. Isgur) (internal citations omitted). The Supreme Court likewise has held that a bankruptcy court, as a court of equity, may look through form to substance when determining the true nature of a transaction as it relates to the rights of parties against a bankrupt's estate. *Pepper v. Litton*, 308 U.S. 295, 304-05 (1939).

278. The ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements should be collapsed and recognized for what they are: Highland Capital using offshore entities to take over Acis LP's assets and business while Highland Capital maintains absolute control over such assets and business, and even using

of injustice or unfairness' is present. "*Precht v. Global Tower LLC*, No. 2:14-CV-00743, 2016 U.S. Dist. LEXIS 177910, at *9 (W.D. La. Dec. 22, 2016) (internal citations omitted).

alleged debt owed to Highland Capital as the purported consideration for these transactions in order to mask Highland Capital's otherwise clear liability for avoidable transfers.

279. Finally, unjust enrichment is an equitable theory of recovery holding that one who receives benefits unjustly should make restitution for those benefits. *Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 927 (Tex. App.--Fort Worth 1994). A party is unjustly enriched when it obtains a "benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992).

280. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits.

***Count 33: Willful Violation of the Automatic Stay
[Against Highland Capital and Highland Funding]***

281. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

282. A willful violation of the automatic stay does not require a specific intent.

Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.

Campbell v. Countrywide Home Loan, Inc., 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005).

283. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate." *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

284. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees. *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009). The term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. *See Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, *inter alia*, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

285. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. *See United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990).

286. Highland Capital knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including when it demanded on June 20, 2018, that the Trustee take actions to effectuate the optional redemption by June 21, 2018.

287. Highland Funding knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including each occasion described herein when it sent the Trustee the Optional Redemption Notices.

288. Pursuant to section 362(k)(1), the Plaintiffs seek recovery of damages commensurate with its injury, due to Highland Capital's and Highland Funding's violations of the automatic stay. Further, given Highland Capital's and Highland Funding's blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiffs seek attorneys' fees, punitive damages, and sanctions, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

***Count 34: Attorneys' Fees and Costs,
Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases
[Against All Defendants]***

289. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

290. Pursuant to Texas Business and Commerce Code section 24.013, Civil Practice and Remedies Code section 38.001, TUFTA, and any other applicable law, the Plaintiffs may recovery attorneys' fees and costs incurred in bringing this Adversary Proceeding.

291. Plaintiffs further seek recovery from Highland Capital of all allowed professionals' fees and expenses in the Bankruptcy Cases, which were losses to Acis resulting from Highland Capital's breach of fiduciary duties to Acis. *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

VII. REQUEST FOR DISGORGEMENT

292. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

293. "Under the equitable remedy of disgorgement or fee forfeiture, a person who renders service to another in a relationship of trust may be denied compensation for his service if he breaches that trust." *McCullough v. Scarbrough, Medlin & Assocs.*, 435 S.W.3d 871, 904-05 (Tex. App.—Dallas 2014) (citing *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999)). "The remedy essentially returns to the principal the value of what it paid for because it did not receive the trust or loyalty." *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237-38).

"The amount of disgorgement is within the trial court's discretion; the court may 'deny him all compensation or allow him a reduced compensation or allow him full compensation.'" *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237 (quoting RESTATEMENT (SECOND) OF TORTS § 243 (1959))).

294. "Equitable disgorgement is distinct from an award of actual damages in that the disgorgement award 'serves a separate function of protecting fiduciary relationships.'" *McCullough*, 435 S.W.3d at 905 (quoting *Saden v. Smith*, 415 S.W.3d 450, 469 (Tex. App.—Houston [1st] Dist. 2013, pet. denied)); *see also Burrow*, 997 S.W.2d at 238 ("[T]he central purpose of the equitable remedy of [disgorgement] is to protect relationships of trust by discouraging agent's disloyalty.").

295. The basis for the disgorgement award against Highland Capital stems from its liability in connection with its breach of fiduciary duty, as pleaded herein, and should be "phrased in terms of the salary, profits or other income [Highland Capital] received during the time [it] committed the tortious conduct." *McCullough*, 435 S.W.3d at 905 (internal quotation marks omitted).

296. Accordingly, Plaintiffs request disgorgement of all funds received by Highland Capital, who breached its fiduciary duties to Acis.

VIII. REQUEST FOR IMPOSITION OF CONSTRUCTIVE TRUST

297. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

298. "A constructive trust is not a cause of action under Texas law." *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010). Rather, "[a] constructive trust is an equitable remedy used to prevent unjust enrichment." *Baxter v. PNC Bank Nat'l Ass'n*, 541 Fed. App'x 395, 398 (5th Cir. 2013) (citing *Everett v. TK-Taito, LLC*, 178 S.W.3d 844, 859 (Tex. App.—Fort Worth 2005, no pet.)); *see also Messier v. Messier*, 458 S.W.3d 155, 164 (Tex. App.—Houston [14th Dist.] 2015,

no pet.) ("A constructive trust is imposed when one party holds property that legally belongs to the other.")). "In order to establish a constructive trust, the proponent must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and, (3) tracing to an identifiable res." *Baxter*, 541 Fed. App'x at 398; *accord Clapper v. Am. Realty Inv'rs, Inc.*, 3:14-CV-2970-D, 2015 U.S. Dist. LEXIS 71543, at *26 (N.D. Tex. June 3, 2015).

299. As described herein, Highland Capital breached its fiduciary duties to Acis, and the Highlands acted in concert to perpetrate the series of fraudulent transfers in order to strip Acis of its assets for the benefit of Highlands.

300. The Highlands were unjustly enriched because they benefitted from the "fraud [and] the taking of an undue advantage" against Acis. *See Heldenfels Bros.*, 832 S.W.2d at 41. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the property transferred, which is traceable and identified herein, as a result of the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee.

301. Further, Highland Capital, who breached its fiduciary duties to Acis, was unjustly enriched in connection with the Expense Overpayments as well as by the payments received as a result of the modifications to the Sub Agreements, and such benefits may be traced and identified by the payments from Acis LP to Highland Capital under the modified Sub Agreements.

302. Accordingly, the Plaintiffs requests that a constructive trust is established for those benefits unjustly received by the Highlands.

The Highland Capital Claims also include contingent indemnity claims arising under the Sub Agreements.

305. The Highland Capital Claims should be disallowed under (i) section 502(b)(1) of the Bankruptcy Code; (ii) section 502(b)(4) of the Bankruptcy Code; (iii) and section 502(d) of the Bankruptcy Code. The Highland Capital Claims are unenforceable against the Debtors under the LPA and applicable law. The Highland Capital Claims are for services of an insider of the Debtors and exceed the reasonable value of the services. As set forth above, Plaintiffs have asserted avoidance actions against Highland Capital such that the Highland Capital Claims should be disallowed. Finally, to the extent allowed at all, the Highland Capital Claims should be equitably subordinated under section 510(c) of the Bankruptcy Code.

306. Pursuant to section 502(b) and (d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3007, the Plaintiffs seek entry of an order disallowing and expunging the Highland Capital Claims from the Debtors' claims registers.

A. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(1).

307. "Section 502(b)(1) provides that a claim is allowed except to the extent it is unenforceable under applicable law." *In re White*, No. 06-50247-RLJ-13, 2008 Bankr. LEXIS 167, at *17-18 (Bankr. N.D. Tex. Jan. 28, 2008). "[T]he the validity of a creditor's claims against the debtor at the time the bankruptcy petition is filed 'is to be determined by reference to state law.'" *Carrieri v. Jobs.com, Inc.*, 393 F.3d 508, 529 (5th Cir. 2004) (quoting *Kellogg v. United States (In re W. Tex. Mktg. Co.)*, 54 F.3d 1194, 1196 (5th Cir. 1995)).

308. As set forth more fully above, the Highland Capital Claims are based entirely on amounts alleged to be due pursuant to the Sub Agreements. As outlined in the causes of action above, there are significant amounts due to Acis LP by Highland Capital under or in connection with the Sub Agreements, which constitute a right of recoupment and/or offset to the entirety of

the Highland Capital Claims. Further, any portion of the Highland Capital Claims that are based on *ultra vires* acts, as alleged in Count 1 above, are void or voidable. Accordingly, the Highland Capital Claims are not enforceable under applicable law, and the Highland Capital Claims should therefore be disallowed.

B. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(4).

309. The Highland Capital Claims are claims for services by an insider, Highland Capital, and the Highland Capital Claims exceed the reasonable value of the services provided by Highland Capital. Section 502(b)(4) of the Bankruptcy Code provides, in relevant part, that a claim for services of an insider or attorney of a debtor shall not be allowed to the extent that "such claim exceeds the reasonable value of such services."

310. The purpose of section 502(b)(4) is: "(1) to prevent insiders of a debtor from extracting inflated compensation from the debtor at the expense of the debtor's creditors; and (2) to prevent over-generosity of a debtor prior to a bankruptcy filing." *Faulkner v. Canada (In re Heritage Org., L.L.C.)*, Case No. 04-35574-BJH-11, Adv. No. 04-3338, 2006 Bankr. LEXIS 4662, at *22-23 (Bankr. N.D. Tex. Jan. 5, 2006); *see also In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("The purpose underlying 11 U.S.C. § 502(b)(4) is to prevent officers and directors (insiders) of a debtor from extracting inflated amounts for their services at the expense of the creditors.").

1. Highland Capital is an Insider of the Debtors.

311. Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, etc. Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See In re Missionary Baptist Foundation of Am., Inc.*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly

known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018).

312. The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992).

313. Highland Capital is a statutory insider, a non-statutory insider, an admitted insider, and an adjudicated insider. The statutory definition of "insider" includes an "affiliate" of the debtor. 11 U.S.C § 101(31)(E). Prior to the entry of the Orders for Relief, Highland Capital met the statutory definition of "affiliate" because Highland Capital "operate[d] the business or substantially all of the property of the [D]ebtor under a[n] . . . operating agreement." *See* 11 U.S.C § 101(2)(D). Under the Sub Agreements, Acis LP effectively ceded control over its operations to Highland Capital.⁴⁰

314. Highland Capital is a non-statutory insider because Dondero controlled both Acis and Highland Capital prior to the date the Court entered the Orders for Relief. The closeness of the Highland Capital-Acis relationship is demonstrated by the fact that both companies are under Dondero's common control, Acis had no employees and Acis was operated exclusively by Highland Capital employees. Transactions were not conducted at arm's length. Indeed, Dondero

⁴⁰ For purposes of section 502(b)(4), courts examine whether a party is an "insider" on the date the operative document was executed. Here, it is indisputable that Highland Capital was an insider when the Sub-Advisory Agreement and the Shared Services Agreement were executed, and Highland Capital was an insider on the Petition Date. *See Faulkner*, 2006 Bankr. LEXIS 4662, at *17 ("The determination of insider status is made as of the time the claimant provided services to the debtor."); *In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("[T]he relevant time for determining one's status as an insider, under 11 U.S.C. § 502(b)(4), is the time services were rendered and when the compensation contracts for such services were formed[.]").

signed both the Sub-Advisory Agreement and the Shared Services Agreement for Highland Capital and Acis.

315. Highland Capital is an admitted insider and an adjudicated insider. During the trial on the involuntary petitions, the Debtors, controlled by Highland Capital, admitted that Highland Capital is an insider of the Debtors.⁴¹ Acis LP's SOFA lists payments to Highland Capital in the section titled "Payments or transfers of property made within 1 year before the filing of this case that benefited any insider." The SOFA is signed by Isaac Leventon, an employee of Highland Capital (who, on information and belief, had no official title or position with the Debtors). Additionally, this Court has found that Highland Capital is an insider of the Debtors, stating: "the court believes it necessary to remove certain *insider* creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code. *This would clearly include Highland Capital* (the Alleged Debtors do not dispute this)." Opinion ¶ 38 (footnotes omitted) (emphasis added).

2. The Highland Capital Claims Exceed the Reasonable Value of the Services Provided.

316. "In analyzing the reasonableness of a claim for services under § 502(b)(4), a court should consider the totality of the circumstances involved at the time that the services were rendered." *Faulkner*, 2006 Bankr. LEXIS 4662, at *23 (citing *In re Gutierrez*, 309 B.R. 488, 493 (Bankr. W.D. Tex. 2004)). "Reasonable value" under Section 502(b)(4) is "synonymous with 'market value.'" *In re Delta Air Lines, Inc.*, No. 05-17923 (cgm), 2010 Bankr. LEXIS 233, at *22 (Bankr. S.D.N.Y. Feb. 3, 2010). "The burden of proof on reasonableness under

⁴¹ Transcript of Hearing on Emergency Motion to Abrogate or Modify 11 U.S.C Section 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C Section 363 Filed by Petitioning Creditor Joshua Terry (3); Emergency Motion to Set Hearing (related to Document (8) Motion to Dismiss Case Filed by Alleged Debtor Acis Capital Management, LP (9) (Case Nos. 18-30264-SGJ7 & 18-30264-SGJ7) (the "2-7-18 Transcript"), at 246: 8-9 ("[T]here are no insiders other than Highland on the list of eighteen[.]").

§ 502(b)(4) ultimately lies with the insider." *Id.* at 24. Thus, Highland Capital has the burden to establish the reasonableness of its claims. Further, when the validity of an insider's contract with a corporation is at issue, the burden is on the insider "not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein." *In re Marquam Inv. Corp.*, 942 F.2d 1462, 1465 (9th Cir. 1991) (quoting *Pepper v. Litton*, 308 U.S. 295, 306 (1939)).

317. Together, the Sub Agreements (as amended) charge Acis LP fees far exceeding the market value of the services provided under such agreements. First, the Trustee's professionals engaged in a marketing process in connection with the Brigade Motion. After conducting a diligent search of the market, the Trustee located a replacement for Highland Capital that provided the services Highland Capital previously provided the Debtor for roughly half the cost Highland Capital charged Acis LP. The Sub Agreements also significantly contributed to rendering Acis insolvent. In fact, the General Counsel of Highland Capital, Scott Ellington, admitted that as of February 7, 2018—one week after the Petition Date—Acis was insolvent or close to insolvent.⁴²

318. Highland Capital cannot show that the exorbitant fees charged under the Sub Agreements are reasonable or that entry into such agreements was in good faith and demonstrates inherent fairness. Therefore, pursuant to section 502(b)(4), the Highland Capital Claims should be disallowed in their entirety.

C. Highland Capital Received Voidable Transfers and Holds Property of the Estate, and the Trustee is Entitled to Setoff under Section 502(d) of the Bankruptcy Code.

319. As set out more fully in the causes of action above, the Plaintiffs seek: (i) avoidance of actual and constructively fraudulent transfers and obligations pursuant to sections

⁴² 2-7-18 Transcript at 219: 22-25 (THE COURT: Do you think Acis is in the zone of insolvency? THE WITNESS: I don't know the answer to that, but I would -- I would assume that it was -- that it's close.")

544 and 548 of the Bankruptcy Code, (ii) avoidance of preferential transfers pursuant to section 547 of the Bankruptcy Code; (iii) turnover of property the estate pursuant to section 542 of the Bankruptcy Code; and (iv) liability for the foregoing under section 550 of the Bankruptcy Code.

320. "Under section 502(d), 'the court shall **disallow** any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544 [or 548] of this title, unless such . . . transferee has paid the amount, or turned over any such property.'" *In re Consol. Capital Equities Corp.*, 143 B.R. 80, 84 (Bankr. N.D. Tex. 1992) (quoting 11 U.S.C. § 502(d)) (emphasis in original).⁴³ Application of section 502(d) is not restricted to cases where a fraudulent transfer has already been avoided, but rather applies to pending fraudulent transfer claims as well. In other words, the statute does not require that the transfer actually be avoided, only that it be "avoidable." *Id.* As a result, once a fraudulent transfer claim has been asserted, the mandatory language of section 502(d) requires bankruptcy courts to consider the fraudulent transfer issue as a component of the claims allowance process. *U.S. Bank N.A. v. Verizon Communs., Inc.*, 761 F.3d 409, 419 (5th Cir. 2014) (finding mandatory language of section 502(d) precluded the court from resolving claims where the trustee alleged the claimant was the transferee of a fraudulent transfer). Moreover, the Court may disallow the Highland Capital Claims before adjudicating the causes of action set forth herein. *See In re Heritage Org., L.L.C.*, 375 B.R. 230, 288-289 (Bankr. N.D. Tex. 2007) (finding a court order avoiding a transfer is not a prerequisite to disallowance of a claim).

321. Thus, pursuant to section 502(d) of the Bankruptcy Code, the Court should disallow the Highland Capital Claims.

⁴³ "Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title [11 USCS § 542, 543, 550, or 553] or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title." 11 U.S.C. § 502(d)

D. The Highland Capital Claims Should be Equitably Subordinated.

322. Section 510(c) of the Bankruptcy Code expressly authorizes subordination of the allowed claim of one creditor to the allowed claims of other creditors "under principles of equitable subordination."

323. In *In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977), the Fifth Circuit articulated what has become the most commonly accepted standard for equitable subordination of a claim. Under the *Mobile Steel* standard, a claim can be subordinated if the claimant engaged in some type of inequitable conduct that resulted in injury to creditors (or conferred an unfair advantage on the claimant) and if equitable subordination of the claim is consistent with the provisions of the Bankruptcy Code.

324. During the time it completely dominated control of Acis, Highland Capital clearly engaged in abundant inequitable conduct related to Acis, as well as conferring numerous unfair advantages to itself, which resulted in injury to Acis's creditors. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates. This has resulted in a grossly inflated claim for Highland Capital as well as significant overpayments to Highland Capital for whatever services and value it did provide to Acis under these agreements.

325. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as

Acis's own counsel later boasted,⁴⁴ and in order to ensure that Terry and other creditors would never receive payment on his judgment, as Dondero has threatened.⁴⁵ These transfers, while very damaging to Acis LP and its creditors, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, even during the Bankruptcy Cases, Highland Capital has attempted to transfer and take over Acis LP's very lucrative Universal/BVK Agreement.

326. To the extent the Highland Capital Claims are allowed in any amount, they are subject to equitable subordination and should be subordinated below all other allowed unsecured claims in the bankruptcy case.

X. OBJECTIONS TO HIGHLAND CAPITAL'S ADMINISTRATIVE CLAIM

A. Highland Capital's Administrative Claim is Subject to Disallowance for the Same Reasons the Highland Capital Claims Should be Disallowed.

1. Prevailing on the Causes of Action Set Forth Herein Mandates the Disallowance of Highland Capital's Administrative Claim.

327. In its Application, without specifically citing the causes of actions or making any reference whatsoever to the objections to the Highland Capital Claims contained herein (as they were previously asserted in the Amended Counterclaims), Highland Capital asserts that the Trustee "apparently has furthered a theory that Highland overcharged the Debtors," but must "provide evidence, not simply allegations, to rebut the prima facie case that Highland is entitled to an administrative claim." Application ¶ 33. Highland Capital then rashly contends that the Trustee "has provided no such evidence" and that "the Contracts speak for themselves and are the best evidence of the validity of the claim asserted by Highland." *Id.* A simple review of the

⁴⁴ See Plaintiff's Motion for Expedited Discovery, Ex. 1 (Declaration of Rogge Dunn) ¶ 4, *Terry v. Acis Capital Mgmt., L.P.*, Cause No. DC-17-15244, 44th District Court of Dallas County, Texas ("On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone. In that call, Mr. Welton stated that Acis is 'judgment proof.'").

⁴⁵ See June 28, 2017 Dondero Dep. Tr. 262:2-8 (Ex. 101 from the involuntary trial) ("Nobody's going to let a dime go out of the firm that we don't have to pay ever to – to Josh, period. I mean, it's . . . I think it's personal[.]").

causes of action herein (as well as evidence presented in connection with the involuntary hearings, confirmation hearings, and other hearings during these Bankruptcy Cases) belies its position and demonstrates otherwise.

328. As is discussed below, Highland Capital must demonstrate that the services provided conferred a direct and substantial benefit on the Debtors' estates. And before Highland Capital can ask the Court to assess whether its services provided the required direct and substantial benefit, it must first demonstrate that it had the right to even charge the Debtors the amount set forth in the agreements. The causes of action asserted against Highland Capital herein, which dispute the amounts charged by Highland Capital, directly implicate the validity of, and support the disallowance of, the Administrative Claim (just as they refute Highland Capital's purported prepetition claims). The Plaintiffs therefore expressly incorporate Counts 1, 5 – 8, and 27 – 30 herein and specifically raises such Counts as objections to the Administrative Claim asserted by Highland Capital in its Application.

329. If the Plaintiffs prevail on the causes of action against Highland Capital as set forth herein, the basis for allowance of the Administrative Claim would also be invalidated. Moreover, as discussed below, based on such causes of action, the Plaintiffs are entitled to recover millions of dollars in damages, all of which may be offset against the Administrative Claim.

2. Highland Capital's Administrative Claim is Also Subject to Disallowance under Section 502(d).

330. Because Highland Capital is alleged to have received fraudulent transfers, its Administrative Claim is also subject to disallowance under section 502(d) until the property or its value has been returned to the Debtors.

331. Although Highland Capital's Application involves an administrative claim, nothing in section 502(d) limits its application to prepetition claims. *MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.)*, 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Section 502(d) by its terms applies to "any claim" and the definition of a "claim" in section 101(5) is sufficiently broad to include requests for payment of expenses of administration. *Id.* Because the objective of section 502(d) is to encourage transferees to return avoidable transfers to the estate, a number of courts have held that section 502(d) applies to administrative claims. *See, e.g., id.* at 508-12; *In re Georgia Steel*, 38 B.R. 829, 839-40 (Bankr. M.D. Ga. 1984) (applying section 502(d) and stating, "[t]he fact that [the] claim is for an administrative expense has no bearing").

332. The Plaintiffs acknowledge that courts are split on the issue of whether section 502(d) applies to administrative expenses. *Compare MicroAge, Inc.*, 291 B.R. at 508-512 (considering split of authority and finding that "the better analysis is that § 502(d) may be raised in response to the allowance of an administrative claim"), *and Georgia Steel*, 38 B.R. at 839-40 (finding the fact that the claim "is for an administrative expense has no bearing" for purposes of section 502(d)), *with In re Plastech Engineered Prods.*, 394 B.R. 147, 164 (Bankr. E.D. Mich. 2008) (concluding that "§ 502(d) does not apply to the allowance and payment of administrative expenses under § 503(b)"). Although not binding on this Court, the Plaintiffs also note that one bankruptcy court in this district has found that section 502(d) does not apply to administrative claims. *Rand Energy Co. v. Del Mar Drilling Co. (In re Rand Energy Co.)*, 256 B.R. 712, 719 (Bankr. N.D. Tex. 2000) (Felsenthal, J.).

333. As described above, Highland Capital is the recipient of certain preferential payments and/or fraudulent transfers. Thus, while acknowledging the split of authority on the issue, the Plaintiffs assert that the plain language of section 502(d), as well as the policy

underlying section 502(d), requires that Highland Capital's Administrative Claim be disallowed in its entirety.

3. The Indemnity Provisions Relied on by Highland Capital Are Invalid and, in Any Event, Do Not Apply to Highland Capital's Intentional Torts.

334. In the Application, Highland Capital also asserts defenses against the causes of action brought herein pursuant to its purported indemnity rights against the Debtors under section 6.03 of the Shared Services Agreement and section 4(c) of the Sub-Advisory Agreement. Application ¶ 34. Any contention by Highland Capital that it is immune from liability arising from the causes of action brought against it herein due to the indemnity provisions of the Sub Agreements lacks merit. First, the indemnity provisions cited by Highland Capital were included only in the last iteration of the Sub Agreements, in March 2017. Thus, even if valid and applicable (which they are not), such provisions do not cover actions of Highland Capital prior to March 2017. Second, to the extent that the indemnity provisions in the Sub Agreements were included in an attempt to shield Highland Capital from liability in connection with its fraudulent scheme to denude Acis (and were added for no consideration), such provisions were themselves fraudulently incurred and should be avoided pursuant to section 548 of the Bankruptcy Code and sections 24.005 and 24.006 of TUFTA.⁴⁶ Further, the protection Highland Capital seeks is outside the scope of the indemnity provisions, which indemnify Highland Capital in connection with its actions taken as sub-advisor under the Sub Agreements—not in connection with torts and other wrongful conduct intentionally committed against Acis as part of Highland Capital's calculated scheme to denude the estate. Finally, it is against public policy for indemnity provisions in contract to shield a party from intentional tortious conduct. *See, e.g., Hamblin v.*

⁴⁶ Notably, all versions prior to the last iteration of the Sub-Advisory Agreement (before March 2017) contained no indemnity provision; also, it is telling that the indemnity provisions were added to the Sub-Advisory Agreement and significantly amended in the Shared Services Agreement only after arbitration had been ordered in state court.

Lamont, 433 S.W.3d 51, 55 (Tex. App.—San Antonio 2013, pet. denied); *In re Oil Spill by the Oil Rig*, 841 F. Supp. 2d 988, 1001-02 (E.D. La. 2012). Accordingly, such provisions are inapplicable as a defense to the causes of action asserted herein against Highland Capital.

B. Highland Capital Cannot Satisfy Its Burden of Proving Its Services Directly and Substantially Benefitted the Debtors' Estates.

1. Administrative Priority Status is Narrowly Construed and Only Awarded Upon a Showing of a Direct and Substantial Benefit to the Estate.

335. Under section 503(b)(1) of the Bankruptcy Code, an administrative expense claim shall be allowed for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The ultimate burden of proof is on Highland Capital to establish it is entitled to an administrative priority claim pursuant to 11 U.S.C. § 503(b). *See In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). Further, because section 503 administrative claims are priority claims, which are entitled to special treatment, section 503 must be narrowly construed. *See In re Templeton*, 154 B.R. 930, 934 (Bankr. W.D. Tex. 2009); *see also In re Federated Dep't Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001) ("Claims for administrative expenses under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants.").

336. At a minimum, Highland Capital must establish that "(1) the claim arises from a transaction with the [debtor]; and (2) the goods or services supplied enhanced the ability of the [debtor's] business to function." *See Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001) (citing *Transamerican*, 978 F.2d at 1416); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Claim under this section 'generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor's estate.'" (quoting *Jack/Wade Drilling*, 258 F.3d at 387)).

337. Moreover, the benefit is measured from the point of view of the bankruptcy estate, not that of the applicant. *In re Premium Well Drilling, Inc.*, 2012 Bankr. LEXIS 1554, at *9 (Bankr. W.D. Tex. Apr. 10, 2012). "The focus on allowance of administrative claims which enjoy priority over other creditors is to prevent unjust enrichment of the estate. It is *not* to compensate the creditor . . . for his or her loss." *In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 462 (Bankr. W.D. Tex. 2005) (emphasis in original).

2. Highland Capital Cannot Demonstrate It Conferred a Direct and Substantial Benefit on the Debtors' Estates.

338. As set forth herein, as it had done prior to these Bankruptcy Cases, following entry of the Orders for Relief, Highland Capital continued perpetrating its scheme to steal, and otherwise attempted to damage, Acis's business—in order to *minimize* value for creditors and ensure that Acis could not successfully reorganize—and to line its own pockets. Aside from Highland Capital's actions in sending notices of optional redemption to liquidate the CLOs (without Court approval and in violation of the automatic stay), following entry of the Orders for Relief, Highland Capital also actively mismanaged the Acis CLOs to undermine the business of the Debtors, as evidenced by, *inter alia*, the vast disparity between the trades made in CLOs 3, 4 5, and 6, as opposed to CLO 7, in 2018, as testified to by Terry at the second confirmation hearing. *See* Dec. 12, 2018 Hr'g Tr. (AM) at pp. 19-35.

339. Additionally, while mismanaging CLOs 3, 4 5, and 6, Highland Capital sought to carry out its plan "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."⁴⁷ As explained herein, Highland Capital's attempt to steal BVK's business from Acis began from nearly day one of these Bankruptcy Cases and continued

⁴⁷ *See Exhibit K* (email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer)).

rather than undermined, the ability of Acis's business to function, such amounts should be reduced to reflect a rate of at most 17.5 basis points.

4. The Plaintiffs Dispute Highland Capital's Calculation of its Administrative Claim.

344. The Plaintiffs further object to Highland Capital's calculation of the amount of the Administrative Claim. Subject to the objections raised herein, in the *Amended Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 621] (the "Disclosure Statement"), the Trustee estimated that under the terms of the Sub Agreements, Highland Capital's alleged Administrative Claim would be approximately \$2,612,574.00, rather than \$3,007,678.41. Highland Capital fails to explain or substantiate this discrepancy. The Administrative Claim also includes \$543,545.88 for expenses. Highland Capital fails to show that these alleged expenses were incurred or payable under the Sub Agreements. *See In re Packard Props., Ltd.*, 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990) ("Since this claim is a request for payment of administrative expenses, the [creditor] carries the burden of proof throughout the entire proceeding."). Therefore, in addition to the objections herein, the Plaintiffs also object to Highland Capital's calculation of its purported Administrative Claim.

C. Highland Capital Is Not Entitled to Payment of Any Allowed Administrative Claim Because Acis's Right of Offset and Recoupment May Reduce or Eliminate Its Administrative Claim.

345. Even if the Court were to determine that Highland Capital is entitled to an allowed Administrative Claim, it should not be entitled to payment because Acis has rights of offset and recoupment that may be applied under section 558 of the Bankruptcy Code to reduce

or eliminate any allowed Administrative Claim.⁴⁹ As set forth above, Highland Capital charged Acis excessive and unreasonable fees for its services, and Acis has asserted a number of causes of action against Highland Capital for such overcharges, including for recovery of overcharges resulting from *ultra vires* actions, turnover of unauthorized payments, money had and received, conversion, fraudulent transfer, civil conspiracy, breach of contract, and breach of fiduciary duty. As a result of these overcharges, the Debtors' estates suffered many millions of dollars in damages which should be offset against any valid administrative claim awarded to Highland Capital. Indeed, the causes of action against Highland Capital may offset, or eliminate altogether, any right of recovery Highland Capital may have against the Debtors' estates on account of any Administrative Claim.

D. To the Extent Allowed, Highland Capital's Administrative Claim Should Also Be Equitably Subordinated.

346. In addition to applying equitable subordination to prepetition claims, courts have equitably subordinated administrative claims when the claimant acted in ways to harm the estate. *See, e.g., Principal Mut. Life Ins. Co. v. Langhorne (In re 848 Brickell Ltd.)*, 243 B.R.142, 149 (S.D. Fla. 1998) (holding that while "pursuit of one's legal rights may not be grounds for equitable subordination, the lower court's findings that [the claimant's] protracted and abusive litigation tactics harmed the estate by causing it to incur about \$400,000 in fees" justified equitable subordination of its administrative claim).

347. For the same reasons described above with respect to Highland Capital's prepetition claims, Highland Capital's Administrative Claim should also be equitably subordinated to the extent allowed. Further, during these Bankruptcy Cases, the Debtors' estates

⁴⁹ The Plan provided for the payment of allowed administrative claims on (i) the later of the effective date or the tenth business day after the administrative expense is allowed, or (ii) as otherwise agreed in writing between the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court. *See* Case No. 18-30264, Docket No. 660 at 11, § 3.01(b).

and the Reorganized Debtors have incurred substantial administrative fees in responding to the protracted and abusive litigation tactics of Highland Capital, including arguing for (and against) injunctive relief to prevent the liquidation of the CLOs and litigating the numerous appeals initiated by Highland Capital against the Trustee. Such litigation tactics by Highland Capital were attempts to thwart the reorganization of the Debtors, damage the estate, and harm its creditors. Accordingly, the Court should equitably subordinate Highland Capital's Administrative Claim. *See Principal Mut. Life Ins. Co.*, 243 B.R. at 149.

348. Thus, to the extent the Highland Capital's Administrative Claim is allowed in any amount, it should be subordinated below all other allowed claims in these Bankruptcy Cases.

VI. PRAYER

Plaintiffs respectfully request that the Court:

(i) enter judgment declaring that Expense Overpayments made to Highland Capital in excess of 20% of Revenue and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable;

(ii) enter judgment against Highland Capital for the recovery of any *ultra vires* payments made to Highland Capital;

(iii) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management for the avoidance and recovery of transfers fraudulently made and obligations fraudulently incurred and for civil conspiracy in connection with such fraudulent transfers and schemes;

(iv) enter judgment against Highland Capital, Highland Holdings, and Highland Management for avoidance and recovery of preferential transfers received;

(v) enter judgment against Highland Capital for tortious interference with contract;

(vi) enter judgment against Highland Capital for breach of contract;

(vii) enter judgment against Highland Capital for breach of its fiduciary duties and order disgorgement of all funds received by Highland Capital as a result of such breach;

(viii) enter judgment against Highland Capital and Highland Funding for willful violation of the automatic stay, pursuant to section 362(k) of the Bankruptcy Code;

(ix) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for punitive damages;

(x) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for pre- and post-judgment interest at the greatest amount permitted by law;

(xi) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for all attorneys' fees and costs incurred in connection with the prosecution of this Adversary Proceeding and for all allowed professionals' fees and expenses incurred by the estates in the Bankruptcy Cases;

(xii) establish a constructive trust for all benefits unjustly received by that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings;

(xiii) declare that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings are alter egos of each other, or that the corporate for should otherwise be disregarded, and each is fully liable for any judgment entered for the Plaintiffs in this Adversary Proceeding;

(xiv) disallow, expunge and/or subordinate the Highland Capital Claims;

(xv) deny, disallow, and/or subordinate Highland Capital's Administrative Claim; and

(xvi) grant any other such relief that the Plaintiffs may show themselves to be justly entitled in law or in equity.

Dated: June 20, 2019.

Respectfully submitted,

By: /s/Rakhee V. Patel

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

/s/ Annmarie Chiarello _____

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Exhibit 15

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Attorneys for the Debtor and Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§ Chapter 11
§
§ Case No. 19-34054-sgj 1
§
§

**Response Deadline: July 23, 2020 at 4:00 p.m. (ET)
Hearing Date: August 6, 2020 at 9:30 a.m.**

**OBJECTION TO PROOF OF CLAIM OF ACIS CAPITAL MANAGEMENT L.P. AND
ACIS CAPITAL MANAGEMENT GP, LLC**

Pursuant to sections 502(b)-(d) and 558 of Title 11 of the United States Code (the
“Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

“Bankruptcy Rules”), debtor and debtor in possession Highland Capital Management, L.P. (the “Debtor”) hereby objects to Proof of Claim No. 3 (the “Acis Claim”) filed by claimants Acis Capital Management L.P. and Acis Capital Management GP, LLC (together, “Acis”).

The Debtor respectfully submits that there are numerous bases for the summary disposition of all claims for relief asserted in the Acis Claim, and represents as follows:

Preliminary Statement

1. The Acis Claim incorporates the complaint from litigation commenced by the trustee of the former estate in the Acis bankruptcy case (the “Acis Case”) at a time when Acis had unpaid creditors (the “Acis Complaint”).² The trustee sought to avoid and recover certain transfers by Acis that were allegedly intended to prevent its largest creditor, Josh Terry, from collecting his \$8.168 million arbitration award (the “Arbitration Award”). The transfers, allegedly orchestrated by James Dondero using his common control and ownership interests in Acis, the Debtor and the other Highland entities, were purportedly intended to “denude” Acis by transferring certain of its management contracts and interests in the managed assets to its affiliates, including the Debtor. Finding a likelihood of success that certain transfers were avoidable, the Court issued a preliminary injunction, which was carried over into a “Temporary Plan Injunction” that allowed Acis to manage those assets to pay creditors. Consistent with that substantive basis, the injunction expires once those creditors are paid in full. That is the operating principle of the Acis Plan: creditors are paid using assets temporarily diverted from the putative transferees that are named as defendants in the Acis Complaint.

² Specifically, the Acis Claim incorporates the *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claims)* filed in Adversary No. 18-03078 in the Acis Case.

2. The Acis Plan has worked as intended. The income diverted by the temporary injunction will soon have paid Mr. Terry and Acis's other creditors 102% of their claims, *plus* all of the administrative expenses incurred to achieve that result. There will no longer be an estate or estate claims to administer. Having served its purpose, the injunction dissolves and the creditor remedies asserted in the Acis Complaint become moot. But Acis is doing the opposite. It filed the Acis Claim in the amount of "at least \$75 million" and has initiated new lawsuits in federal and state court against employees, advisors and professionals for allegedly breaching duties owed not to creditors but *purportedly owed to Acis*. The sole beneficiary of these far-flung litigations would be Mr. Terry, whose claim is paid in full under the Acis Plan, except for \$1 million with which he chose to purchase Acis's equity.³ Now Mr. Terry seeks a \$75 million windfall, which would come not at Dondero's expense but from the pockets of the Debtor's innocent creditors (including unsecured trade creditors, the Redeemer Committee of the Highland Crusader Fund ("Redeemer"), with an arbitration award of \$190,824,557, and UBS Securities LLC ("UBS").

3. Attempted windfalls usually have a fallacious premise, and this one is a \$75 million whopper. The fallacy is that Reorganized Acis has greater rights than "old Acis," which at the time of the transfers was a member of the Highland related entities that Acis itself alleges were controlled and primarily owned by Dondero. Acis alleges that each was an alter ego of the others, which means that *Acis is just as culpable, and just as much an alter ego, as*

³ Inasmuch as claims against Acis are worth 102%, Terry's \$1 million reduction of his claim was the substantive equivalent of paying \$1 million, not a typical debt for equity exchange.

any of the others. Coupled with the fact that Acis’s creditors are being paid in full, several things follow that are instantly fatal to the Acis Claim. None are subject to any factual dispute.

a. First, it is undisputed that at the time of the transfers, James Dondero and Mark Okada were Acis’s sole owners, and it is hornbook law that sole owners do not owe fiduciary duties *to their company*. Subject of course to the rights of creditors to claw back transfers that leave a company unable to pay its debts, Dondero and Okada as Acis’s sole owners were free to transfer its assets to other entities, and third parties had no duty or right to stop them. “Delaware law is clear that a company's sole owner cannot breach fiduciary duties ‘owed to the companies he wholly owned.’ ... [Plaintiff] has not cited legal support for the proposition that a nonowner can be liable for conspiring with the sole owner of a partnership for breaching duties that the owner owes himself.” *Tow v. Amegy Bank N.A.*, 976 F. Supp. 2d 889, 906-07 (S.D. Tex. 2013) (internal citation omitted). Whatever their motive, if Acis’s owners wanted to shut it down, they were free to do so, subject to the rights of creditors, who are being paid in full without any further recovery.⁴ Nor can Acis base its claims on the rights of Acis’s former creditors. For one thing, they’ve been paid, and for another, Delaware law does not permit creditors of a limited partnership to sue third parties for breach of fiduciary duty, *nor does*

⁴ Acis relies heavily on the Arbitration Award, but the panel found no violation of any duty *to the partnership*. The only duty that the panel found was breached was between partners: it was the duty of the majority partners not to exceed the ratio of expenses to revenue while Terry was a 25% limited partner. Even that duty expired with Terry’s partnership interest when his employment was terminated. About that there is no dispute: the cash-out of his partnership interest was the primary component of the Arbitration Award. The panel found that Terry was not wrongfully terminated because his employment was “at-will,” but that he was entitled to payment for his partnership interest because the termination was not for cause. Most of the rest of his award was his pro rata partnership share of the alleged Overpayments (which he now seeks to recover *twice* by claiming them through Acis).

*it permit a trustee to sue on their behalf.*⁵ These claims are not and cannot as a matter of law be brought for the benefit of Acis's former creditors.

b. Second, even if fiduciary duties had been owed, Acis's duty-based claims against the Debtor and other third parties are barred by the *in pari delicto* defense. It is a paradigmatic application of the doctrine: Acis cannot sue others for participating in a scheme in which it, as one of the entities it alleges was commonly owned and controlled, was equally culpable. This fundamental defect is obscured by the subsequent appointment of a trustee and change of ownership. But while the Fifth Circuit has not decided the issue, it has affirmed that Bankruptcy Code § 541 subjects trustees and successors to whatever defenses existed against the debtor, and most courts of appeal hold that, as a result, the appointment of a trustee does not "cleanse" the *in pari delicto* defense (much less, as here, where the claims purportedly revested in the reorganized debtor). Even if the equities are applied, as this Court once held they may, there is no equity in permitting a new owner to sue persons for conspiring with the old owner, in order to parlay a \$1 million investment into \$75 million, *at the expense of this Debtor's creditors*. These facts are not in dispute, and the issue can and should be decided on the record before the Court.

c. Third, the fraudulent transfer claims fail, and may be summarily resolved, because the Debtor did not receive the benefit of the alleged fraudulent transfers since (with one exception) it was not the transferee of the transferred rights. Bankruptcy Code §

⁵ *Beskroner v. OpenGate Capital Grp. (In re Pennysaver USA Publ'g, LLC)*, 587 B.R. 445, 467 (Bankr. D. Del. 2018); *Gavin/Solmonese LLC v. Citadel Energy Partners, LLC (In re Citadel Watford City Disposal Partners, L.P.)*, 603 B.R. 897, 905 (Bankr. D. Del. 2019).

550(a) is not satisfied as to those transfers for which the Debtor was not the initial transferee: it is insufficient as a matter of law simply to allege an amorphous benefit from being part of the same corporate group. This is all that the Acis Claim alleges – the Debtor benefited solely because it was a Highland related entity. Furthermore, if the Debtor did not receive the benefit from a transfer, there are no damages in the first place. That is shown *conclusively* by the fact that the earnings derived by Acis from the enjoined transfer of the ALF PMA have already paid Acis’s creditors and administrative expenses. That is presumably why the Acis Claim lacks any damage allegations – there are none.

d. Fourth, the fraudulent transfer claims also fail, along with preference claims as well, for another reason that may also be summarily resolved: a debtor cannot recover avoidance claims for its own benefit under section 550(a) of the Bankruptcy Code. There must be a benefit to the debtor’s estate. Here, there is nothing left of the former Acis estate: creditors were paid, old equity was canceled, and the new equity is held by a purchaser who paid \$1 million, no different than if he had done so in an auction. There is no estate to benefit. Authority before and after *Mirant* holds that avoidance recoveries should be limited based on equitable considerations, which in this case are conclusively in favor of limiting any recovery to the amount required to satisfy creditors’ claims. Unlike *Mirant* and this Court’s *Texas Rangers* decision, this is not a case in which a recovery will enable a debtor to satisfy outstanding plan obligations, or one in which creditors were forced to take equity instead of cash

and are depending on its value for a recovery on their claims.⁶ There is no estate and no equities to support Mr. Terry's windfall.

e. Fifth, Acis may not assert for its own benefit any claims against prior equity holders or third parties that were not pending when Mr. Terry purchased the company. The *Bangor Punta* doctrine holds that a purchaser of controlling equity in a company may not then use the control over the corporate machinery to turn around and assert claims against the prior owners if the claims arose prior to the date when the purchaser took control.⁷ The reasons are self-evident and squarely applicable here: the purchaser paid what it considered fair value and has suffered no damage, and to permit such claims would promote the kind of litigation free-for-all in which Mr. Terry is presently engaged. This bars standing as to all claims except those the trustee had already asserted prior to Mr. Terry's purchase (relating to the ALF share transfer, ALF PMA transfer and the note transfer described herein), all of which claims fail for multiple other independent reasons.

f. Sixth, Acis's four claims seeking \$7 million in so-called "Overpayments" have no legal basis and should be summarily disallowed. These are payments for services that exceeded, in gross, the expense ratio that was permitted under Acis's limited partnership agreement (the "Acis LPA") without partner consent. The only alleged substantive basis for recovery is the claim that the Overpayments were *ultra vires* acts, which would be flatly wrong even if it applied in concept (which it does not): (i) Acis was indisputably *authorized* to

⁶ Significantly, any recovery on preference or constructive fraudulent transfer claims would be offset by the Debtor's resulting claims under Bankruptcy Code § 502(h), which would be entitled to full payment under the Acis Plan.

⁷ *Bangor Punta Operations, Inc. v. Bangor & A. R. Co.*, 417 U.S. 703, 710, 94 S. Ct. 2578 (1974); *Midland Food Servs., LLC v. Castle Hill Holdings V, LLC*, 792 A.2d 920, 929 (Del. Ch. 1999).

pay for services, which is all that matters legally; any excess was not *ultra vires* but an inter-partner issue already addressed by the Arbitration Award (through which Mr. Terry already recovered his share); (ii) turnover under Bankruptcy Code § 542(a) does not apply to disputed debts as a matter of law; and (iii) and the “money had and received” and conversion claims are equally inapplicable as a matter of law. In any event, most of the time period during which the alleged Overpayments were made is beyond the two year statute of limitations under Texas law.

g. Seventh, Acis’s civil conspiracy claim also fails as a matter of law because the claim is not recognized: section 550 provides the statutory remedies for any fraudulent transfer liabilities, and it may not be circumvented by a conspiracy claim.

h. Eighth, Acis’s tortious interference claim fails as a matter of law because it does not apply to at-will contracts, and the Debtor had the right to compete for the business.

i. Ninth, Acis’s breach of contract claim, like its claim for breach of fiduciary duty, rests on the fallacy that Acis had legal interests that were distinct from those of its sole owners, duties that parties contracting with Acis had a duty to identify and protect even though Acis’s sole owners instructed otherwise. That is not the law.

j. Tenth, alter ego liability is inadequately pled; it is a remedy and not a claim and, moreover, is unavailable on the alleged grounds. What Acis alleges is “single enterprise” liability based on common control by Mr. Dondero, a theory never adopted under Delaware law (which controls) and also rejected by the Texas Supreme Court.

k. Numerous other of the Debtor's defenses are meritorious but cannot be decided summarily, including defenses such as solvency (*Acis* was manifestly solvent without recovering *all* of the alleged fraudulent or preferential transfers), preference defenses and punitive damages (to the extent any tort claim is not dismissed; notably, such damages would be subordinated at best).

4. The rights of creditors to be paid were the legal basis of the *Acis* Plan injunction, which is why the injunction terminates once those creditors are paid in full. Mr. Terry elected to acquire new equity for \$1 million; he is not entitled to receive another \$75 million by claiming that *Acis* was damaged by those transfers, much less from the pockets of the Debtor's unpaid creditors. To impose on the former partners and third parties such as the Debtor a duty to "restore" \$75 million to the former business, not to pay its creditors but for the sole benefit of a successor owner who bought the diminished entity for \$1 million, would be a legally groundbreaking windfall, to say the least. The *Acis* Claim can and should summarily be disallowed in its entirety on the record before the Court.

Jurisdiction

5. The Court has jurisdiction over this matter under the Bankruptcy Code and pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B) and (L). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicates for the relief requested herein are 11 U.S.C. § 502(b)-(d), 11 U.S.C. § 558 and Fed. R. Bankr. P. 3007.

Factual Background

7. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

8. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court.

9. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s Bankruptcy Case to this Court [Docket No. 186].⁸

10. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

11. The Settlement Order approved, among other things, certain operating and reporting protocols [Docket Nos. 354, 466].

12. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, at the Debtor’s general partner, Strand Advisors, Inc. (the “Independent Board”)

13. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections

⁸ All docket numbers refer to the docket maintained by this Court.

1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

Objection

A. Legal Standard

14. The Bankruptcy Code establishes a burden-shifting framework for proving the amount and validity of a claim. “A claim . . . , proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). “A proof of claim executed and filed in accordance with the [Bankruptcy Rules] shall constitute *prima facie* evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f); *see also In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006). However, the ultimate burden of proof for a claim always lies with the claimant. *Armstrong*, 347 B.R. at 583 (citing *Raleigh v. Ill. Dep’t of Rev.*, 530 U.S. 15 (2000)).

15. The Acis Claim incorporates and is expressly based upon the claims and causes of action asserted in the Acis Complaint filed in the Acis Case. It purports to assert thirty-four claims for relief, which are described and addressed *seriatim* below.

B. Claims 1-4 to Recover the Alleged Overpayments Must be Disallowed

16. The first four claims are based on service and expense payments by Acis to the Debtor that allegedly exceeded 20% of revenues, without Mr. Terry’s consent, in violation of section 3.10(a) of the Acis LPA, which provides that “the aggregate annual expenses of the Partnership . . . may not exceed 20% of Revenues without the consent of all of the members of

the Founding Partner Group.” The arbitration panel found that Mr. Terry (still a partner at that time) had not consented to these so-called “Overpayments,” which totaled \$7,021,924.

17. Acis asserts four claims: (1) the alleged Overpayments were void or voidable *ultra vires* acts because all of the partners had not consented; (2) the Overpayments are Acis’s estate property subject to turnover under Bankruptcy Code § 542(a); (3) the Debtor is liable to return the Overpayments as “money had and received”; and (4) the Debtor is liable for conversion of the alleged Overpayments.⁹

18. Each of the four claims is frivolous, and all should be summarily disallowed: (1) the Alleged Overpayments were not *ultra vires*; (2) the turnover statute does not apply when the right to the property is disputed; (3) “money had and received” does not apply as a matter of law; and (4) neither does conversion. (As discussed below, even if these claims were not frivolous, because they are brought for the benefit of Acis’s equity acquirer and not for the benefit of creditors, they are also barred by the *Bangor Punta* doctrine.)

1. The Alleged Overpayments Were Not Void or Voidable as Ultra Vires

19. Acis obviously had the *power* to make payments for services. That is all that would matter even if Delaware had not essentially abolished the *ultra vires* doctrine.¹⁰ If Acis paid more for services than the Acis LPA permitted without the partners’ consent, that is a

⁹ Acis appears to base its claims solely on allegations that the alleged Overpayment are void, not on the alleged excessive contract rates. As set forth herein, the Debtor believes all four claims may be summarily disallowed as a matter of law on undisputed facts. Nonetheless, the Debtor reserves the right to bring defenses with respect to whether the rates were reasonable or any other applicable defenses.

¹⁰ See discussion *infra*; *Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 648 (Del. Ch. 2013) (*ultra vires* applied under former law when “the corporation acted outside the scope of . . . its authorized powers.”).

matter *between partners*, not an *ultra vires* act. That is how the arbitration panel treated it for purposes of valuing Mr. Terry's partnership interest: it calculated how much Mr. Terry would have received as a 25% partner had expenses not exceeded the limit, and included it in the Arbitration Award. By necessary extension, the rest of any recovered money should be distributed to the *other* partners; instead, Mr. Terry seeks to recover it a second time.

20. Regardless, *ultra vires* is inapplicable. It formerly applied under Delaware law only when "the corporation acted outside the scope of ... its authorized powers" (which was not the case here) but the superseding statute essentially eliminated any utility the *ultra vires* doctrine had. *See* Delaware General Corporation Law, § 124 ("No act of a corporation and no conveyance of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer. . . ."); *see also Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 648 (Del. Ch. 2013).

21. Furthermore, contrary to Acis's suggestion, even if Delaware had not statutorily eliminated *ultra vires* as a valid concept in corporate law, the concept of *ultra vires* acts never applied to partnerships. The Acis Claim blatantly misstates the law and the cited decision in stating that corporate law on *ultra vires* applies by analogy. *In re Mesa Ltd. P'ship Preferred Unitholders Litig.*, Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at *20 (Dec. 10, 1991) did not apply *ultra vires* to a partnership, by analogy or otherwise. In fact, it had nothing whatsoever to do with *ultra vires*. It was an unpublished decision involving a ratification issue in a breach of fiduciary duty case. *Ultra vires* was mentioned as one of several

things that can be cured by ratification, after which the court began the next paragraph with:

“Case rulings construing statutory corporation law are not necessarily binding precedents as to issues arising under contractual partnership agreements but they may often be helpful by analogy.” The Eleventh Circuit Court of Appeal has suggested that *ultra vires* does not apply to partnerships even in concept.¹¹

22. Acis does not claim that the alleged Overpayments are void or voidable on any substantive basis other than *ultra vires*, and thus has no colorable claim under state law to recover its own payments. Accordingly, claims 1-4 must be disallowed under Bankruptcy Code § 502(b)(1). A claimant may not simply venture forth recovering payments a debtor has made without some substantive basis; whether Mr. Terry was deemed to consent to them under the Acis LPA is completely irrelevant.

2. Turnover Under Bankruptcy Code § 542(a) is Inapplicable

23. It is axiomatic that turnover under Bankruptcy Code § 542(a) applies only to obtain possession of property that is indisputably property of the estate. *See, e.g., United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991) (“It is settled law that the debtor cannot use the turnover provisions to liquidate contract disputes or otherwise demand assets whose title is in dispute.”); *In re Amcast Indus. Corp.*, 365 B.R. 91, 122 (Bankr. S.D. Ohio 2007) (“Recovery under 11 U.S.C. § 542 is limited to assets that are undisputedly property of the

¹¹ *In re Sec. Grp.*, 926 F.2d 1051, 1054 n.5 (11th Cir. 1991) (“The appellants consistently cast their argument as one alleging the guaranties were ultra vires with respect to the partnerships. Ultra vires is a uniquely corporate concept, arising out of an historical fear and distrust of the corporate form. [citation omitted] Indeed, almost all of the cases cited by the appellants involve corporations, not partnerships. We do not believe that this uniquely corporate concept controls this case.”).

estate.”) (citation omitted). Here, Acis’s purported right to the property at issue is clearly in dispute, and section 542(a) is therefore inapplicable.

3. “Money Had and Received” is Also Inapplicable

24. “The quasi-contractual action for money had and received is a cause of action for a debt not evidenced by a written contract between the parties” (*MGA Ins. Co. v. Chesnutt*, 358 S.W.3d 808, 815 (Tex. App. 2012)). Here, the alleged Overpayments were made pursuant to valid contracts. Once again, therefore, Acis’s theory of relief is conceptually inapplicable.

25. Even if there were a claim for “money had and received,” a substantial portion of such a claim would be time-barred. The Arbitration Award found that the alleged Overpayments were made from 2014 to May 2016. Texas applies a two-year statute of limitations to claims for money had and received. *Merry Homes, Inc. v. Luc Dao*, 359 S.W.3d 881, 884 (Tex. App. 2012) (citing “clear precedent”). Accordingly, Acis cannot recover any alleged Overpayments that were made prior to January 31, 2016 (two years prior to the Acis petition date).

4. Conversion is Also Inapplicable

26. Conversion is another inapplicable claim. The Debtor has no identifiable, segregated money subject to recovery through a conversion cause of action, and Acis has not even attempted to identify any such money or property. *See, e.g., Lawyers Title Co. v. J.G.*

Cooper Dev., Inc., 424 S.W.3d 713, 718 (Tex. App. 2014) (“an action for conversion of money arises only where the money can be identified as a specific chattel, meaning it is (1) defined for safe keeping; (2) intended to be kept segregated; (3) substantially in the form in which it is received or an intact fund; and (4) not the subject of a title claim by the keeper”). As noted above, conversion and similar claims are subject to a two-year statute of limitations (Tex. Civ. Prac. & Rem. Code 16.003(a)). Acis cannot meet its burden of proving these requirements.

C. **Claims 5-25: All Avoidance Claims Should be Disallowed Because They Seek Recovery Under Section 550(a) of Amounts in Excess of Acis’s Plan Obligations**

27. Reorganized Acis will no doubt contend that it may prosecute avoidance claims and recover damages without regard to whether creditors are paid in full, because the company itself was damaged by the transfers. The argument is invalid and is based on a gross oversimplification of the law. Reorganized Acis stands in the shoes of old Acis, and debtors cannot recover transfers for their own benefit, except to the extent the recovery is effectively in payment of a claim. Acis has paid its creditors; in fact, it did so with money effectively recovered from the Debtor on one of the very claims it asserts here, by virtue of the Temporary Plan Injunction! Bankruptcy Code § 550 does not permit a debtor or anyone standing in the shoes of the debtor to recover another \$75 million for the benefit of the debtor. ***This is a summary basis for disallowance of all avoidance claims alleged in Claims 5-25.***

28. “Courts have consistently held that an avoidance action can only be pursued if there is some benefit to creditors and may not be pursued if it would only benefit the debtor.” *Balaber-Strauss v. Harrison (In re Murphy)*, 331 B.R. 107, 122 (Bankr. S.D.N.Y.

2005) (citing *Wellman v. Wellman*, 933 F.2d 215, 218 (4th Cir. 1991) (denying recovery “when the result is to benefit only the debtor rather than the estate”). Consistent with that principle, the Acis Plan provides that “the Reorganized Debtor shall have exclusive standing . . . to prosecute . . . Estate Claims *for the benefit of the Estate*” Acis Plan, § 7.03 (emphasis added). But a recovery of “at least \$75 million” in damages demanded by Reorganized Acis will benefit only one person or entity, namely Mr. Terry, who bought the equity interests in the new Acis. Acis’s creditors will have been paid in full; none are depending for their recovery on anything more than has already been recovered by means of the Temporary Plan Injunction. Mr. Terry is among those Acis creditors who will have been paid in full. He may claim that he acquired his equity interest in the new Acis in a debt for equity exchange, *i.e.*, by shaving \$1 million off his \$8.168 million claim, but that is not a recovery on behalf of his claim, but on behalf of the new equity that he bought. There is no substantive difference between discounting a hundred cent claim and a cash purchase. Even if there was, it would not justify such a windfall, much less at the expense of *the Debtor’s creditors*. These include unsecured trade creditors, Redeemer, which has filed a proof of claim in respect of its arbitration award of \$190,824,557 in damages as of the petition date, and UBS.

29. Restoring the pre-transfer equity value of the old Acis, after its creditors have been paid in full, and the equity to be “restored” is newly issued and purchased equity, is not the kind of “benefit to the estate” contemplated by *MC Asset Recovery LLC v. Commerzbank A.G. (In re Mirant Corp.)*, 675 F.3d 530, 534 (5th Cir. 2012), as discussed below. There is no post-confirmation “estate” to benefit within the meaning of section 550(a). Unlike any decision

in which a recovery was found to at least indirectly benefit an estate, where, e.g., plan obligations were unfulfilled, or even simply to boost equity value where creditors had received new equity interests on account of their claims (as opposed to purchasing the new equity, as Mr. Terry effectively did), there is no benefit to the estate here. Creditors were paid and Acis's equityholders' interests were canceled under the Acis Plan, and with it their partnership, a relationship that dissolved by operation of law upon the bankruptcy of their general partner, Acis LLC.¹² There is only a new owner, Mr. Terry, who purchased the new equity under the Acis Plan exactly as if it were sold at auction. There is no legal basis for Mr. Terry's attempt to stand in the shoes of the preconfirmation partnership in order to recover more assets than necessary to satisfy its liabilities.

30. In fact, there is a triple irony to Reorganized Acis's demand: (i) first, Mr. Terry is already the only person who was paid for his former equity interest in Acis (the value of which was the main component of the Arbitration Award, for which he has been paid in full in cash); (ii) second, the petition-date Acis equity holders (the persons who might have benefited from Acis recovering its prepetition transfers if their interests had not been canceled) will not

¹² As a Delaware entity, Acis LP was governed by the Delaware Revised Uniform Limited Partnership Act ("DRULPA"). DRULPA specifies six different events that trigger the dissolution of a Delaware limited partnership. Pertinent here, these include a withdrawal of the general partner "upon the happening of events specified in a partnership agreement...." Article 5 of the Acis LP Agreement, captioned "Dissolution and Winding Up," provides that Acis LP "shall be dissolved" upon any of four events, which include the bankruptcy of the general partner (Sec. 5.01(a)). Here, the general partner was co-debtor Acis LLC. State law dissolution may be prevented by an election by the partners to continue the partnership, made within 90 days of the general partner's bankruptcy filing, but that did not occur. "Because these dissolution provisions have been adopted into the partnership law of almost every state, federal bankruptcy courts have generally enforced the UPA and RULPA dissolution provisions as incorporated in state law, and have held partnerships to be dissolved upon the filing of a bankruptcy petition by a general partner." Lawrence J. La Sala, *Partner Bankruptcy and Partnership Dissolution: Protecting the Terms of the Contract and Ensuring Predictability*, 59 Fordham L. Rev. 619, 621(1991) (citing cases) (available at: <https://ir.lawnet.fordham.edu/flr/vol59/iss4/5>).

only see none of any recovery, they or their affiliates are actually the ones being asked to pay it; *and* (iii) third, the only recipient of the \$75 million would be Mr. Terry himself! Presumably, Mr. Terry purchased Reorganized Acis in anticipation of earning money managing assets while it paid Acis creditors; if he anticipated a \$75 million return on his \$1 million investment at the expense of the Debtor’s creditors, it was a gross miscalculation, inconsistent with the law.

31. *Mirant* is entirely consistent with the Debtor’s position, and is not in derogation of the substantial body of authority holding that section 550 is subject to equitable limitations. In *Mirant*, the debtor had sued its lenders to avoid a guaranty and recover payments thereunder. Its plan of reorganization provided for the creation of a special litigation entity (“MCAR”). Unsecured creditors received Reorganized Mirant stock and an interest in MCAR’s recoveries. The lender moved for summary judgment in part on the basis that creditors would be paid in full and so MCAR lacked standing. The district court found that MCAR had standing (while granting summary judgment on other grounds), ruling in part:

Finally, and most importantly, the fact that the creditors were paid in New Mirant stock confers standing on MCAR to pursue the avoidance action based on the indirect benefit to the creditors from a more financially sound estate.... [S]ee also Acequia, 34 F.3d at 811-12 (discussing broad interpretations of ‘benefit the estate’ in context of avoidance actions and fact that equity stake to creditors results in benefit to estate)... In the instant case, the creditors were paid in stock; thus, the prospect of a more financially sound estate would provide MCAR with standing.

Mirant, 441 B.R. 791, 803 (N.D. Tex. 2010) (emphases added).

32. The Fifth Circuit agreed with the district court’s ruling on standing (while vacating on other grounds):

A bankruptcy trustee may still have standing to avoid a fraudulent transfer after the unsecured creditors are satisfied in full. The fraudulent transfer injured the estate and § 550 ensures that the injury is redressed because a trustee may only avoid a transfer to the extent it benefits the estate. ***Therefore, to the extent that MCAR's successful avoidance of fraudulent transfers will benefit the bankruptcy estate, MCAR has Article III standing to avoid transfers that injured the estate.***

Mirant, 675 F.3d at 534 (emphasis added).

33. This Court followed *Mirant* in the *Texas Rangers* case. The former debtor, Texas Rangers Baseball Partners (“TRBP”) had sued its former ultimate parent, HSG Sports Group (“HSG”), to avoid obligations under an aircraft sharing contract signed on the eve of bankruptcy. TRBP had paid its creditors in full under a confirmed plan. HSG argued that TRBP therefore lacked standing as there would be no benefit to the estate from avoiding the contract. This Court observed *Mirant*’s broad interpretation of “benefit to the estate,” while noting two facts critical here: (1) the case at hand was for avoidance only, and not for recovery under section 550(a), and (2) TRBP still had obligations to lenders that had *not* been paid their entire prepetition indebtedness under the plan. On these facts, the Court found that TRBP had Constitutional standing to assert the fraudulent transfer claim because it would produce a plausible “benefit to the estate.”

Mirant makes clear that “benefit to the estate” does not hinge on whether a Chapter 5 action will result in a pool of assets being garnered for the benefit of unsecured creditors. Here, it is a matter of public record that the equity holders of TRBP have obligations to certain lenders that TRBP was also liable to. . . .

Thus, to the extent the equities matter here, it would seem that such equities weigh in favor of finding there to be a plausible “benefit to

the estate” argument articulated by TRBP. Accordingly, the court finds that here, TRBP does have Constitutional standing to assert a fraudulent transfer claim under section 548(a)(1)(A) of the Bankruptcy Code, even though unsecured creditors were paid in full under the Plan, and that the Avoidance Complaint should not be dismissed.

Paradigm Air Carriers, Inc. v. Tex. Rangers Baseball Partners (In re Tex. Rangers Baseball Partners), 498 B.R. 679, 709 (Bankr. N.D. Tex. 2013).

34. The great weight of authority, both pre- and post-*Mirant*, holds that recovery under section 550(a) is subject to a case-by-case analysis of the facts of the case and the equities. Section 550(a) provides that “the trustee may recover, *for the benefit of the estate*, the property transferred, or, if the court so orders, the value of such property[.]” 11 U.S.C. § 550(a) (emphasis added).

Under §550, courts have limited the recovery of pre-petition transfers on equitable principles in a manner consistent with the purposes of the Bankruptcy Code and §550, in particular. *See, e.g., In re Sawran*, 359 B.R. 348, 353 (Bankr. S.D. Fla. 2007) (citing cases). For a concise discussion of the rationales for limiting recovery under 11 U.S.C. §550 based on equitable principles, see Robert B. Bruner and Gerard G. Pecht, *The Unexplored Limits of Moore v. Bay: Statutory and Equitable Basis for Limiting Money Damage Awards on Fraudulent Transfer Claims*, 26 J. Bankr. L. & Prac. NL Art. 2 (June 2017).

Holber v. Nikparvar (In re Incare, LLC), Nos. 13-14926 ELF, 14-0248, 2018 Bankr. LEXIS 1339, at *35-36 (Bankr. E.D. Pa. May 7, 2018) (citing, among others, *Crescent Res. Litig. Tr. ex rel. Bensimon v. Duke Energy Corp.*, 500 B.R. 464, 481-82 (W.D. Tex. 2013)).

35. *Duke Energy* is an instructive, post-*Mirant* decision from the district court in the Western District of Texas, noting that the power to avoid a transfer is not the same as the

power to recover under section 550(a) and holding that while the full amount of the fraudulent transfer was legally avoidable, as per *Mirant*, the court could nonetheless consider “the equitable impact of the Trust’s potential recovery” and limit the recovery under section 550. *Id.* at 481-83.

36. In *Duke Energy*, the Crescent Resources post-confirmation Trust sued to avoid a 2006 spinoff transaction that allegedly rendered Crescent Resources insolvent while Duke received \$1.6 billion. The plan gave the original lenders all of the equity and allowed unsecured claims for the \$961 million difference between those claims and the value of their new equity interests. The Plan also formed the Trust and authorized it to pursue claims against third parties. The Trust had two classes of beneficiaries: Class A comprised creditors with \$279 million in unrelated claims and Class B included the lenders with their \$961 million in allowed claims.

37. Duke Energy defended in part on the basis that the original lenders entered into the 2006 transaction knowing how the loan proceeds would be distributed, and should not benefit from its avoidance. *Id.* at 478. The district court agreed, referring to *Mirant* and offering the following section 550(a) analysis:

There is precious little guidance from the Fifth Circuit on the scope of Section 550(a)’s “for the benefit of the estate” language. Other courts generally interpret the language broadly. *See In re Acequia, Inc.*, 34 F.3d 800, 811 (9th Cir. 1994); *In re Tronox Inc.*, 464 B.R. 606, 617 (Bankr. S.D.N.Y. 2012) (citing *Acequia*, 34 F.3d at 811). Still, there are numerous examples of cases where courts have denied or limited recovery based on the equitable principles underlying the Bankruptcy Code and Section 550(a) in particular. *See, e.g., Wellman v. Wellman*, 933 F.2d 215, 218 (4th Cir. 1991) (affirming district court’s order holding debtor’s avoidance action was not “for the benefit of” the estate); *In re Yellowstone Mountain Club, LLC*, 436 B.R. 598, 678 (Bankr. D. Mont. 2010) (refusing to

award any recovery to the original lender who was complicit in the fraudulent transfer, as well as syndicate lenders “who have speculated on a monumental award against” the plaintiff); *In re Jackson*, 318 B.R. 5, 27-28 (Bankr. D.N.H. 2004), *aff’d*, 459 F.3d 117 (1st Cir. 2006) (because “equity guards against windfalls in general,” amount of recovery through Section 550(a) on a Section 544(b) claim may be equitably adjusted); *but see Tronox*, 464 B.R. at 614 (collecting cases interpreting Section 550(a) as setting “a minimum floor for recovery in an avoidance action,” but not “any ceiling on the maximum benefits that can be obtained once that floor has been met”).

The one consistent vein traveling through all of these cases is the fact-specific nature of the inquiry. *See, e.g., Wellman*, 933 F.2d at 218 (“benefit of the estate” question requires “a case-by-case, fact-specific analysis”); *In re Murphy*, 331 B.R. 107, 121 (Bankr. S.D.N.Y. 2005) (limiting recovery under Section 550 based on the “extremely unusual” facts of the case). It is therefore instructive to consider the factual circumstances of this case, and the equitable impact of the Trust’s potential recovery.

* * *

If the Trust is allowed to recover the \$961 million of the term loan proceed transfer destined for the Class B creditors—a group of creditors who all derive their interest in the estate from the original lenders—the banks’ high risk investment will pay off in the form of a massive windfall.

Duke Energy, 500 B.R. at 481-82. The district court concluded that there was “no equitable basis” for allowing a recovery to Class B creditors, and granted summary judgment in favor of Duke Energy.

38. Where this Court found the facts and equities in *Texas Rangers* to favor finding a “benefit to the estate,” the facts and equities here point decisively to the opposite conclusion. By comparison, here: (1) Reorganized Acis is seeking not just to avoid obligations but to recover \$75 million under section 550(a), (2) Acis’s creditors will already have been paid in full at 102% (once Mr. Terry actually elects to pay creditors with the cash at Acis), (3) there

are *no* creditors relying on Reorganized Acis's equity or financial condition to recover on their claims, (4) any recovery would come at the expense of the Debtor's unsecured creditors, and (5) the person to receive the asserted \$75 million windfall (*i.e.*, Mr. Terry) paid only \$1 million to purchase Acis's interests to take a flyer on this and related litigation. As the court stated in *Blixseth v. Kirschner (In re Yellowstone Mt. Club, LLC)*, *supra*, 436 B.R. at 678 "the Court will not at this time enter an order that would in any way benefit Credit Suisse, the Prepetition Lenders or other parties who have speculated on a monumental award against Blixseth." *See also Wellman, supra*, 933 F.2d at 219 (Fourth Circuit denied recovery where the plaintiff/debtor "executed the non-recourse promissory notes to the creditors in an attempt to create a claim in the estate so that he could obtain a "massive surplus recovery" for himself in addition to the surplus distributed to him.").

39. The facts here are firmly aligned with cases dealing with recoveries under section 550(a) such as *Adelphia Recovery Trust v. Bank of America, N.A.*, 390 B.R. 80, 97 (S.D.N.Y. 2008), where the court found no benefit to the estate where all creditors were "paid in full with interest under the Plans and no creditors have been issued shares" in the Adelphia Recovery Trust. As noted, Mr. Terry did not receive the ownership interests in Acis in payment of his claim against the Acis estate (for which claim he received or will receive 102% of his claim amount); he purchased the debtor – Acis – for \$1 million, and it is only Mr. Terry who would benefit, not Acis's creditors, employees (there are none) or prior equity holders. "Courts have consistently held that an avoidance action can only be pursued if there is some benefit to creditors and may not be pursued if it would only benefit the debtor." *Balaber-Strauss v.*

Harrison (In re Murphy), 331 B.R. at 122 (citing *Wellman, supra*, 933 F.2d at 218 (no recovery “when the result is to benefit only the debtor rather than the estate”)).

40. Thus, under sections 548 and 550, “only net amounts diverted from, that is damages consequently suffered by the creditor body of, a debtor may be recovered via a fraudulent conveyance action.” *In re Foxmeyer Corp.*, 296 B.R. 327, 342 (Bankr. D. Del. 2003). To do otherwise is solely to benefit the debtor (or, as here, the debtor’s purchaser). That is inappropriate under either federal or state fraudulent transfer laws, as discussed at length in *Murphy*, 331 B.R. at 124-25. As a Minnesota bankruptcy court explained:

Whether there is a benefit to the estate depends on a case-by-case, fact-specific analysis. [] This is not the usual case in which an increase in dollars to the estate results in a patent benefit to the estate. In this case, the increase in dollars to the estate which would result from the requested relief would not provide a benefit to the estate. In this case, the trustee has advised that the amount on hand for distribution from the estate already exceeds the total amount of estimated administrative expenses and all claims. Thus, in this case, the only party to benefit from avoiding and recovering the Transfer would be the debtor.

Such a benefit to the debtor would be inappropriate. The provisions of MUFTA “protect creditors rather than transferors of debt.” See *Bartholomew v. Avalon Capital Group, Inc.*, 828 F.Supp.2d 1019, 1025 (D. Minn. 2009). “Only creditors are entitled to remedies under the UFTA.” *Id.*, citing Minn. Stat. §§ 513.47, 513.48(b).

Running v. Dolan (In re Goodspeed), 535 B.R. 302, 315-16 (Bankr. D. Minn. 2015). Noting that trustees are the exception since they sue on behalf of creditors, the court observed that nonetheless there must be a benefit to creditors, citing and extensively quoting *Murphy* and *Wellman, supra*.

41. To permit any recovery under section 550(a) beyond the amount needed to pay creditors would create a new duty under state law. Acis's former equity holders, as its sole owners, had no duty under applicable state law *to Acis*, or anyone else other than creditors, to refrain from making the transfers at issue, nor did the Debtor or any of the other related entities or professionals who are now litigation targets have any right or obligation to stop them. Thus in a trustee's lawsuit against former partners of a debtor partnership, in which the trustee alleged in part that the partners had conspired to "set into motion a series of transactions that crippled [the debtor partnership]," the district court for the Southern District of Texas explained and held in part:

Delaware law is clear that a company's sole owner cannot breach fiduciary duties "owed to the companies he wholly owned." *See Midland Food Services, LLC v. Castle Hill Holdings V, LLC*, 792 A.2d 920, n. 14 (Del. Ch. 1999) (citing *Goodman v. Futrovsky*, 42 Del. Ch. 468, 213 A.2d 899, 902 (1965) (the defendants could not defraud company since they "were the sole owners . . . and could do with it as they wished"), cert denied, 383 U.S. 946, 86 S. Ct. 1197, 16 L. Ed. 2d 209 (1966)). ***Tow has not cited legal support for the proposition that a nonowner can be liable for conspiring with the sole owner of a partnership for breaching duties that the owner owes himself.***

Tow v. Amegy Bank N.A., 976 F. Supp. 2d 889, 906-07 (S.D. Tex. 2013) (emphasis added). *See also Newman v. Toy*, 926 S.W.2d 629, 631 (Tex. App.-Austin 1996, writ denied) ("A sole shareholder or all shareholders acting in agreement, being all the beneficial owners of corporate property, may themselves deal with such property so long as the rights of creditors are not prejudiced ...").

42. Accordingly, any recoveries of the transfers sought to be avoided in the Acis Claim should be limited to any amount needed to satisfy obligations under the Acis Plan, that is to say, to pay creditors and administrative claimants in full. No creditors have a stake in restoring Acis to the financial condition it occupied prior to any of the transfers that are the subject matter of the Acis Claim, at least not on account of any unpaid claims. Upon payment of creditors in full under the Acis Plan, therefore, all avoidance claims should be dismissed as moot, and the only thing stopping the avoidance claims from actually being moot is Mr. Terry's unwillingness to pay Acis's creditors with the cash at Acis.

D. Acis is Barred Under the *Bangor Punta* Doctrine From Asserting For Its Own Benefit All Claims Not Asserted Pre-Acquisition – Claims 1-8 and 21-34 – Excepting Only Claims Related to the ALF PMA Transfer (Claims 9-12), the ALF Share Transfer (Claims 13-16), and the Note Transfer (Claims 17-20)

43. In *Bangor Punta Operations, Inc. v. Bangor & A. R. Co.*, 417 U.S. 703, 94 S. Ct. 2578, 2584-85 (1974); the Supreme Court held that a stockholder who has purchased all or substantially all of the shares of a corporation from a vendor at a fair price may not seek to have the acquired corporation recover against the vendor for prior corporate mismanagement and waste of corporate assets that may have occurred during the prior vendor's ownership. *Bangor Punta*, 417 U.S. at 710. “What the *Bangor Punta* Doctrine does prohibit is purchasers . . . from accepting their end of the bargain - - ownership and control of the corporation - - and attempting to sweeten their end of the deal by suing the seller to recover damages to the corporation allegedly caused by the seller before the sale. The *Bangor Punta* Doctrine properly prohibits as

inequitable such attempts at re-trading commercial transactions through litigation. *Midland Food Servs., LLC v. Castle Hill Holdings V, L.L.C.*, 792 A.2d 920, 933-34 (Del. Ch. 1999).

The nature of the claim does not matter. *Id.* at 930.

44. The doctrine does not apply to claims brought for the benefit of creditors. *Bangor Punta*, 417 U.S. at 715 (rejecting argument that plaintiff-corporation should be entitled to recovery since any recovery would benefit the public where the plaintiff-corporation “would be entitled to distribute the recovery in any lawful manner it may choose”); *Wieboldt Stores, Inc. v. Schottenstein*, 94 B.R. 488, 508 (N.D. Ill. 1988) (permitting debtor in possession to assert breach of fiduciary claim but only to extent of creditor injury – “The creditors cannot receive a “windfall” recovery, but may recover only to the extent of their claims.”). *Cf. Meyers v. Moody*, 693 F.2d 1196, 1207 (5th Cir. 1982) (*Bangor Punta* doctrine inapplicable to suit brought by receiver for benefit of creditors); *Think3 Litig. Tr. v. Zuccarello (In re Think3, Inc.)*, 529 B.R. 147, 185 (Bankr. W.D. Tex. 2015) (doctrine inapplicable where “Plaintiff Trust was created by a confirmed plan of reorganization in the Think3 bankruptcy case for the purpose of bringing suits for the benefit of creditors of insolvent Think3.”).

45. The doctrine also does not apply to claims that were pending when the acquisition occurred. *Meyers v. Moody*, 693 F.2d at 1208 (“Moody is thus urging us to extinguish a cause of action that both existed and was pursued long before the transfer of Empire's assets took place. Neither law nor equity permits us to do so.”); *TNS Media Research, LLC v. TiVo Research & Analytics, Inc.*, 193 F. Supp. 3d 307, 312 (S.D.N.Y. 2016) (“Once

brought, a claim is not released merely and necessarily based on a change in corporate ownership.”).

46. Mr. Terry agreed to purchase Acis’s equity on July 5, 2018 and the Acis Plan was confirmed on January 1, 2019. The only claims pending at either time were those asserted by the Acis trustee in his counterclaim filed on July 2, 2018 (Acis Adversary No. 18-03078, at Docket No. 23). That counterclaim asserted only fraudulent transfer claims for (1) the ALF Share Transfer, (2) the ALF PMA Transfer, and (3) the Note Transfer (all as described below). Acis’s amended complaint, asserting for the first time *all other claims* asserted in the Acis Claim, all of which relate to other transactions, was filed on **June 20, 2019**. The *Bangor Punta* doctrine, therefore, bars all claims other than Claims 9-20.

E. Claims 5-8: Fraudulent Transfer Claims - Sub-Advisory Agreement Modifications

47. Claims 5 through 8 are claims to avoid as fraudulent transfers and recover unspecified damages based on modifications to the Sub-Advisory Agreement by and between Acis LP and the Debtor dated January 1, 2011. The modifications were made on July 29, 2016, and raised the Debtor’s rates from 5 to 20 basis points. Those claims are: (5) for actual fraudulent transfer under section 548; (6) for actual fraudulent transfer under section 544(b) and Texas law; (7) for constructive fraudulent transfer under section 548; and (8) for constructive fraudulent transfer under section 544(b) and Texas law.

48. There are numerous bases on which Claims 5-8 can and should be disallowed entirely, some on a summary basis and others for which further factual development would be required, as follows:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. The Debtor believes this issue can be summarily adjudicated at this time.

b. The claims are barred by the *Bangor Punta* doctrine, which can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

- (1) Acis cannot meet its burden of proving insolvency at the time of the modifications. In fact, Acis clearly was solvent at that time. Expert testimony will be required on this issue.
- (2) Acis received reasonably equivalent value for the modifications, in that the rates had been maintained at artificially low levels during Mr. Terry's tenure, and as modified represented reasonably equivalent value for the services rendered thereunder. In fact, the revised rates are similar to what Brigade is currently charging Acis.
- (3) The modifications, which were made prior to the commencement of litigation and which had a legitimate purpose and justification, were not undertaken to hinder or defraud creditors.
- (4) Acis has not alleged damages. The modifications gave rise to, at most, an avoidable *obligation*, not a *transfer*, and the obligation potentially subject to avoidance was rejected by

the Acis trustee and approved by an order of the Court. To the extent that Acis alleges that payments made at the modified rates were fraudulent transfers, the Debtor maintains, as alleged above, that the rates as modified constituted reasonably equivalent value for the services rendered.

- (5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

F. Claims 9-24: Acis Has Not Alleged Facts Sufficient to Show That the Debtor is the Entity for Whose Benefit the Transfers Were Made

49. Acis claims that with respect to each alleged avoidable transfer, the Debtor was either the initial transferee or the entity for whose benefit it was made, from which the property transferred or its value may be recovered under federal or state law.¹³

50. Acis concedes, as it must, that *the Debtor was not the initial transferee of the transfers alleged in Claims 9 through 24*. As to those claims, Acis has failed to allege facts sufficient to establish, if proven, that the Debtor was “the entity for whose benefit such transfer was made.” This defense can be summarily adjudicated at this time.

¹³ Section 550(a) provides that with respect to a transfer that is avoided under sections 544, 545, 547, 548, 549, 553(b), or 724(a), “the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—(1) *the initial transferee of such transfer or the entity for whose benefit such transfer was made* [.]” 11 U.S.C. § 550(a)(1). Texas law is similar. See *Citizens Nat’l Bank of Tex. v. NXS Constr., Inc.*, 387 S.W.2d 74, 79-80 (Tex. App. 2012) (“the creditor may obtain a monetary judgment against the transferee of the asset, the person for whose benefit the transfer was made, or subsequent transferees.” (citing Tex. Bus. & Com. Code § 24.009(b)). Other than with respect to the sub-advisory agreement modifications, the Debtor is not alleged to have been either an immediate or subsequent transferee of any of the allegedly improper transfers, for purposes of Bankruptcy Code § 550(a) and Tex. Bus. & Com. Code § 24.009(b) (referencing the “first transferee” and “any subsequent transferee”).

51. Specifically, Acis has not identified any specific, direct benefit to the Debtor from the fraudulent transfers alleged in Claims 9-24. It only alleges an indirect benefit to the Debtor from being part of the Highland corporate group. But any transaction by a corporate group member commonly has indirect benefits for other group members, which is why as a matter of law it is insufficient simply to allege an amorphous benefit for the Debtor to be deemed a beneficiary of the putative fraudulent transfers under § 550. *See, e.g., Faulkner v. Kornman (In re Heritage Org., LLC)*, 413 B.R. 438, 495-96 (Bankr. N.D. Tex. 2009) (Judge Houser) (“an unquantifiable advantage” is not a “benefit” for purposes of § 550(a); liability will not be imposed upon a party that allegedly benefitted from the fraudulent transfer just because defendant had controlled debtor-transferor and directed the transfer; “There is simply no showing that Kornman [who allegedly benefitted] received any benefit at all from the initial transfers.”); *Peterson v. Hofmann (In re Delta Phones, Inc.)*, 2005 Bankr. LEXIS 2550, *16-*17 (Bankr. N.D. Ill. Dec. 23, 2005) (“That a shareholder holds some ownership interest in a corporation does not somehow mean that all transfers made to the corporation or by it are automatically made for the ‘benefit’ of the shareholder under § 550(a)(1). The ‘entity’ under § 550(a)(1) must benefit from the transfer ‘directly,’ not indirectly.... Taken to its logical conclusion, Peterson’s position would put average investors on the hook for all kinds of corporate transactions any time a public company sought bankruptcy protection.”); *see also In re Peregrine Fin. Group, Inc.*, 589 B.R. 360 (Bankr. N.D. Ill. 2018) (“the [defendant] cannot be the transfer beneficiary if it will get the benefit of the funds sometime later”; “[T]he [defendant] received no direct benefit at the

time the transfer was made. It had only the right to benefit from the funds in the future after [certain fees were deducted, other requirements were met, and funds were still available].”).

52. Accordingly, Reorganized Acis has not alleged facts sufficient to establish, even if proven, that the Debtor was “the entity for whose benefit such transfer was made” with respect to the transfers alleged in Claims 9-24.

G. Claims 9-12: Fraudulent Transfer Claims - ALF PMA Transfer

53. Acis alleges that its rights to direct and effectuate an optional redemption and otherwise control the assets of Acis Loan Funding Ltd. (“ALF”), pursuant to a Portfolio Services Agreement dated August 10, 2015, and a Portfolio Management Agreement dated December 22, 2016, by and between Acis and ALF (together, the “ALF PMA”), had value and were transferred for no value to Highland HCF Advisor in October 2017. The corresponding claims for relief are: (9) actual fraudulent transfer under section 548; (10) actual fraudulent transfer under section 544(b) and Texas law; (11) constructive fraudulent transfer under section 548; and (12) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the transfer and recover unspecified damages.

54. *Acis fails to address the fact that it has been exercising the rights that it alleges were transferred and has been deriving earnings under the ALF PMA since the preliminary and plan injunctions were issued in the Acis Case, in an amount sufficient to satisfy all claims against it.* That is, the alleged transfers had no economic effect as Acis retained all rights under the contracts. Accordingly, the Debtor objects on the following bases to Claims 9-12:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. The Debtor believes this issue can be summarily adjudicated at this time.

b. As set forth above, the Debtor was not the transferee of the ALF PMA Transfer and an insufficient factual basis is alleged to conclude that it was the entity for whose benefit the transfer was made. The Debtor believes this issue can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

- (1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.
- (2) Acis received reasonably equivalent value for the transfer.
- (3) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.
- (4) Acis has not alleged damages. In fact, Acis has continued to exercise rights and derive earnings under the ALF PMA pursuant to injunctive relief granted in the Acis Case.
- (5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

H. Claims 13-16: Fraudulent Transfer Claims - ALF Share Transfer

55. Acis alleges that on October 24, 2017, Acis and CLO Holdco Ltd. entered into a resolution whereby Acis sold its equity interest in ALF (the "ALF Share Transfer") to Highland Funding for \$991,000. The 13th through 16th claims for relief are: (13) actual fraudulent transfer under section 548; (14) actual fraudulent transfer under section 544(b) and Texas law; (15) constructive fraudulent transfer under section 548; and (16) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the ALF Share Transfer and recover unspecified damages.

56. The Debtor submits that there are numerous bases for disallowance of Claims 13-16 in the entirety:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. The Debtor believes this issue can be summarily adjudicated at this time.

b. As set forth above, the Debtor was not the transferee and an insufficient factual basis is alleged to conclude that it was the entity for whose benefit the transfer was made. The Debtor believes this issue can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

- (1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.

- (2) Acis received reasonably equivalent value for the transfer, as the repurchase price was at their net asset value.
- (3) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.
- (4) Acis has not alleged damages. In fact, Acis has continued to control and derive earnings from these assets by means of the ALF PMA pursuant to injunctive relief granted in the Acis Case.
- (5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

I. Claims 17-20: Fraudulent Transfer Claims – Note Transfer

57. Acis alleges that on November 3, 2017, Acis LP, the Debtor, and Highland Management (a Debtor affiliate) entered into an *Agreement for Assignment and Transfer of Promissory Note* (the "Note Transfer Agreement"), by which Acis transferred a \$9.5 million promissory note owed by the Debtor to Acis (the "Note") to Highland CLO Management for no material value. Based thereon it pleads the 17th through 20th claims for relief: (17) actual fraudulent transfer under section 548; (18) actual fraudulent transfer under section 544(b) and Texas law; (19) constructive fraudulent transfer under section 548; and (20) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the transfer and recover unspecified damages.

58. Not only did the Debtor not receive the Note, it remains liable! For this and other reasons, the Debtor objects to Claims 17-20 on the following bases:

a. Since the Debtor did not receive the Note, and indeed remains liable on the Note, it is certainly not the entity for whose benefit it was made. This issue can be summarily adjudicated at this time.

b. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. This issue can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

- (1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.
- (2) Acis received reasonably equivalent value for the transfer.
- (3) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.
- (4) Acis has not alleged damages.
- (5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

J. Claims 21-24: Fraudulent Transfer Claims – Acis CLO 2017-7 Agreement

59. Acis alleges that on December 19, 2017, it entered into an *Agreement for Assignment and Transfer* (the "CLO 2017-7 Agreement") by which it transferred its interests in sub-advisory and services agreements relating to Acis CLO 2017-7, by which it derived fees, to

Highland CLO Holdings (a Debtor affiliate) for no consideration, and also its indirect equity interests in the underlying CLO (the "2017-7 Equity") in exchange for the forgiveness of \$2.8 million payable owed by Acis to the Debtor. Based thereon Acis pleads the 21st through 24th claims for relief: (21) actual fraudulent transfer under section 548; (22) actual fraudulent transfer under section 544(b) and Texas law; (23) constructive fraudulent transfer under section 548; and (24) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the transfer and recover unspecified damages.

60. The Debtor submits that Claims 21-24 can and should be disallowed on the following bases:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. This issue can be summarily adjudicated at this time.

b. As set forth above, the Debtor was not the transferee and an insufficient factual basis is alleged for a conclusion that it was the entity for whose benefit the transfer was made. This issue can be summarily adjudicated at this time.

c. The claims are barred by the *Bangor Punta* doctrine, which can be summarily adjudicated at this time.

d. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

- (1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.
- (2) The Debtor did not receive any benefit from the transfer and so is not the entity for whose benefit the transfer was made.
- (3) Acis received reasonably equivalent value for the transfer.
- (4) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.
- (5) Acis has not alleged damages.
- (6) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

K. Claim 25: Preferences

61. Acis alleges that within one year of the Petition Date, the Debtor received payments of totaling \$16,113,790.14 from Acis on account of purported debt claims owed by Acis, comprised of approximately \$7.3 million pursuant to the Shared Services Agreement and Sub-Advisory Agreement (the “Service Payments”), over \$5 million pursuant to an October 2016 Participation Purchase Agreement (the “Participation Payments”), approximately \$3.3 million in promissory note repayments (the “Note Payments”), and approximately \$118,000 for miscellaneous expense reimbursements (“Expenses”).

62. Acis's 25th claim for relief alleges that if such transfers are not otherwise recoverable, they may be avoided and recovered as preferences under Bankruptcy Code § 547 and Texas Business and Commerce Code §§ 24.006(b) and recovered under Bankruptcy Code § 550. Acis also alleges that the 2017-7 Equity Transfer and the Note Transfer, to the extent they satisfied legitimate obligations, are avoidable as preferences.

63. Setting aside the many statutory defenses to these claims set forth below, the fact that Acis creditors are being paid in full is fatal to the preference claim. Acis tries to sidestep one consequence by asserting that whether a creditor would receive more in liquidation is measured as of the petition date. But there are at least two other consequences. One, as discussed, is that Acis cannot recover damages for its own benefit, once creditors are paid. The other is that the Debtor would receive on account of any preference recovery a general unsecured claim under the Acis Plan under Bankruptcy Code § 502(h), which would offset any liability *in full*. The Debtor objects to Claim 25 on those bases and others, as follows:

a. As set forth above, Acis is not entitled to any recovery under section 550(a) on the alleged preferences beyond that required to satisfy obligations under the Acis Plan. This issue can be summarily adjudicated at this time.

b. The claims are barred by the *Bangor Punta* doctrine, which can be summarily adjudicated at this time.

c. Acis has not alleged a factual basis for its allegation that it was insolvent at the time of the transfers. This is a pleading requirement.

d. Acis has not alleged the existence of antecedent debts, also a pleading requirement.

e. In addition, the Debtor objects to this claim on the following grounds, which are not subject to summary adjudication at this time:

- (1) Acis cannot meet its burden of proving insolvency at the time of the transfers. Expert testimony will be required on this issue.
- (2) Acis cannot meet its burden of proving that each transfer enabled the Debtor to receive more than it would have received in a hypothetical chapter 7 liquidation.
- (3) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.
- (4) Within the meaning of section 547(c)(1), each alleged transfer was intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and was in fact a substantially contemporaneous exchange, including without limitation all Service Payments and Expenses.
- (5) Within the meaning of section 547(c)(2), each alleged transfer was made in the ordinary course of business or financial affairs of the debtor and the transferee; or made according to ordinary business terms, including without

limitation all Service Payments, all payments under Participation Payments, all Note Payments, and all Expenses.

- (6) Within the meaning of section 547(c)(4), each alleged transfer was made to or for the benefit of a creditor, to the extent that, after each such transfer, such creditor gave new value to or for the benefit of the debtor—(A) not secured by an otherwise unavoidable security interest; and (B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor, including without limitation all Service Payments, Participation Payments, and Expenses.
- (7) Participation Payments were received as a mere conduit.
- (8) Any recovery on account of the alleged preferences would be offset by a corresponding general unsecured claim under the Acis Plan under Bankruptcy Code § 502(h).

L. Claim 26: Liability Under Section 550(a)

64. Acis alleges that the Debtor is the initial transferee within the meaning of Bankruptcy Code § 550(a) of all transfers sought to be avoided in Counts 5 – 8 and 25, and that it is the entity for whose benefit the transfers were made with respect to the transfers sought to be avoided in Counts 9-24.

a. Claim 26 can and should be disallowed in its entirety, on a summary basis. First, by operation of the statute, there is no liability under section 550 if no

transfers are avoided. Second, as discussed in Section E above, Acis concedes the Debtor was not the initial transferee of the transfers alleged in Claims 9 through 24, and it has not alleged facts sufficient to establish, if proven, that the Debtor was “the entity for whose benefit such transfer was made.” Specifically, it has not identified any specific, direct benefit to the Debtor from the fraudulent transfers alleged in Claims 9-24. It only posits an indirect benefit from being part of the Highland corporate group, which is inadequate to establish that an entity is the entity for whose benefit a transfer was made. Finally, all claims other than Claims 9-20 are barred by the *Bangor Punta* doctrine.

M. Claim 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers

65. Acis alleges that the Debtor, Highland Advisor, Highland Management, and Highland Holdings formed a conspiracy to “engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business.” Acis Claim, ¶ 246.

66. This claim fails as a matter of law, and can be adjudicated at this time. It is an impermissible end-around section 550's remedial provisions, and the inconvenient fact that the Debtor did not receive a cognizable benefit thereunder with respect to most of the fraudulent transfer claims. Section 550 provides the exclusive remedy for fraudulent transfers. Partly for that reason, there is simply no substantive legal basis for the sinister allegations of “unlawful, overt acts” to “take over Acis LP's valuable business” upon which the “conspiracy” is

predicated. As discussed above, the law is crystal clear that Acis's equity holders had no duty to Acis *not* to 'take over its valuable business' and nobody had a duty to stop them from doing so, as the Southern District of Texas court discussed thoroughly in *Tow v. Amegy Bank N.A., supra*, 976 F. Supp. 2d at 906-07. They owned all of it! The only thing they could not do is transfer assets without adequate consideration if Acis were insolvent. For that, there are statutory remedies prescribed by sections 548 and 550.

67. That is why no claim for conspiracy to commit an actual or constructive fraudulent transfer (or for "aiding and abetting") exists under Texas or federal law. *Tow v. Bulmahn*, No. 15-3141, 2016 U.S. Dist. LEXIS 57396, at *91 (E.D. La. Apr. 29, 2016). *See Mack v. Newton*, 737 F.2d 1343, 1357 (5th Cir. 1984) ("[T]he general rule under the Bankruptcy Act is that one who did not actually receive any of the property fraudulently transferred (or any part of a 'preference') will not be liable for its value, even though he may have participated or conspired in the making of the fraudulent transfer (or preference)."); *Schlossberg v. Abell (In re Abell)*, 549 B.R. 631, 667 (Bankr. D. Md. 2016). A party may not be liable for more than it actually received. *D.A.N. Joint Venture III, L.P. v. Touris*, No. 18-cv-349, 2020 U.S. Dist. LEXIS 51407, at *25-26 (N.D. Ill. Mar. 25, 2020) ("Numerous courts have held that the bankruptcy court cannot invoke state law remedies to circumvent or undermine the remedy legislated by Congress for the avoidance of a fraudulent transfer [T]he trustee's remedy for an avoided transfer [is] provided for in § 550, and that provision only allows a trustee to recover up to the amount of the transfer.") (citations omitted). Allowing a trustee to recover more than the amount of the transfer would "lead to a result that expands the remedies [for a fraudulent

transfer] beyond §550." *Sherman v. FSC Realty LLC (In re Brentwood-Lexford Partners, LLC)*, 292 B.R. 255, 275 (Bankr. N.D. Tex. 2003).

68. This Court recognized but distinguished *Mack* in *Milbank v. Holmes (In re TOCFHBI, Inc.)*, 413 B.R. 523, 535 (Bankr. N.D. Tex. 2009):

[W]hile it is perfectly true that "the general rule under [the Bankruptcy Code or the old Act] is that one who did not actually receive any of the property fraudulently transferred (or any part of a 'preference') will not be liable for its value, even though he may have participated or conspired in the making of the fraudulent transfer (or preference)," (*Mack v. Newton*, 737 F.2d at 1357), the Chapter 7 Trustee, in this case, is not moving under the fraudulent transfer statute and arguing something amazingly similar such as "conversion" and "conspiracy" regarding the same acts--and, in the process, joining Defendants who would not normally have liability under the relevant fraudulent transfer statutes.

Id. at 535-36. "). The Court recognized that "liability [under most states' uniform fraudulent transfer acts] cannot be imposed on non-transferees under aiding and abetting or conspiracy theories[.]" *Id.* (citation omitted). Accordingly, the claim should be disallowed.

69. Further, this claim is barred by the *in pari delicto* defense, as discussed below in the discussion of the Thirtieth Claim for Breach of Fiduciary Duty. Acis was by its own allegations an instrumentality of Dondero, who allegedly used it to perpetrate the "scheme" characterized in the Acis Complaint. The trustee was, and Reorganized Acis is, subject to all defenses that existed against Acis. Any claim by Acis against its alleged co-conspirators would be barred by *in pari delicto*, as Acis was at least equally culpable in all of the conduct it alleges.

70. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry, the acts occurred prior to Mr. Terry's acquisition of

the company, and this claim was not asserted in the Acis trustee's counterclaim that was pending when Mr. Terry acquired the company.

N. Claim 28: Tortious Interference with the Universal/BVK Agreement

71. Acis alleges that the Debtor tortiously interfered with its rights by seeking to replace it as manager under the Agreement for the Outsourcing of Asset Management between Acis LP and Universal-Investment-Luxembourg S.A. by which Acis provided sub-advisory services for a German fund (the "Universal/BVK agreement"), before and after the Debtor's sub-advisory services were terminated on August 1, 2018.

72. Claim 28 can and should be summarily disallowed, as there is no factual dispute on several critical issues: (1) this was an at-will contract; (2) the Debtor had no duty not to compete; and (3) no damages were sustained, as the contract was not terminated and all attorneys' fees have been paid, in fact, with money diverted from the Debtor.

73. Under Texas law, a claim for tortious interference with contract has four elements: (1) a contract subject to the alleged interference exists; (2) the alleged act of interference was willful and intentional; (3) the willful and intentional act proximately caused damage; and (4) actual damage or loss occurred. *Victoria Bank & Trust Co. v. Brady*, 811 S.W.2d 931, 939 (Tex.1991). Those requirements are not met on the undisputed facts.

74. The Universal/BVK agreement was an at-will contract. "Ordinarily, merely inducing a contract obligor to do what it has a right to do is not actionable interference." *ACS Investors, Inc. v. McLaughlin*, 943 S.W.2d 426, 430 (Tex. 1997). A defendant cannot tortiously interfere with a contract that permits the non-plaintiff contracting party to terminate

the agreement, where the defendant's actions constitute justifiable competition. *See, e.g., C.E. Servs. Inc. v. Control Data Corp.*, 759 F.2d 1241, 1248 (5th Cir. 1985); *West Tex. Gas v. 297 Gas Co.*, 864 S.W.2d 681, 686 (Tex. App. 1993) (competitor had legal right to persuade company to exercise its right to terminate at-will natural gas sale/purchase agreement with plaintiff). “[A] legal justification or excuse, which is treated as a type of privilege, is an affirmative defense to a claim of tortious interference.... Interference with a contractual relationship is privileged where it results from the bona fide exercise of a party's own rights.”; “North Texas had the legal right to persuade or attempt to persuade 297 to exercise its right to terminate the 1988 agreement and to contract with it.” *Id.*

75. Once again, until displaced, Acis's owners had every right to do as they wished with the Universal/BVK Agreement, subject to creditor rights but not subject to any duty to Acis to refrain from doing so, and the Debtor had no duty to say otherwise. After the Debtor was terminated, it had a right as a competitor to attempt to win back its business. The contention that it should have stopped after the Acis bankruptcy petition is the subject of a different claim. Further, “[t]he alleged interference generally must have induced a breach of the contract to be actionable.” *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320, at *7 (N.D. Tex. Dec. 15, 2015). Here, that is not even alleged to have occurred.

76. Further, no damages were sustained. The contract was not terminated, and to the extent the alleged damages are administrative expenses incurred in the Acis case, not only have they been paid, they have been paid by the Debtor by virtue of the earnings derived from the enjoined putative transfer of the ALF PMA.

77. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and all acts occurred prior to Mr. Terry's acquisition of the company.

78. Accordingly, no claim for tortious interference has been stated, and the claim is barred in any event, and so it should be disallowed.

O. Claim 29: Breach of the Sub-Advisory Agreement and Shared Services Agreement

79. Acis claims that the Debtor breached these agreements by failing to purchase and attempting only to sell loans for the CLOs, in order to liquidate Acis for the benefit of the Debtor and the detriment of Acis. This claim should be dismissed.

80. The Debtor met its standard of care but, moreover, there is a more fundamental fallacy that is instantly fatal to this claim. As discussed, here and throughout the Acis Claim, Acis sets up a fictional jurisprudential world in which it, by virtue of its existence as a legal entity, had interests that contracting parties or managers or professionals were required to identify and protect, rather than acting as instructed by Acis's owners. It did not and they did not. The Debtor was entitled to take directions from Acis's owners. Put differently, there is no allegation whatsoever that Acis did not want the Debtor to do exactly what it did. *Ipsa facto*, the Debtor did not breach the contract. The claim must be dismissed.

81. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and all acts occurred prior to Mr. Terry's acquisition of the company.

P. Claim 30: Breach of Fiduciary Duty

82. Acis claims that the Debtor owed it a fiduciary duty pursuant to the Sub-Advisory Agreement as its investment adviser, and that it breached that fiduciary duty by acting in a manner detrimental to Acis by increasing its fees under the Sub-Advisory Agreement, charging over-market rates in excess of the compensation limits of the Acis LPA, and being the “ringleader” and ultimate beneficiary of schemes to render Acis judgment-proof by transferring the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. Acis makes no damage allegations but seeks punitive damages.

83. This claim can and should be summarily disallowed. *First, the duty to Acis was contractual, not fiduciary.* The Debtor as portfolio manager had fiduciary duties *to investors* in the CLOs, but its duties to Acis were governed by the Shared Services Agreement which, construed with the Sub-Advisory Agreement, provides that the Debtor was an independent contractor with only a contractual obligation to act with reasonable care and no other obligations or duties.

84. *Second, regardless,* even if the Debtor had a fiduciary duty to Acis, it could not and did not violate that fiduciary duty by following directions from Acis’s sole owners. As discussed in the authorities and analysis above, such a claim is a legal impossibility. At all relevant times, Acis was by its allegations controlled and principally owned by Dondero and Okada, along with all of the other Highland related entities. It is hornbook law that sole owners do not have a fiduciary duty to their company; they could transfer away its assets without violating any duty to their company. How, then, would advisors and employees and

professionals go about protecting the interests of an entity such as Acis against the “ravages” of an owner such as Dondero, who had no such duty? The owners had a right, subject to fraudulent transfer laws, to direct Acis and transfer assets as desired. Acis did not, simply by virtue of its existence alone, have interests distinct from its owners’ interests that its fiduciaries were obligated to somehow identify and protect against the designs of its sole owners. No duty *to Acis* could be or was breached by following its owners’ directions.

85. ***Third, any fiduciary duty claim is barred by the in pari delicto defense:***

The equitable defense of *in pari delicto*, which means 'in equal fault,' is based on the common law notion that a plaintiff's recovery may be barred by his own wrongful conduct." *Howard v. Fidelity and Deposit Co. of Maryland, (In re Royale Airlines, Inc.)*, 98 F.3d 852, 855 (5th Cir. 1996). "Two fundamental premises underlie this defense: (1) that courts should not lend their good offices to mediating disputes among wrongdoers; and (2) that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." *Murray v. Royal Alliance Assocs.*, 375 B.R. 208, 213 (M.D. La. 2007).

Milbank v. Holmes (In re TOCFHBI, Inc.), 413 B.R. 523, 536-37 (Bankr. N.D. Tex. 2009).

While this Court denied summary judgment on the defense in *Milbank* (*id.* at 537), the defense can be applied on the face of the pleadings when it is apparent that it applies. *Brickley v.*

ScanTech Identification Beams Sys., LLC, 566 B.R. 815, 842-43 (W.D. Tex. 2017) (“In sum,

because applicability of the *in pari delicto* defense to parts of the trustee's breach of fiduciary

duty claim is apparent on the face of the Complaint, the Court will dismiss ... the claims that the

Stolzar defendants breached their fiduciary duties by assisting Barra and Vitale in their efforts to

fraudulently obtain shareholder capital and debt financing, by counseling and providing legal

services assisting Barra, Vitale, and Shaw in the usurpation of corporate assets and corporate opportunities, and by aiding in the execution of the fraudulent loan agreement.”).

86. Here, it is apparent from the face of the Acis Claim that to the extent that the “scheme” of which Acis complains was orchestrated by Dondero in violation of fiduciary duties, Acis had every bit as much culpability as the Debtor or any of the other commonly controlled entities; after all, according to Acis, the same person was making the decisions for all of them. Acis is simply assuming the Court will not hold the *delicto* of “old Acis” against Reorganized Acis.

87. While the assertion of *in pari delicto* against a trustee or reorganized debtor is not a settled issue in the Fifth Circuit, it is in most others. In *Milbank*, in 2009, this Court stated: “Some courts have found that the defense may be asserted against a bankruptcy trustee, as he stands in the shoes of a debtor who may have, through its officers and directors, perpetrated bad acts. The Fifth Circuit has not addressed this issue.” The Court determined that it should “consider how the facts and equities of the individual case interact with the policy in *in pari delicto* was designed to serve,” which it found presented factual issues that could not be resolved on summary judgment. *Milbank*, 413 B.R. at 537 (internal citations omitted).

88. Subsequently, however, in 2012, in refusing to apply *in pari delicto* to a receiver, the Fifth Circuit specified that cases under the Bankruptcy Code were distinguishable because of federal law (Bankruptcy Code § 541) subjecting a trustee to whatever defenses existed against the debtor as of the petition date.

These cases, however, are plainly distinguishable because they rely upon Section 541(a) of the Bankruptcy Code, which limits the debtor estate to interests of the debtor "as of the commencement of the case." 11 U.S.C. § 541(a)(1); *see, e.g., Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1150 (11th Cir. 2006) ("If a claim of [debtor] would have been subject to the defense of *in pari delicto* at the commencement of the bankruptcy, then the same claim, when asserted by the trustee, is subject to the same affirmative defense.") (internal quotation marks and citations omitted); *Official Comm. of Unsecured Creditors of R.F. Lafferty & Co., v. R.F. Lafferty & Co., Inc.*, 267 F.3d 340, 356 (3d Cir. 2001) ("[T]he application of the *in pari delicto* doctrine is affected by the rules governing bankruptcies. . . . [T]he explicit language of section 541 directs courts to evaluate defenses as they existed at the commencement of the bankruptcy."); *Matter of Pernie Bailey Drilling Co., Inc.*, 993 F.2d 67, 70 (5th Cir. 1993) (noting that bankruptcy trustee stood *in pari delicto*); *see also In re Hedged-Invs. Assocs., Inc.*, 84 F.3d 1281, 1285 (10th Cir. 1996) ("Though the Seventh Circuit's reasoning in *Scholes* enjoys a certain appeal, both from doctrinal and public policy perspectives, we cannot adopt it in this case. Put most simply, Mr. Sender is a bankruptcy trustee acting under 11 U.S.C. § 541, and bankruptcy law, apparently unlike the law of receivership, expressly prohibits [application of *Scholes*]"). We therefore are not persuaded by Wells Fargo's analogy to bankruptcy trustees.

Jones v. Wells Fargo Bank, N.A., 666 F.3d 955, 967-68 (5th Cir. 2012).

89. So although the Fifth Circuit has not addressed the issue directly, courts have predicted it will follow the majority rule, and ruled accordingly, as in this 2019 Western District of Texas decision:

It is an open question in the Fifth Circuit whether *in pari delicto* can be asserted as a defense to claims made by a trustee in a bankruptcy case. *In re Today's Destiny, Inc.*, 888 B.R. 737, 747 (Bankr. S.D. Tex. 2008). The majority of sister Circuits do apply the *in pari delicto* defense to claims made by trustees, however, and this Court has no reason to believe that the Fifth Circuit would depart from that majority. *See, e.g., Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1151 (11th Cir. 2006) ("If a claim . . . would have been subject to the defense of *in pari delicto* at the commencement of the bankruptcy, then the same

claim, when asserted by the trustee, is subject to the same affirmative defense.") (citing *Grasmueck v. Am. Shorthorn Ass'n.*, 402 F.3d 833, 837 (8th Cir. 2005); *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 356-57 (3rd Cir. 2001); *Terlecky v. Hurd (In re Dublin Sec. Inc.)*, 133 F.3d 377, 381 (6th Cir. 1997); *Sender v. Buchanan (In re Hedged— [*17] Inv. Assocs.)*, 84 F.3d 1281, 1285 (10th Cir. 1996); *Official Comm. of Unsecured Creditors of Color Tile v. Coopers & Lybrand, LLP*, 322 F.3d 147, 158-66 (2nd Cir. 2003)). Accordingly, the Court will consider the in pari delicto defense raised by Broadway.

Osherow v. York, No. 5:17-CV-483-DAE, 2019 U.S. Dist. LEXIS 200382, at *16-17 (W.D. Tex. Aug. 5, 2019).

90. Even if, as in *Milbank*, the Court were to consider the particular facts and equities of this case, as in *Milbank, supra*, there should be only one possible conclusion on the facts of this case, and there are no additional facts that could change it: the equities favor the Debtor's creditors over a windfall to Mr. Terry, who paid \$1 million presumably on the basis of expected earnings and not tens of millions of dollars of litigation recoveries (or even if the latter, Acis (Mr. Terry) is still not entitled to a speculator's ransom at the expense of innocent creditors). No amount of factual development can or will change that conclusion.

91. Finally, no duty can be bootstrapped from the rights of Acis's (former) creditors, who will not only be paid in full but who had no such right: ***under Delaware law, creditors of a limited partnership cannot sue third parties for breach of fiduciary duty, even derivatively, nor can a trustee sue for them.*** "The claim for breach of fiduciary duties owed to the creditors fails because the Trustee does not allege that the creditors are assignees or members of the Debtors' LLCs. The creditors of the Debtors' LLC thus lack standing to sue the LLC or its members and directors for breaches of fiduciary duties. ***The Trustee does not have standing to***

sue on behalf of the creditors who themselves have no standing.” Beskrone v. OpenGate Capital Grp. (In re Pennysaver USA Publ'g, LLC), 587 B.R. 445, 467 (Bankr. D. Del. 2018) (emphasis added). The analysis and result is the same for limited partnerships. Gavin/Solmonese LLC v. Citadel Energy Partners, LLC (In re Citadel Watford City Disposal Partners, L.P.), 603 B.R. 897, 905 (Bankr. D. Del. 2019) (“Given the similarity of the relevant statutory language of the Delaware Limited Liability Company Act to that of the Delaware LP Act, the result here should be no different for limited partnerships.”).

92. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and all acts occurred prior to Mr. Terry’s acquisition of the company.

Q. Claim 31: Punitive Damages

93. Acis seeks punitive damages to the extent permitted by law. But, to start, there is no right to recover punitive damages under either federal or state fraudulent transfer laws:

Section 550 does not provide for the recovery of exemplary damages. The trustee has recovered under Texas fraudulent conveyance laws. Under Texas law, exemplary damages are available if the plaintiff has in fact sustained actual loss or injury. *Mack v. Newton*, 737 F.2d 1343, 1367 (5th Cir. 1984). However, as concluded above, the court cannot invoke state law remedies to circumvent or undermine the specific remedy legislated by Congress for the avoidance of a fraudulent transfer.

Sherman v. FSC Realty LLC (In re Brentwood-Lexford Partners, LLC), 292 B.R. 255, 275 (Bankr. N.D. Tex. 2003). See also Schlossberg v. Abell (In re Abell), 549 B.R. 631, 667 (Bankr.

D. Md. 2016); *Hyundai Translead, Inc. v. Jackson Truck & Trailer Repair Inc.*, 419 B.R. 749, 760 (M.D. Tenn. 2009); *In re Lexington Oil and Gas Ltd., Co.*, 423 B.R. 353, 376 (Bankr. E.D. Okla. 2010); *Tronox Inc. v. Anadarko Petroleum Corp. (In re Tronox Inc.)*, 429 B.R. 73, 111 (Bankr. S.D.N.Y. 2010) (“Persuasive authority holds that § 550 bars punitive damages notwithstanding their possible availability under state law.”).

94. As set forth herein, Acis’s state law claims can and should be summarily disallowed, which ends any issue concerning punitive damages.

95. Texas law permits punitive damages only if the plaintiff has in fact sustained actual loss on its substantive counts. *See, e.g., Sherman*, 292 B.R. at 255 (plaintiff could not recover exemplary damages since he did not recover any judgment for breach of fiduciary duty or other applicable cause of action).¹⁴ The claimant must prove by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from: (1) fraud¹⁵; (2) malice¹⁶; or (3) gross negligence.¹⁷ Tex. Civ. Prac. & Rem. Code § 41.003(a). Acis cannot sustain this burden, nor would such an award be supported under the relevant factors.¹⁸

¹⁴ Texas law caps punitive damages at the greater of (1) two times economic damages plus an amount equal to noncompensatory damages found by a jury not in excess of \$750,000, or (2) \$200,000. Tex. Civ. Prac. & Rem. Code § 41.008(b).

¹⁵ Constructive fraud does not count. Tex. Civ. Prac. & Rem. Code § 41.001(6).

¹⁶ “Malice” means “a specific intent by the defendant to cause substantial injury or harm to the claimant.” Tex. Civ. Prac. & Rem. Code § 41.001(7).

¹⁷ “Gross negligence” means “an act or omission: (A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.” Tex. Civ. Prac. & Rem. Code § 41.001(11).

¹⁸ “The Court weighs the following six factors in determining the reasonableness of an award: (1) the nature of the wrong; (2) the character of the conduct involved; (3) the degree of culpability of the wrongdoer; (4) the situation and sensibilities of the parties concerned; (5) the extent to which such conduct offends a public sense of justice and propriety; and (6) the net worth of the defendant.” *In re Galaz*, 2015 Bankr. LEXIS 229, at *30 (Bankr. W.D. Tex. Jan. 23, 2015) (citing Tex. Civ. Prac. & Rem. Code § 41.011(a)).

96. Finally, any claim for punitive damages is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and was not asserted prior to Mr. Terry's acquisition of the company.

R. Claim 32: Alter Ego Liability

97. Acis does not adequately allege a claim for alter ego, even if it was a "claim," which it is not; it is only a means of imposing liability for an underlying cause of action. *NMRO Holdings, LLC v. Williams*, 2017 Tex. App. LEXIS 9939, *6 (Tex. App. Oct. 24, 2017). Its allegations of common control by Mr. Dondero are insufficient as a matter of pleading and substantively.

98. Acis alleges that the Debtor, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by Mr. Dondero, and "[e]ach of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others." It also requests that the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements be "collapsed" and treated as a scheme by which the Debtor would take over Acis's business. Although it is unclear, Acis appears to also assert under this rubric a claim for unjust enrichment, and requests that "[e]ach of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should

be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits.” Acis Claim ¶ 280.

99. Texas law applies the alter ego rules of the state of incorporation or formation. *See, e.g., In re The Heritage Org., LLC*, 413 B.R. 438, 510 (Bankr. N.D. Tex. 2009); *The Richards Group, Inc. v. Brock*, 2008 U.S. Dist. LEXIS 55139 (N.D. Tex. July 18, 2008). The analyses are often similar. *See, e.g., Sell v. Universal Surveillance Sys., LLC*, 2017 U.S. Dist. LEXIS 219898, at *5 (W.D. Tex. July 6, 2017) (observing that the analyses undertaken by Texas courts, federal courts, and Delaware courts are similar and focus on whether the defendant abused the corporate form).

100. What Acis is essentially alleging is “single enterprise” liability based on common control by Mr. Dondero. Delaware has never recognized the “single business enterprise” theory of alter ego liability, and it was rejected under Texas law by the Texas Supreme Court in *SSP Partners v. Gladstone Invs. Corp.*, 275 S.W.3d 444, 452-54 (Tex. 2008).

101. *SSP Partners* is instructive in rejecting allegations of common control as sufficient to support alter ego liability without the use or abuse of the corporate form to perpetrate a wrong.

We disregard the corporate fiction, even though corporate formalities have been observed and corporate and individual property have been kept separately, when the corporate form has been used as part of a basically unfair device to achieve an inequitable result. Specifically, we disregard the corporate fiction:

- (1) when the fiction is used as a means of perpetrating fraud;

- (2) where a corporation is organized and operated as a mere tool or business conduit of another corporation;
- (3) where the corporate fiction is resorted to as a means of evading an existing legal obligation;
- (4) where the corporate fiction is employed to achieve or perpetrate monopoly;
- (5) where the corporate fiction is used to circumvent a statute; and
- (6) where the corporate fiction is relied upon as a protection of crime or to justify wrong.

Each example involved an element of abuse of the corporate structure. . .

Creation of affiliated corporations to limit liability while pursuing common goals lies firmly within the law and is commonplace. We have never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances. There must also be evidence of abuse.

Id. That is not what Acis does or can allege, *i.e.*, even if, *arguendo*, it could establish that assets were wrongfully transferred, the “wrong” did not involve any abuse of the *form* of the entities involved. They are simply a family of commonly controlled entities. As the Fifth Circuit explained in *Pan Eastern Exploration Co. v. Hufo Oils*, 855 F.2d 1106 (5th Cir. 1988):

“The focus of alter ego proper is on the legal adequacy of the corporation's existence, and the relationship between the corporation and its controlling corporation or individual. Many wholly-owned subsidiary and closely-held corporations are not factually distinct from their owners; many are in fact controlled and operated in close concert with the interests of the owners, and do not have a distinct factual existence-- separate employees, separate offices, separate properties, etc. That is perfectly natural and proper. *See, e.g., Edwards Co. v. Monogram Industries*, 730 F.2d 977 (5th Cir. 1984) (en banc) (‘shell’ subsidiary was formally distinct and creditor was not misled; corporate disregard under Texas law was therefore improper). The problem arises when such

a corporation is not treated as *legally* distinct, when, in other words, the owners neglect to maintain the *formal* existence of the corporation as required by law.”

Id. at 1131.

102. Indeed, the absence of a wrong by this Debtor involving the corporate form led the Southern District of New York district court to reject alter ego liability in *Highland CDO Opportunity Master Fund, L.P. v. Citibank, N.A.*, 270 F. Supp. 3d 716 (S.D.N.Y. 2017). Citibank had identified three acts that it asserted constituted fraudulent or wrongful conduct, for which it contended the Debtor had alter ego liability: (i) the Debtor stripped cash and assets from Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) that would have otherwise been available to satisfy the obligations to Citibank; (ii) the Debtor diverted cash distributions on certain notes (the “HFP Notes”) that would otherwise have been available to CDO Fund to meet its obligations to Citibank; and (iii) the Debtor fraudulently misrepresented the value of the HFP Notes that CDO Fund pledged to Citibank as collateral. *Id.* at 729-33. The district court held that the first prong of New York’s alter ego test – the Debtor’s control and domination of its affiliates – was satisfied, but that Citibank failed to demonstrate the second prong – a “wrong or fraud” for veil piercing purposes – and so dismissed the alter ego claims seeking to hold the Debtor liable for CDO Fund’s obligations. *Id.* at 729-33.

103. Here, the allegations are insufficient even as a matter of pleading. *See Capmark Fin. Grp. Inc. v. Goldman Sachs Credit L.P.*, 491 B.R. 335, 349 (S.D.N.Y. 2013). The pleading here is particularly inadequate because, absent “single enterprise” liability (which is unavailable), Acis would actually need to pierce the veil of each entity between the Debtor and

any entity found to bear liability. *Id.* (“[Plaintiff] fails to present facts to adequately allege the "double-pierce" required to lump together two "sister" subsidiaries, the Goldman Lenders and the PIA Funds, even under the liberal notice pleading standard.”). *See Outokumpu Eng'g Enters., Inc v. Kvaerner Enviropower, Inc.*, 685 A.2d 724, 729 (Del. Super. 1996) (stating that in order to disregard corporate formalities separating "sister" subsidiaries, a plaintiff must first pierce the veil separating one subsidiary from its corporate parent, and then surmount "another barrier" by piercing the veil separating the corporate parent from the second subsidiary).

104. Any claim for punitive damages is also barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and was not asserted prior to Mr. Terry’s acquisition of the company.

105. Finally, to the extent that Acis is alleging in this action that Dondero is liable as an alter ego for any liability of the Debtor herein (as it does explicitly in its other newly commenced lawsuits), Acis is violating the automatic stay in this case, as any such rights is property of the bankruptcy estate.

S. Claim 33: Willful Violation of the Automatic Stay

106. Acis alleges that the Debtor and Highland Funding violated the Acis automatic stay by sending the Acis trustee Optional Redemption Notices requesting that the trustee effectuate optional redemptions, and by “demanding” that the trustee take actions to effectuate the optional redemption by the next day. Acis seeks damages, attorneys’ fees and costs, and punitive damages.

107. The claim should be disallowed. The Acis trustee declined to effectuate the redemptions. HCLOF, the equity holder of the CLO entities, took the position that the automatic stay was inapplicable, and the Debtor did not believe that it applied. In addition, the claim is untimely and/or has been waived.

108. The claim is also barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and the acts occurred prior to Mr. Terry's acquisition of the company.

T. Claim 34: Payment of Attorneys' Fees and Costs, Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases

109. Acis requests that the Court award attorneys' fees in the adversary proceeding under Texas Business and Commerce Code § 24.013, Civil Practice and Remedies Code § 38.001, TUFTA, and all fees in the entire Acis Case from the Debtor based on the Debtor's alleged breach of fiduciary duty. There is no basis in fact or law for such an award, and the Debtor reserves all defenses thereto.

110. Furthermore, the Debtor and/or affiliates *already* bore the fees of which "reimbursement" is sought: as they were paid by income derived from transferred assets that as a result of the injunction were utilized for the benefit of Acis rather than by the transferees.

111. Finally, the claim is also barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and the acts occurred prior to Mr. Terry's acquisition of the company.

U. Reservation of Rights

112. The Debtor reserves its right to supplement or modify this Objection and to assert such further objections, defenses or arguments as may later become available or apparent.

WHEREFORE, the Debtor respectfully requests that the Acis Claim be disallowed in its entirety, and such other and further relief as this Court may deem just and proper.

Dated: June 23, 2020

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Jeffrey N. Pomerantz

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Attorneys for the Debtor and
Debtor in Possession

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been served electronically via the Court's CM/ECF system upon all parties appearing on the attached service list.

/s/ Jeffrey N. Pomerantz

Jeffrey N. Pomerantz

In re Highland Capital Management, L.P.
Case No. 19-34054-sgj11

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Exhibit 16



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed October 27, 2020

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket Nos. 1087 & 1088

ORDER APPROVING DEBTOR'S SETTLEMENT WITH (A) ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP LLC (CLAIM NO. 23), (B) JOSHUA N. TERRY AND JENNIFER G. TERRY (CLAIM NO. 156), AND (C) ACIS CAPITAL MANAGEMENT, L.P. (CLAIM NO. 159) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

Having considered the *Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [Docket No. 1087] (the

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

“Motion”),² the Settlement Agreement attached as **Exhibit “1”** (the “Settlement Agreement”) to *Declaration of Gregory V. Demo in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP, LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith* [Docket No. 1088] (the “Demo Declaration”), and the General Release attached as **Exhibit “2”** (the “Release”) to the Demo Declaration filed by the above-captioned debtor and debtor-in-possession (the “Debtor”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement and the Release are fair and equitable; and this Court having, analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to Settlement Agreement and Release, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

this Court having reviewed the Motion, any and all other documents filed in support of the Motion, including the Debtor's Omnibus Reply filed by the Debtor at Docket No. 1211, and all objections thereto, including the objection filed by James Dondero at Docket No. 1121 (the "Dondero 9019 Objection");³ and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Settlement and the Release, attached hereto as **Exhibit 1** and **Exhibit 2** are approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.
3. The Dondero 9019 Objection and all other objections to the Motion are overruled in their entirety.
4. All objections to the proofs of claim subject to the Motion⁴ are overruled as moot in light of the Court's approval of the Settlement Agreement and Release.
5. The Debtor, the Debtor's agents, the Acis Parties (as defined by the Release), and all other parties are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement and the Release without need of further Court approval or notice.

³ The objection to the Motion filed by Patrick Hagaman Daugherty at Docket No. 1201 was withdrawn on the record during the hearing on the Motion. The reservations of rights filed by Highland CLO Funding, Ltd., CLO Holdco, Ltd., HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P. and HarbourVest Partners L.P. filed at Docket Nos. 1177, 1191, and 1195 (collectively, the "Reservations") are resolved based on the Debtor's representations on the record, made without objection, that (a) the conditions precedent in Section 1(c) of the Settlement Agreement will not occur and therefore, the Debtor will not, pursuant to the Settlement Agreement, transfer all of its direct and indirect right, title and interest in Highland HCF Advisor, Ltd. to Acis or its nominee, and that (b) none of the parties asserting any of the Reservations are bound by the Release.

⁴ The objections include (a) the Debtor's *Objection to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 771]; (b) *James Dondero's Objection to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC*; and (II) *Joinder in Support of Highland Capital Management, L.P.'s Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC* [Docket No. 827]; and (c) *UBS (I) Objection to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC and (II) Joinder in the Debtor's Objection* [Docket No. 891].

6. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement, including all attachments, (the “Agreement”) is entered into as of September 9, 2020, by and among (i) Highland Capital Management, L.P. (“HCMLP”); (ii) Acis Capital Management, L.P. (“Acis LP”); (iii) Acis Capital Management GP LLC (“Acis GP” and together with Acis LP, “Acis”); (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and (v) Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan

Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, on August 3, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an Order Directing Mediation [Docket No. 912] pursuant to which HCMLP, Acis Capital Management L.P., and Acis Capital Management GP, LLC (together, the “Mediation Parties”), among others, were directed to mediate their disputes before Retired Judge Allan Gropper and Sylvia Mayer (together, the “Mediators”); and

WHEREAS, during the mediation, the Mediators made an economic proposal to resolve the Claims (the “Mediators’ Economic Proposal”), and each of the Mediation Parties accepted the Mediators’ Economic Proposal; and

WHEREAS, the Parties have negotiated and executed that certain General Release, dated as of even date herewith (the “Release”),¹ which, among other things, releases the Acis Released Claims and the HCMLP Released Claims; and

WHEREAS, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the Mediators’ Economic Proposal and which, when combined with the Release, will fully and finally resolve the Claims; and

WHEREAS, this Agreement and the Release attached hereto will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”);

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.** In full and complete satisfaction of the Claims:

(a) The proof of claim filed by Acis in the HCMLP Bankruptcy Case on December 31, 2019 [Claim No. 23] will be allowed in the amount of \$23,000,000 as a general unsecured claim;

¹ All capitalized terms used but not defined herein have the meanings given to them in the Release.

(b) On the effective date of a plan of reorganization and confirmed by the Bankruptcy Court, HCMLP will pay in cash to:

(i) Joshua N. Terry and Jennifer G. Terry \$425,000, plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed in the HCMLP Bankruptcy Case by Joshua N. Terry and Jennifer G. Terry on April 8, 2020 [Claim No. 156];

(ii) Acis LP \$97,000, which amount represents the legal fees incurred by Acis LP with respect to *NWCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195-2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP in the HCMLP Bankruptcy Case on April 8, 2020 [Claim No. 159];

(iii) Joshua N. Terry \$355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

(c) On the effective date of a plan of reorganization proposed by HCMLP and confirmed by the Bankruptcy Court, if HCMLP receives written advice of nationally recognized external counsel that it is legally permissible consistent with HCMLP's contractual and legal duties to transfer all of its direct and indirect right, title and interest in Highland HCF Advisor, Ltd. to Acis or its nominee and that doing so would not reasonably subject HCMLP to liability, HCMLP shall transfer all of its right, title and interest in Highland HCF Advisor, Ltd., whether its ownership is direct or indirect, to Acis or its nominee, subject at all times to Acis's right to unilaterally reject the transfer in its sole and absolute discretion;

(d) Within five (5) days of the Agreement Effective Date, HCMLP shall:

(i) Move to withdraw, with prejudice, its proof of claim [Claim No. 27] filed in *In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018), and its proof of claim [Claim No. 13] filed in *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018);

(ii) Move to withdraw, with prejudice, Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b) filed in the Acis Bankruptcy Case [Docket No. 772];

(e) At all times after the execution of this Agreement:

(i) Only to the extent reasonably necessary to maintain the status quo in the Acis Appeals, the Parties shall cooperate in seeking to abate or otherwise stay the Acis Appeals vis-à-vis the Parties pending the occurrence of the Agreement Effective Date; and

(ii) HCMLP shall cooperate in good faith to promptly return to Acis all property of Acis that is in HCMLP's possession, custody, or control, including but not limited to e-mail communications.

2. **Releases.** The Release is (a) attached to this Agreement as **Appendix A**; (b) an integral component of the Mediator’s Economic Proposal and (c) incorporated by reference into this Agreement as if fully set forth herein.

3. **Agreement Subject to Bankruptcy Court Approval.**

(a) The effectiveness of this Agreement and the Parties’ obligations hereunder are conditioned in all respects on the approval of this Agreement and the Release by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement and the Release expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order. The “Agreement Effective Date” will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

(b) The Parties acknowledge and agree that the terms and conditions of this Agreement are conditioned, in all respects, on the execution of the Release by the Parties and the approval of the Release and this Agreement by the Bankruptcy Court. If either the Release or this Settlement Agreement are not approved by the Bankruptcy Court for any reason, this Agreement and the Release will be immediately null and void and of no further force and effect.

4. **Representations and Warranties.** Subject in all respects to Section 3, each Party represents and warrants to the other Party that such Party is fully authorized to enter into and perform the terms of this Agreement and that, as of the Agreement Effective Date, this Agreement and the Release will be fully binding upon each Party in accordance with their terms.

5. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by HCMLP, the Acis Parties, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the Acis Parties, or any other person.

6. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns, including but not limited to any Chapter 7 trustee appointed for HCMLP.

7. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

Acis

Acis Capital Management, LP
4514 Cole Avenue
Suite 600
Dallas, Texas 75205

Attention: Joshua N. Terry
Email: josh@aciscm.com

with a copy (which shall not constitute notice) to:

ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
Dallas, Texas 75201
Attention: Brian P. Shaw
Telephone No.: 214.239.2707
E-mail: shaw@roggedunngroup.com

Joshua N. Terry and Jennifer G. Terry

25 Highland Park Village, Suite 100-848
Dallas TX 75205
Attention: Joshua N. Terry
Email: joshuanterry@gmail.com

with a copy (which shall not constitute notice) to:

ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
Dallas, Texas 75201
Attention: Brian P. Shaw
Telephone No.: 214.239.2707
E-mail: shaw@roggedunngroup.com

HCMLP

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Legal Department
Telephone No.: 972-628-4100
Facsimile No.: 972-628-4147
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910

Facsimile No.: 310-201-0760
E-mail: jpomerantz@pszjlaw.com

8. **Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

9. **Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

10. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

11. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

12. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

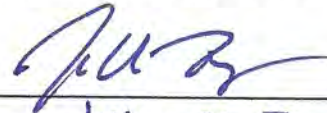
13. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the HCMLP Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this

Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).


[Remainder of Page Intentionally Blank]

IT IS HEREBY AGREED.


ACIS CAPITAL MANAGEMENT, L.P.

By: 
Name: Joshua N. Terry
Its: President

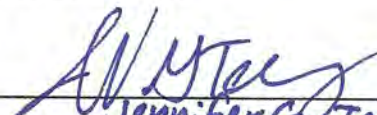
ACIS CAPITAL MANAGEMENT GP LLC

By: 
Name: Joshua N. Terry
Its: President

JOSHUA N. TERRY

By: 
Name: Joshua N. Terry
Its: Self

JENNIFER G. TERRY

By: 
Name: Jennifer G. Terry
Its: Self

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

IT IS HEREBY AGREED.

ACIS CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

ACIS CAPITAL MANAGEMENT GP LLC

By: _____
Name: _____
Its: _____

JOSHUA N. TERRY

By: _____
Name: _____
Its: _____

JENNIFER G. TERRY

By: _____
Name: _____
Its: _____

HIGHLAND CAPITAL MANAGEMENT, L.P.


By: 
Name: JAMES P. SCURRY, JR
Its: CEO/CO

EXHIBIT 2

GENERAL RELEASE

This GENERAL RELEASE (this “Release”), effective on the Effective Date (as defined below), is entered into by and among (i) Highland Capital Management, L.P. (“HCMLP”), (ii) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (collectively, the “Terry Parties”), (iii) Acis Capital Management L.P., and Acis Capital Management GP, LLC (collectively, “Acis”) (the Terry Parties and Acis, collectively, the “Acis Parties”), and (iii) those HCMLP Specified Parties (as defined below) who execute this Release (together, the “Parties”).

RECITALS

WHEREAS, the Parties have asserted or may assert claims that are defined in Section 1 below as the “Acis Released Claims” and the “HCMLP Released Claims” (collectively, the “Claims”); and

WHEREAS, on August 3, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Court”) entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, Acis Capital Management L.P., and Acis Capital Management GP, LLC (together, the “Mediation Parties”), among others, were directed to mediate their disputes before Retired Judge Allan Gropper and Sylvia Mayer (together, the “Mediators”); and

WHEREAS, during the mediation, the Mediators made an economic proposal to resolve the Claims (the “Mediators’ Economic Proposal”), and each of the Mediation Parties accepted the Mediators’ Economic Proposal; and

WHEREAS, the Parties desire to enter into a general release of all Claims which, when combined with the Mediators’ Economic Proposal, will fully and finally resolve the Claims; and

WHEREAS, except in Section 1.c below, this is a general release, meaning the Parties intend hereby to release any and all Claims which the Parties can release, and the Parties are unaware of any Claims between them which are not being released herein; and

WHEREAS, this Release will be appended or otherwise incorporated into a written settlement agreement (the “Settlement Agreement”) that will include the terms of the Mediators’ Economic Proposal and will be presented to the Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”), and is only effective upon the Effective Date.

NOW, THEREFORE, after good-faith, arms-length negotiations, and in consideration of the promises made herein and in the Mediators’ Economic Proposal, the Parties agree to release each other pursuant to and in accordance with the terms and conditions set forth below.

AGREEMENT

1. Releases.

a. Upon the Effective Date, and to the maximum extent permitted by law, and except as set forth in Section 1d below, each of the Acis Parties on behalf of himself, herself, or itself and each of their respective current or former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (A)(i) HCMLP; (ii) Strand; (iii) any entity of which greater than fifty percent of the voting ownership is held directly or indirectly by HCMLP and any entity otherwise controlled by HCMLP; and (iv) any entity managed by either HCMLP or a direct or indirect subsidiary of HCMLP (the foregoing (A)(i) through (A)(iv) the “HCMLP Entities”) and (B) with respect to each such HCMLP Entity, such HCMLP Entity’s respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the “HCMLP Parties,” and together with the HCMLP Entities, the “HCMLP Released Parties”), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Filed Cases, including the proofs of claim [Claim No. 23; 156; 159] filed by the Acis Parties in the HCMLP Bankruptcy Case and any objections or potential objections to the Plan or the confirmation thereof (collectively, the “Acis Released Claims”). This release is intended to be general. Notwithstanding anything contained herein to the contrary, the term HCMLP Released Parties **shall not** include NexPoint Advisors (and any of its subsidiaries), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd.), Highland CLO Funding, Ltd. (and any of its subsidiaries), NexBank, SSB (and any of its subsidiaries), James Dondero, Hunter Mountain Investment Trust (or any trustee acting for the trust), Dugaboy Investment Trust (or any trustee acting for the trust), Grant Scott, David Simek, William Scott, Heather Bestwick, Mark Okada and his family trusts (and the trustees for such trusts in their representative capacities), McKool Smith, PC, Gary Cruciani, Lackey Hershman, LLP, Jamie Welton, or Paul Lackey.

b. Upon the Effective Date, and to the maximum extent permitted by law, each HCMLP Released Party hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue the (A) Acis Parties, (B) Acis CLO 2013-1Ltd., Acis CLO 2014-3 Ltd., Acis CLO 2014-4 Ltd., Acis CLO 2014-5 Ltd., Acis CLO 2015-6 Ltd. (collectively, the “Acis CLOs”), and (C) with respect to each such Acis Party and Acis CLO, to the extent applicable, such Acis Party and Acis CLO, their respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents,

affiliates, successors, designees, and assigns (the foregoing (A), (B), and (C), the “Acis Released Parties”), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Filed Cases (collectively, the “HCMLP Released Claims”). This release is intended to be general. Notwithstanding anything contained herein to the contrary, this Section 1.b will not affect any right to payment under any notes, debt, equity, or other security issued by any Acis CLO and held by any HCMLP Released Party.

c. The HCMLP Released Parties shall also hereby forever, finally, fully, unconditionally, and completely release, relieve, acquit, remise, and exonerate, and covenant never to sue (A) U.S. Bank National Association, Moody’s Investor Services, Inc., and Brigade Capital Management, Inc. and (B) with respect to each such DAF Suit Defendant, to the extent applicable, such DAF Suit Defendant, their respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the foregoing (A) and (B), the “DAF Suit Defendants”), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, which were or could have been asserted in, in connection with, or with respect to the DAF Lawsuits. This release is not intended to be general.

d. Notwithstanding anything herein to the contrary, if (A) any HCMLP Specified Party has not executed this Release on or before the Effective Date or (B) any HCMLP Released Party, including any HCMLP Specified Party, (i) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten any Acis Released Party on or in connection with any HCMLP Released Claim or any other claim or cause of action arising prior to the date of this Release, (ii) takes any action that, in HCMLP’s reasonable judgment, impairs or harms the value of HCMLP, its estate, and its assets; or (iii) in HCMLP’s reasonable judgment fails to use commercially reasonable efforts to support confirmation of the Plan and/or the monetization of HCMLP’s assets at their maximum value, then (a) such HCMLP Released Party (and only such HCMLP Released Party) will be deemed to have waived (x) the release and all other protections set forth in Section 1a hereof and will have no further rights, duties, or protections under this Release and (y) any releases set forth in the Plan, (b) the Acis Released Parties, as applicable, may, in their discretion, assert any and all Acis Released Claims against such HCMLP Released Party (and only such HCMLP Released Party), and (c) any statutes of limitation or other similar defenses are tolled against such HCMLP Released Party (and only such HCMLP Released Party) from the execution of this Release until ninety (90) days after the Acis Released Parties receive actual written notice of any violation of this Section 1d. For the avoidance of doubt, by signing this Release each of the HCMLP Specified Parties is

acknowledging and agreeing, without limitation, to the terms of this Section 1.d and the tolling agreement set forth herein.

2. Withdrawal/Dismissal of Filed Cases. Within five days of the Effective Date, each Acis Released Party and HCMLP Released Party, to the extent applicable, will coordinate to cause the Filed Cases, including any appeals of any Filed Cases, to be dismissed with prejudice as to any Acis Released Party or HCMLP Released Party; *provided, however*, that there is no obligation to dismiss or withdraw the HCMLP Bankruptcy Case. For the avoidance of doubt, and consistent with this Section, (a) if HCMLP receives written advice of nationally recognized external counsel that it is legally permissible consistent with HCMLP's contractual and legal duties to direct Neutra, Ltd. to move to dismiss all of their appeals arising from the Acis Bankruptcy and that doing so would not reasonably subject HCMLP to liability, HCMLP shall direct Neutra, Ltd. to move to dismiss all of their appeals arising from the Acis Bankruptcy and (b) Acis shall move to dismiss with prejudice its claims against HCMLP asserted in any adversary proceeding in the Acis Bankruptcy Case. To the extent reasonably necessary to maintain the status quo in the Filed Cases, including any appeals thereof, prior to the Effective Date, each Acis Released Party and HCMLP Released Party shall reasonably cooperate in seeking to abate or otherwise stay the Filed Cases vis-à-vis the Parties.

3. Representations and Warranties.

a. Each of the Acis Parties represents and warrants to each of the HCMLP Released Parties and each of the HCMLP Specified Parties who have signed this Release that (a) he, she or it has full authority to release the Acis Released Claims and has not sold, transferred, or assigned any Acis Released Claim to any other person or entity, and that (b) to the best of his, her or its current knowledge, no person or entity other than the Acis Parties has been, is, or will be authorized to bring, pursue, or enforce any Acis Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) any of the Acis Parties.

b. Each of HCMLP and each HCMLP Specified Party who has signed this Release represents and warrants to each of the Acis Parties that he, she or it has not sold, transferred, pledged, assigned or hypothecated any HCMLP Released Claim to any other person or entity.

c. Each HCMLP Specified Party and each of HCMLP and Strand represents and warrants to each of the Acis Parties that he, she, or it has full authority to release any HCMLP Released Claims that such HCMLP Specified Party, HCMLP, or Strand personally has against any Acis Party.

d. HCMLP represents and warrants that it is releasing the HCMLP Released Claims on behalf of the HCMLP Entities to the maximum extent permitted by any contractual or other legal rights HCMLP possesses. To the extent any of the HCMLP Entities dispute HCMLP's right to release the HCMLP Released Claims on behalf of any of the HCMLP Entities, HCMLP shall use commercially reasonable efforts to support the Acis Parties' position, if any, that such claims were released herein. For the avoidance of doubt, HCMLP will have no obligations to assist the Acis Parties under this Section if HCMLP has been advised by external counsel that such assistance could subject HCMLP to liability to any third party or if such

assistance would require HCMLP to expend material amounts of time or money. HCMLP shall not argue in any forum that the non-signatory status of any of the HCMLP Entities to this Release shall in any way affect the enforceability of this Release vis-à-vis any of the HCMLP Entities. The Parties agree that all of the HCMLP Entities are intended third-party beneficiaries of this Release.

Notwithstanding anything herein to the contrary, the Acis Parties acknowledge and agree that their sole and exclusive remedy for the breach of the foregoing Sections 3b, 3c, and 3d will be that set forth in Section 1.d hereof.

4. Additional Definitions.

a. “Acis Bankruptcy Case” means, collectively, *In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018)

b. “DAF Lawsuits” means (a) Case No. 1:19-cv-09857-NRB; *The Charitable Donor Advised Fund, L.P. v. U.S. Bank National Association, et al*, formerly pending in the United States District Court for the Southern District of New York; and (b) Case No. 1:20-cv-01036-LGS; *The Charitable Donor Advised Fund, L.P. and CLO Holdco, Ltd. v. U.S. Bank National Association, et al*, formerly pending in the United States District Court for the Southern District of New York.

c. “Effective Date” means the date of an order of the Court approving the Settlement Agreement pursuant to a motion filed under Rule 9019.

d. “Filed Cases” means (a) the HCMLP Bankruptcy Case, (b) *Acis Capital Management, L.P., et al. v. Highland Capital Management, L.P., et al*, Case No. 18-03078 (Bankr. N.D. Tex. 2018); (c) *Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause for Violations of the Acis Plan Injunction*, Case No. 19-34054-sgj-11 [Docket No. 593] (Bankr. N.D. Tex. 2020); (d) *Joshua and Jennifer Terry v. Highland Capital Management, L.P., James Dondero and Thomas Surgent*, Case No. DC-16-11396, pending in the 162nd District Court of Dallas County Texas; (e) *Acis Capital Management, L.P., et al v. James Dondero, et al.*, Case No. 20-0360 (Bankruptcy N.D. Tex. 2020); (f) *Acis Capital Management, L.P., et al v. Gary Cruciani, et al.*, Case No. DC-20-05534, pending in the 162nd District Court of Dallas County Texas; (g) *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey; and (h) the Acis Bankruptcy Case.

e. “HCMLP Bankruptcy Case” means *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (Bankr. N.D. Tex. 2019).

f. “HCMLP Specified Party” means Scott Ellington, Isaac Leventon, Thomas Surgent, Frank Waterhouse, Jean Paul Sevilla, David Klos, Kristin Hendrix, Timothy Cournoyer, Stephanie Vitiello, Katie Irving, Jon Poglitsch, or Hunter Covitz. For the avoidance of doubt, each HCMLP Specified Party is a HCMLP Released Party.

g. “Plan” means the *Plan of Reorganization of Highland Capital Management, L.P.*, filed in the HCMLP Bankruptcy Case [Docket No. 956] as may be amended or restated.

h. “Strand” means Strand Advisors, Inc.

5. Miscellaneous.

a. For the avoidance of doubt, all rights, duties, and obligations of any HCMLP Released Party or Acis Released Party created by this Release or the Settlement Agreement shall survive its execution.

b. This Release, together with the Settlement Agreement and any exhibits thereto, contains the entire agreement between the Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between the Parties relating thereto.

c. This Release may not be modified other than by a signed writing executed by the Parties.

d. The effectiveness of this Release is subject in all respects to entry of an order of the Court approving this Release and the Settlement Agreement and authorizing HCMLP’s execution thereof.

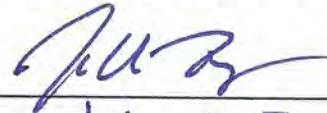
e. This Release may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument, and shall be effective against a Party upon the Effective Date.

f. This Release will be exclusively governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its conflicts of law principles, and all claims relating to or arising out of this Release, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Texas, excluding Texas’s conflicts of law principles. The Court will retain exclusive jurisdiction over all disputes relating to this Release. In any action to enforce this Release, the prevailing party shall be entitled to recover its reasonable and necessary attorneys’ fees and costs (including experts).


[SIGNATURE PAGE FOLLOWS]

IT IS HEREBY AGREED.


ACIS CAPITAL MANAGEMENT, L.P.

By: 
Name: Joshua N. Terry
Its: President

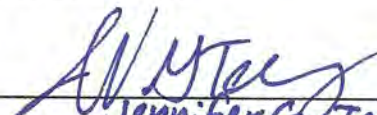
ACIS CAPITAL MANAGEMENT GP LLC

By: 
Name: Joshua N. Terry
Its: President

JOSHUA N. TERRY

By: 
Name: Joshua N. Terry
Its: Self

JENNIFER G. TERRY

By: 
Name: Jennifer G. Terry
Its: Self

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

IT IS HEREBY AGREED.

ACIS CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

ACIS CAPITAL MANAGEMENT GP LLC

By: _____
Name: _____
Its: _____

JOSHUA N. TERRY

By: _____
Name: _____
Its: _____

JENNIFER G. TERRY

By: _____
Name: _____
Its: _____

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: JAMES P. SIZERY, JR.
Its: CEO/CFO

HCMLP SPECIFIED PARTIES

SCOTT ELLINGTON

ISAAC LEVENTON

THOMAS SURGENT

FRANK WATERHOUSE

JEAN PAUL SEVILLA

DAVID KLOS

KRISTIN HENDRIX

TIMOTHY COURNOYER

STEPHANIE VITIELLO

KATIE IRVING

JON POGLITSCH

HUNTER COVITZ

Exhibit 17

Rakhee V. Patel – State Bar No. 00797213
 Phillip Lamberson – State Bar No. 00794134
 Jason A. Enright – State Bar No. 24087475
 Annmarie Chiarello – State Bar No. 24097496
WINSTEAD PC
 500 Winstead Building
 2728 N. Harwood Street
 Dallas, Texas 75201
 Telephone: (214) 745-5400
 Facsimile: (214) 745-5390
 rpatel@winstead.com
 plamberson@winstead.com
 jenright@winstead.com
 achiarello@winstead.com

Brian P. Shaw – State Bar No. 24053473
ROGGE DUNN GROUP, PC
 500 N. Akard St., Suite 1900
 Dallas, Texas 75201
 Telephone: (214) 888-5000
 Facsimile: (214) 220-3833
 shaw@roggedunnngroup.com

COUNSEL FOR REORGANIZED DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

In re:	§	Case No. 18-30264-SGJ-11
	§	Case No. 18-30265-SGJ-11
ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	(Jointly Administered Under Case
LLC,	§	No. 18-30264-SGJ-11)
	§	
Debtors.	§	Chapter 11
	§	

ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	
LLC, Reorganized Debtors,	§	
	§	Adversary No. 18-03078
Plaintiffs,	§	
	§	(Consolidated with Adversary Nos.
vs.	§	18-03212 & 19-03103)
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P., HIGHLAND CLO FUNDING, LTD.	§	
F/K/A ACIS LOAN FUNDING, LTD.,	§	
HIGHLAND HCF ADVISOR, LTD.,	§	
HIGHLAND CLO MANAGEMENT, LTD.,	§	
and HIGHLAND CLO HOLDINGS, LTD	§	
	§	
Defendants.	§	
	§	

PLAINTIFFS’ UNOPPOSED MOTION TO DISMISS LESS THAN ALL DEFENDANTS

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP") together with Acis LP, the "Reorganized Debtors" or "Acis") the reorganized debtors in the above-styled and jointly administered bankruptcy cases, and Plaintiffs in the in the above-styled adversary proceeding, file this *Unopposed Motion to Dismiss Less than All Defendants*, and respectfully state as follows:

1. Pursuant to Federal Rule of Bankruptcy Procedure 7041, Acis hereby requests the Court enter an order dismissing with prejudice all of the claims that were brought, or could have been brought, by and between Acis and Defendants Highland Capital Management, L.P., Highland HCF Advisor, Ltd, Highland CLO Management, Ltd., and Highland CLO Holdings, Ltd. (collectively the "Highland Released Parties"). The Highland Released Parties, for their part, request dismissal of any and all claims asserted, or that could have been asserted, against Acis, including but not limited to the pre-petition, gap and administrative claims asserted by Highland Capital Management, L.P. against Acis, the adjudication of which had been consolidated in this adversary proceeding. The parties have agreed to respectively bear their own attorneys’ fees and costs of court.

2. This requested dismissal shall have no effect on the claims of any Defendant other than the Highland Released Parties.

DATED: November 3, 2020

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Respectfully submitted,

By: Brian P. Shaw

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COUNSEL FOR REORGANIZED DEBTORS

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for the Highland Released Parties, who stated that they are unopposed to the relief sought in and approve of the form of this Motion.

Brian P. Shaw
BRIAN P. SHAW

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2020, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District.

Brian P. Shaw

BRIAN P. SHAW

Exhibit 18



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed November 6, 2020

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Case No. 18-30264-SGJ-11
	§	Case No. 18-30265-SGJ-11
ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	(Jointly Administered Under Case
LLC,	§	No. 18-30264-SGJ-11)
	§	
Debtors.	§	Chapter 11
	§	

ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	
LLC, Reorganized Debtors,	§	
	§	Adversary No. 18-03078
Plaintiffs,	§	
	§	(Consolidated with Adversary Nos.
vs.	§	18-03212 & 19-03103)
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P., HIGHLAND CLO FUNDING, LTD.	§	
F/K/A ACIS LOAN FUNDING, LTD.,	§	
HIGHLAND HCF ADVISOR, LTD.,	§	
HIGHLAND CLO MANAGEMENT, LTD.,	§	
and HIGHLAND CLO HOLDINGS, LTD	§	
	§	
Defendants.	§	
	§	

ORDER DISMISSING LESS THAN ALL DEFENDANTS

Upon the *Motion to Dismiss Less Than All Defendants* [Docket No. 215] (the “Motion”)¹ filed by the above-captioned Plaintiffs; this Court having reviewed the Motion, any and all other documents filed in support of or in opposition to the Motion; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED**.
2. All of claims that were brought, or could have been brought, by and between Acis and Defendants Highland Capital Management, L.P., Highland HCF Advisor, Ltd, Highland CLO Management, Ltd., and Highland CLO Holdings, Ltd. (collectively the “Highland Released Parties”) are dismissed with prejudice to the re-filing of same. Acis and the Highland Released Parties shall respectively bear their own attorneys’ fees and costs of court.
3. The Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Exhibit 19

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	Case No. 19-12239 (CSS)
)	
Debtor.)	
)	

**DECLARATION OF FRANK WATERHOUSE
IN SUPPORT OF FIRST DAY MOTIONS**

I, Frank Waterhouse, hereby declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I hold the job title of Chief Financial Officer of the above-captioned debtor and debtor in possession (the “Debtor”). I am also a Partner of the Debtor and Treasurer of the Debtor’s general partner, Strand Advisors, Inc.

2. I initially joined the Debtor as a corporate accountant in October 2006. Since then, I have held various accounting and finance positions with the Debtor and assumed the job title of Chief Financial Officer in December 2011. Prior to joining the Debtor, I was employed with PricewaterhouseCoopers in its Technology Assurance practice. I have had a diverse career spanning cancer research with M.D. Anderson Cancer Center to financial consulting with Salomon Smith Barney. I received an M.P.A. from the University of Texas at Austin, an M.B.A. from the University of Houston and a B.S. in Microbiology and a B.S. in

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Molecular Biology from the University of Texas at Austin. I am a licensed Certified Public Accountant

3. I submit this declaration (the “Declaration”) in support of the Debtor’s petition and “first day” motions, as described further below (collectively, the “First Day Motions”). Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of the Debtor’s books and records, relevant documents, and other information prepared or collected by the Debtor’s representatives, or my opinion based on my experience with the Debtor’s operations and financial condition. In making my statements based on my review of the foregoing, I have relied upon the Debtor’s representatives accurately recording, preparing, or collecting such documentation and other information. I am authorized to submit this Declaration on behalf of the Debtor.

4. Part I of this Declaration describes the Debtor’s business and the developments that led to the filing for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Part II discloses certain ordinary course transactions that the Debtor intends to continue postpetition. Part III sets forth the relevant facts in support of the First Day Motions filed by the Debtor concurrently herewith in support of its chapter 11 case. Capitalized terms not defined herein shall have the same meanings as set forth in each relevant First Day Motion.

PART I

BACKGROUND

A. Description and History of the Debtor’s Business

5. Highland Capital Management, L.P. (together with its affiliates, “Highland”) is a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm has evolved over 25 years, building on its credit expertise and value-based approach to expand into other asset classes.

6. Today, Highland operates a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, Highland’s investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, Highland provides shared services to its affiliated registered investment advisors.

7. Highland is headquartered in Dallas, Texas and maintains offices in Buenos Aires, Rio de Janeiro, Singapore, and Seoul.

8. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships. Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for approximately \$2.5 billion of assets under management. Separately, the Debtor provides shared services for approximately \$7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. None of these affiliates are filing for Chapter 11 protection.

9. The Debtor primarily generates revenue from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity as and when needed, the Debtor intends to sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC (“Jefferies”), as described in additional detail below. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor’s stand-alone annual revenue totaled approximately \$50 million. Through August 31, 2019, the Debtor’s stand-alone revenue for the year to date totaled approximately \$24 million.

10. The Debtor’s organizational chart is attached hereto as **Exhibit A**. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity. As noted above, the Debtor is a Delaware limited partnership.

B. The Debtor’s Prepetition Capital Structure

i. Jefferies Margin Borrowings (Secured)

11. The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the “Brokerage Agreement”). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with Jefferies (the “Prime Account”).

12. A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker’s street name.

As of October 11, 2019, the Debtor held approximately \$87 million in liquid and illiquid equity and debt securities (the “Securities”) in the Prime Account and had borrowed approximately \$30 million on margin from Jefferies secured by the Securities. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof. As of October 11, 2019, the Debtor had approximately \$9.6 million of excess margin in the Prime Account. The Debtor does not intend to borrow any additional amounts on margin, absent the approval of this Court. As reflected in the Budget, the Debtor intends to liquidate certain of the Securities for cash and to use such cash in the Debtor’s operations and to satisfy ongoing chapter 11 administrative expenses. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business.

ii. The Frontier Bank Loan (Secured)

13. The Debtor and Frontier State Bank (“Frontier Bank”) are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the “Original Frontier Loan Agreement”), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of \$9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain *First Amended and Restated Loan Agreement* (the “Amended Frontier Loan Agreement”), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional \$1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the “Frontier Loan”). The Frontier Loan matures on August 17, 2021.

14. Pursuant to that certain *Security and Pledge Agreement* dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor's obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the "Frontier Prepetition Collateral"). For the avoidance of doubt, the Debtor does not seek authority to liquidate any portion of the Frontier Prepetition Collateral and is not requesting the use of the Frontier Prepetition Collateral.

15. As of the Petition Date, the aggregate principal balance of the Frontier Loan was approximately \$5.2 million.

iii. The CLO Purchase Agreement (Unsecured)

16. On October 7, 2016, the Debtor and Acis Capital Management L.P. ("Acis") entered into that certain *Agreement for Purchase and Sale of CLO Participation Interests* (the "CLO Purchase Agreement" and the promissory note therein, the "CLO Note"). Previously, Acis managed certain collateralized loan obligations ("CLOs") identified in the CLO Purchase Agreement and was entitled to fee compensation in connection therewith (the "Servicer Fees").² The Debtor's obligations under the CLO Purchase Agreement and CLO Note are unsecured.

17. Pursuant to the CLO Purchase Agreement, Acis sold a portion of its future Servicer Fees to the Debtor in exchange for cash flows from the Debtor, as evidenced in the CLO Note (such Servicer Fees to be paid to the Debtor, the "Debtor Stabilization Fees" and such cash flows from the Debtor, the "Stabilization Payment").

² Acis was subsequently the subject of an involuntary bankruptcy filing in 2018.

18. Pursuant to that certain *Agreement for Assignment and Transfer of Promissory Note* dated as of November 3, 2017 (the “CLO Assignment Agreement”), Acis assigned all of its right, title, and interests in the CLO Note, including the right to any and all Stabilization Payments not yet paid to Acis, to Highland CLO Management, Ltd. (“HCLOM”). The Debtor does not have any beneficial ownership interest in HCLOM.

19. Pursuant to that certain *Amended and Restated Forbearance Agreement* dated as of May 31, 2019, by and between the Debtor and HCLOM, HCLOM agreed not to demand payment of the Stabilization Payments under the CLO Note for a period of one year (*i.e.*, until June 1, 2020).

20. As of the Petition Date, the aggregate principal balance of the CLO Note was approximately \$9.5 million.

iv. Other Unsecured Obligations

21. The Debtor has various substantial litigation claims asserted against it, including a recent arbitration award in the purported amount of approximately \$189 million.

22. In addition, the Debtor has ordinary course trade debt totaling less than \$10 million, accrued and unaccrued employee bonus obligations totaling approximately \$30 million, and contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that could total in the tens of millions of dollars.

C. Events Leading to the Debtor’s Bankruptcy Filing and Commencement of the Chapter 11 Case

26. The Debtor’s filing was precipitated by an arbitration award (the “Award”) initially issued against the Debtor in March 2019, as subsequently modified and finalized, by a panel of the American Arbitration Association, in favor of a Committee of Redeemers in the Highland Crusader Fund (the “Redeemer Committee”).

27. The Debtor was formerly the investment manager for the Highland Crusader Fund (the “Crusader Fund”) that was formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Fund investors, as the Crusader Fund’s assets lost significant value.

28. On October 15, 2008, the Debtor placed the Crusader Fund in wind-down, thereby compulsorily redeeming the Crusader Fund’s limited partnership interests. The Debtor also declared that it would liquidate the Crusader Fund’s remaining assets and distribute the proceeds to investors.

29. However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a *Joint Plan of Distribution of the Crusader Fund* (the “Crusader Plan”), and the *Scheme of Arrangement* between Highland Crusader Fund and its Scheme Creditors (the “Crusader Scheme”), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Fund’s investors to oversee the Debtor’s management of the Crusader Fund.

satisfy the Award or post a supersedeas bond necessary to pursue an appeal. The Debtor intends to utilize the breathing spell provided by the automatic stay to consider all of its restructuring options with the goal of ultimately proposing a chapter 11 plan that will maximize the value of the estate's assets for the benefit of all constituents. To assist and coordinate the restructuring process, the Debtor retained Bradley D. Sharp as Chief Restructuring Officer of the Debtor (the "CRO") on October 7, 2019.

PART II

ORDINARY COURSE ACTIVITIES

34. During the pendency of the chapter 11 case, the Debtor intends to continue operating its business in the ordinary course. Part of that business includes the purchase and sale of securities held through the Prime Account. In order to raise cash for its ordinary course operations and other projected chapter 11 administrative expenses, the Debtor intends to liquidate certain securities held in the Prime Account on a postpetition basis in the ordinary course. Additionally, Debtor is the majority owner and investment manager of a non-Debtor affiliate called Highland Select Equity Fund, L.P. (the "Select Fund").³ Ordinary course operations of Select Fund include the purchase and sale of securities. With respect to any trades in either the Prime Account or the Select Equity Fund, the Debtor will follow the following protocol: (i) all trades will be with unaffiliated third parties; (ii) all securities will be traded through either a public or over-the-counter exchange; and (iii) all trades will be fully disclosed to

³ The Select Fund is a Delaware limited partnership whose limited partnership interests are majority-owned by the Debtor. The balance of such interests are held directly or indirectly by affiliates of the Debtor, including James Dondero. The Select Fund is managed by its general partner, Highland Select Equity Fund GP, L.P., a Delaware limited partnership (the "Select Fund GP"). The Select Fund GP is directly and indirectly wholly-owned by the Debtor. The Debtor, through the Select Fund GP, can cause the Select Fund to buy and sell assets under its Investment Management Agreement.

the CRO.

35. Further, in the ordinary course of business, the Debtor may be the named counterparty with various broker dealers through which the Debtor trades securities on behalf of its clients. Any transactions that the Debtor executes on behalf of its clients are settled through non-Debtor client accounts pursuant to a standardized internal allocation system. As such, the Debtor has no property interest in any such assets, nor is the Debtor likely to have any liability if any trade fails.⁴ The Debtor simply as a matter of convenience interacts in its own name with the various broker dealers on behalf of its clients. Certain dealers have suggested that the Debtor should no longer be the named counterparty now that the Debtor is in bankruptcy and, instead, that a non-Debtor entity act as the “street name” on the trades. The Debtor is considering this request and intends to comply to the extent necessary.

36. Although the Debtor believes that it has the authority to conduct its business going forward in the ordinary course, the Debtor will file a precautionary motion with the Court, out of an abundance of caution, as soon as practicable after the Petition Date seeking approval to continue conducting its business in the ordinary course pursuant to section 363(c)(1) and, to the extent necessary, section 363(b) of the Bankruptcy Code (the “Ordinary Course Motion”).

37. In addition, and as will be set forth more fully in the Ordinary Course Motion, the Debtor also intends to seek authority to continue the operation of its three primary business lines: (i) proprietary trading; (ii) investment management; and (iii) the provision of

⁴ Under the Debtor’s internal policies and procedures, liability for payment on unsettled trades rests solely with the managed funds on whose behalf the trade was executed.

certain middle and back office services to other registered investment advisors (collectively, the “Ordinary Course Services”). Generally speaking, the Ordinary Course Services are as follows:

a. **Proprietary Trading.** The Debtor buys and sells securities for its own account through the Prime Account and the Select Fund and has invested, in its own name, as a limited partner in two unaffiliated private equity style funds (the “PE Entities”). The Debtor has certain obligations to fund capital calls made by the PE Entities, which it intends to continue following the Petition Date.

b. **Investment Management.** The Debtor provides investment management and advisory services to its clients, which include hedge funds, private equity style funds, separately managed accounts, and collateralized loan obligations. As part of these services, the Debtor, in most cases, has the authority to cause its clients to buy or sell assets if the Debtor believes such purchases or sales would be advantageous. With certain exceptions, the clients pay the Debtor a fee for providing these services, which generally consists of a management fee based on the total amount of assets managed and, for certain funds, an incentive fee based on the returns generated for the client.

c. **Shared Services.** The Debtor provides certain middle and back office support to other registered investment advisors pursuant to shared services agreements. The Debtor receives a fee for providing these shared services.

38. The fees and investment returns generated from the foregoing three business lines are the Debtor’s primary source of income and are necessary for the Debtor’s successful reorganization. Although the Debtor believes that it has the authority to continue operating its business in the ordinary course without Court approval, the Debtor intends to file

the Ordinary Course Motion out of an abundance of caution in order to provide clarity to its customers – as well as its creditors – that the Debtor can continue operating as a going concern and generating positive returns. If the Debtor is not able to continue providing such services or is required to seek prior approval from this Court to buy or sell assets in every instance, the Debtor’s ability to generate positive returns for its clients and creditors in this fast moving marketplace will be severely compromised.

PART III

FIRST DAY MOTIONS

39. In order to enable the Debtor to minimize the adverse effects of the commencement of the chapter 11 case, the Debtor has requested various types of relief in the First Day Motions filed simultaneously with this Declaration. A summary of the relief sought in each First Day Motion is set forth below.

40. I have reviewed each of these First Day Motions (including the exhibits and schedules thereto). The facts stated therein are true and correct to the best of my knowledge, information, and belief. I believe that the type of relief sought in each of the First Day Motions: (a) is necessary to enable the Debtor to operate in chapter 11 with minimal disruption; and (b) is essential to maximizing the value of the Debtor’s assets for the benefit of its estate and creditors.

A. Motion of Debtors for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (the “Cash Collateral Motion”)

41. Through the Cash Collateral Motion, the Debtor seeks the entry of interim and final orders: (a) authorizing the Debtor to use cash collateral, (b) providing adequate

protection to the Debtor's prepetition broker and margin creditor, Jefferies LLC

("Jefferies"), (c) authorizing the liquidation of securities by the Debtor, and to cause its non-Debtor affiliates to do the same, in the ordinary course of business, and (d) modifying the automatic stay.

42. The Debtor has a prime brokerage account with Jefferies (*i.e.*, the Prime Account) that contains approximately \$87 million of the Debtor's liquid and illiquid securities. Through the Prime Account, the Debtor has borrowed approximately \$30 million on margin from Jefferies. Such margin balance is secured by the Debtor's securities in the Prime Account and any proceeds thereof. The Debtor submits that the collateral pledged to secure the margin debt to Jefferies far exceeds the amount due. Nonetheless, the Debtor anticipates that Jefferies may assert an interest in any cash in the Prime Account. Although the Cash Collateral Motion is filed on a non-consensual basis, the Debtor will endeavor to negotiate the terms of a consensual cash collateral order with Jefferies in advance of the interim hearing on the Cash Collateral Motion.

43. The Debtor has an urgent and immediate need for the use of cash, including the Cash Collateral. The Debtor has not obtained postpetition financing and, without the use of Cash Collateral, the Debtor will not be able to operate as a going concern or preserve its assets for the benefit of its creditors.

44. The Debtor itself is the operating arm of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. Pursuant to various contractual arrangements, the Debtor provides money

management and advisory services to a variety of affiliated and unaffiliated entities with respect to a wide range of asset classes. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships.

45. As set forth in the Budget, the Debtor anticipates funding this Chapter 11 Case with cash on hand, postpetition receipts on account of management services and sales of liquid assets, including the Securities in the Prime Account, and projected distributions from subsidiaries. Proceeds of the Securities in the Prime Account comprise collateral of Jefferies and, pursuant to the Cash Collateral Motion, the Debtor seeks authority to use such Cash Collateral in the ordinary course of business to preserve its operations and thereby maximize the value of the Debtor's assets for the benefit of its creditors.

46. Notably, Jefferies will be adequately protected by a substantial equity cushion in the Prime Account and the Replacement Lien, the Adequate Protection Lien, and the Adequate Protection Claim.

47. Without immediate access to Cash Collateral, the repercussions to the Debtor's restructuring efforts will be catastrophic and likely irreparable, ending its ability to maximize value for the benefit of all constituents. The Debtor needs to fund, among other things, payroll obligations, payments to vendors for ongoing goods, services, and rent, and other administrative obligations.

48. If the Motion is not approved, the Debtor's only alternative would be a piecemeal liquidation that would substantially handicap recoveries by creditors and eliminate the Debtor's going concern value. Hence, the relief sought in the Cash Collateral Motion should be granted as soon as possible, at least on an interim basis.

B. Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (the “Cash Management Motion”)

49. Pursuant to the Cash Management Motion, the Debtor seeks the entry of an order authorizing: (a) the Debtor to continue using its existing cash management system and brokerage relationships in the ordinary course of business; (b) the Debtor to make intercompany transactions; and (c) a limited waiver of section 345(b) deposit and investment requirements.

50. The Debtor’s cash management system (the “Cash Management System”) facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtor’s business. The Cash Management System currently consists of six accounts (collectively, the “Bank Accounts”) held in the name of the Debtor at BBVA USA (“BBVA”) and NexBank, SSB (“NexBank”). BBVA and NexBank are together referenced herein as the “Banks.”

51. BBVA is a bank regulated by the Federal Reserve, and its deposits are insured by the Federal Deposit Insurance Corporation (the “FDIC”). NexBank is Texas-based savings bank that is regulated by the FDIC, and its deposits are FDIC-insured. NexBank is indirectly owned by James Dondero and Mark Okada. Mr. Dondero is an insider of the Debtor and the owner of 100% of the equity in the Debtor’s general partner, Strand Advisors, Inc. Mr. Dondero also has an indirect interest in the Debtor’s Class A limited partnership interests. Mr. Okada is an insider of the Debtor and has an interest in the Debtor’s Class A limited partnership interests.

52. The following chart sets forth the Bank Accounts and their balances as of the close of business on October 15, 2019:

Bank	Account Type	Account No.	Balance
NexBank	Checking Account	XXXX735	\$1,435.40
NexBank	Checking Account	XXXX668	\$0.00
NexBank	Checking Account	XXXX513	\$291,309.27
NexBank	Certificate of Deposit	XXXXXX891	\$135,205.21
NexBank	Money Market Deposit Account	XXXX130	\$190.82
BBVA	Checking Account	XXXXXXXX342	\$2,125,975.28

53. Master Operations Account. The Debtor’s main operating account is its account at BBVA (Account No. 342) (the “Master Account”). Except for payment of certain intercompany expenses discussed below, all proceeds from the Debtor’s operations flow into the Master Account and, on average, the Debtor receives approximately \$8 million in deposits into the Master Account every month though deposits can vary significantly on a month-to-month basis. Virtually all of the Debtor’s expenses, including payroll expenses, are paid from the Master Account either through the issuance of paper checks or via wire or other electronic transfers. As described below, the Debtor also uses the Master Account to fund certain Intercompany Transactions (as defined below).

54. Money Market Account. The Debtor maintains a money market deposit account at NexBank (Account No. 130) (the “Money Market Account”). Although the Debtor does not have a specific policy governing the Money Market Account, the Debtor generally sweeps excess cash from the Master Account into the Money Market Account in order to earn

additional interest.⁵ Conversely, if the Debtor needs additional funds to pay expenses, it will transfer money from the Money Market Account to the Master Account. The Debtor also receives payments into the Money Market Account from certain of its non-Debtor affiliates in consideration for providing certain services, such as back office support, pursuant to the terms of various contracts. The Debtor generally does not pay expenses from the Money Market Account, except for employee bonuses with respect to newly-granted awards paid each February.

55. Insurance Account. The Debtor maintains a self-funded health insurance plan for its employees and the employees of certain of its affiliates. To facilitate this plan, the Debtor maintains an account with NexBank (Account No. 513) (the “Insurance Account”). The Debtor transfers the monthly insurance premiums for its employees from the Master Account to the Insurance Account, and certain of the Debtor’s affiliates that participate in the health insurance plan also fund money into the Insurance Account. The amounts held in the Insurance Account are then used to pay health insurance claims made by the Debtor’s or its affiliates’ employees. If a claim is made against the Insurance Account by an employee of a Debtor affiliate, the Debtor affiliate is billed for the amount of the claim. Besides health insurance claims, the only payments made from the Insurance Account are those made to Blue Cross Blue Shield, which administers the health insurance plan.

56. Certificate of Deposit. The Debtor has a certificate of deposit (Account No. 891) at NexBank (the “Certificate of Deposit”). The Certificate of Deposit was originally

⁵ The Money Market Account is a money market deposit account, not a money market fund. As such, amounts deposited in the Money Market Account are not invested in any other securities, like certificates of deposits. Rather, the Money Market Account is a demand deposit account with a higher interest rate than a regular checking or savings account.

opened in June 2008 with a principal balance of \$1,400,000. The current balance is \$135,205.21. The Certificate of Deposit is renewed every June and currently accrues interest at a rate of 2.67% per annum.

57. The Debtor's remaining two accounts at NexBank – Account No. 735 and Account No. 668 – are legacy accounts that have not been utilized in many years. Account No. 735 holds a *de minimis* amount of cash and is accruing interest. Account No. 668 has a balance of zero dollars.

i. Prime Brokerage Account

58. As described in Part I above, the Debtor maintains the Prime Account with Jefferies. As of October 11, 2019, the Debtor held approximately \$87 million in Securities in the Prime Account and had borrowed approximately \$30 million on margin from Jefferies against the Securities.

ii. Intercompany Transactions.

59. As noted above, the Debtor occasionally engages in intercompany cash transactions with certain of its affiliates. These transfers include (a) the movement of cash to and from the Insurance Account to fund the payment of health insurance claims and (b) the receipt of cash in the Master Account in connection with the provision of services to certain non-Debtor affiliates. In addition to the foregoing, the Debtor also funds the following using the Master Account:

a. **Highland Multi Strategy Credit Fund, L.P.** The Debtor serves as the investment manager for Highland Multi Strategy Credit Fund, L.P. ("MCSF") and is also a limited partner in MCSF. MCSF invests in and holds life settlement policies that require regular

payment of premiums (generally monthly) to keep the policies from lapsing. If the policies were to lapse, MCSF would be unable to collect when the proceeds of such policies become realizable and, consequently, its ability to make distributions to the Debtor as a limited partner or pay amounts owed to the Debtor as the investment manager would be impaired. Because MSCF has limited liquidity, the Debtor provides MSCF the funding required to pay the premiums on its life settlement policies, among other expenses, in the amount of approximately \$1 million per month. In return, MSCF issues on demand, zero interest notes to the Debtor, which will be repaid once MSCF's investments become liquid.

b. **Highland Capital Management Korea Limited.** Highland Capital Management Korea Limited ("HCM Korea") is a wholly-owned subsidiary of the Debtor and an affiliated investment advisor domiciled in South Korea. HCM Korea is the advisor for, and minority limited partner in, an investment fund (the "HCM Korea Fund"). Each limited partner in the HCM Korea Fund, including HCM Korea, is required to provide capital when called by the HCM Korea Fund, and the failure to fund capital calls could lead to a default under the HCM Korea Fund's partnership agreement. Because of HCM Korea's limited liquidity, the Debtor has provided HCM Korea with a revolving note pursuant to which the Debtor has extended up to \$20 million in credit for HCM Korea to use to fund its commitments to the HCM Korea Fund. The note is at zero percent interest, and there is currently approximately \$3.06 million outstanding on the note. The Debtor anticipates that HCM Korea will draw an additional \$3 million on the note over the next one to two years and will repay the note as the HCM Korea Fund realizes gains on its portfolio and distributes those gains to its investors.

c. **Highland Capital Management Latin America, L.P.** Highland Capital Management Latin America, L.P. (“HCM Latin America”) is a wholly owned subsidiary of the Debtor and an affiliated investment advisor domiciled in the Cayman Islands. HCM Latin America is the advisor for an investment fund investing primarily in Argentina (the “SA Fund”). HCM Latin America employs several consultants to assist in advising and marketing the SA Fund. However, because of the recent instability in the Argentinian market, the value of the SA Fund dropped precipitously and consequently, the SA Fund does not currently generate sufficient fees to cover the cost of these consultants. In addition to its original equity contribution, the Debtor has been contributing equity to HCM Latin America to help cover its costs during the downturn. To date, the Debtor has provided approximately \$0.7 million in additional equity to cover such operating costs. The Debtor anticipates that HCM Latin America will require additional equity contributions of between \$1 million to \$1.5 million per year until the Argentinian market recovers. However, because of HCM Latin America’s fee structure, there are opportunities for HCM Latin America to make outsized returns depending on the SA Fund’s performance, and, in the event of an Argentinian recovery and a concomitant uptick in the SA Fund, HCM Latin America’s fee revenue and profitability will also increase. Consequently, the Debtor believes that contributing equity now will lead to increased returns on its investment in HCM Latin America going forward.

d. **Highland Capital Management (Singapore) Pte Ltd.** Highland Capital Management (Singapore) Pte Ltd. is a wholly owned subsidiary of the Debtor based in Singapore (“HCM Singapore”). Historically, HCM Singapore has been a marketing office that has solicited investments in the Debtor’s managed funds from Asian-based institutional

investors. To facilitate HCM Singapore’s marketing efforts, the Debtor agreed to cover HCM Singapore’s costs. The Debtor agreed to this arrangement as any capital raised by HCM Singapore would directly increase the management fees – and potentially long-term incentive fees – earned by the Debtor. The Debtor believes such increased revenue, should it materialize, would more than offset the costs paid by the Debtor.

e. **Expense Allocations.** As is customary among investment advisors, the Debtor tasks its employees with researching and evaluating potential investments and opportunities for the Debtor’s clients. The Debtor also provides certain back office support for its clients from time to time. In order to provide such services, the Debtor has directly contracted with various service providers and is required to pay for such services. However, pursuant to the Debtor’s expense allocation policy, such expenses are then allocated amongst the Debtor and its various clients either pro rata based on the assets owned by a client or otherwise in a manner consistent with the policy. Consequently, although the Debtor fronts these costs, the Debtor is reimbursed for a portion of such costs by its clients. On a monthly basis, the Debtor generally expects to pay approximately \$450,000 for such services and is reimbursed for a substantial majority of such costs by its clients or affiliates.

60. The transactions described in the foregoing paragraphs are referred to collectively as the “Intercompany Transactions.”

61. By Cash Management Motion, and out of an abundance of caution, the Debtor seeks authority to make the Intercompany Transactions and to satisfy postpetition obligations associated with the Intercompany Transactions. Moreover, the Debtor seeks

authority, to the extent required, to transfer funds between the Bank Accounts as described above.

62. The Debtor seeks a waiver of the United States Trustee's requirement for the closure of the Bank Accounts (and potentially the Prime Account) and opening of new postpetition bank accounts at depositories authorized by the United States Trustee. If strictly enforced in this chapter 11 case, the requirement to close and open new bank accounts could cause a severe disruption in the Debtor's activities and could impair the Debtor's ability to operate under chapter 11 of the Bankruptcy Code. Maintenance of the Bank Accounts, the Prime Account, and the Cash Management System generally will greatly facilitate the Debtor's operations for the duration of this chapter 11 case.

63. If the Bank Accounts were closed, the Debtor would need to undertake the laborious effort of opening new bank accounts and, with respect to the Prime Account, establishing a new brokerage account to hold and maintain the Securities, which would require the satisfaction of any outstanding margin balances. Any disruption to the Debtor's operations would severely impact its ability to operate at this critical juncture. If the Debtor were required to close the Bank Accounts and the Prime Account, and open new debtor in possession accounts, the Debtor would be forced to reconstruct its cash management system in its entirety. Moreover, as noted above, the closure of the Prime Account would trigger the repayment of the approximately \$30 million that has been borrowed against the Securities.

64. In the ordinary course of the operation and maintenance of the Cash Management System, the Debtor incurs routine charges and fees relating to the administration of the Cash Management System. While it is difficult to readily determine the aggregate amount of

unpaid prepetition account fees and charges as of the Petition Date, on average, the Debtor pays BBVA approximately \$4,500 in quarterly fees and charges. The Debtor does not pay fees to NexBank. The Debtor seeks authority, in its sole discretion, to pay any such routine and ordinary course prepetition fees and charges, and to continue the postpetition payment of such fees and charges in the ordinary course of business.

65. As addressed above, the Debtor may utilize the Cash Management System for the Intercompany Transactions. Other than as described herein, no other Intercompany Transactions occur. The Debtor believes that the Intercompany Transactions described herein are beneficial to its estate and creditors and other parties in interest and, therefore, should be authorized by the Court.

66. In sum, the Debtor submits that the relief requested in the Cash Management Motion is necessary to avoid immediate and irreparable harm and should be granted by this Court.

C. Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (the “Wage Motion”)

67. Pursuant to the Wage Motion, the Debtor seeks the entry of an order authorizing: (a) authorizing the Debtor to (i) to pay all prepetition Workforce Compensation and all costs related to the prepetition Benefit Programs, as set forth in the Wage Motion; and (ii) maintain and continue to honor the Benefit Programs as they were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business; and (b) authorizing the Banks to honor and process checks and electronic

transfer requests for payment of prepetition obligations with respect to the Workforce

Compensation and Benefit Programs. The Debtor does not seek authority to pay any Employees on account of Wages in excess of the statutory cap of \$13,650.

i. The Debtor's Workforce

68. The Debtor employs approximately 76 employees (the "Employees"), all but one of whom are full-time Employees. Approximately 55 Employees are salaried workers, while approximately 21 are hourly Employees. Except as otherwise noted, the Debtor provides the Benefit Programs (discussed below) to all of its Employees.

69. In addition to the Employees, the Debtor also periodically retains specialized individuals as independent contractors and temporary workers (the "Independent Contractors") to complete certain projects or tasks. As of the Petition Date, the Debtor retained approximately six (6) Independent Contractors. The Independent Contractors are a critical supplement to the efforts of the Employees and integral to the Debtor's operations and business.

70. Typically, the Employees, as well as the Independent Contractors, rely on their compensation and benefits (as applicable) to pay their daily living expenses and to support their families. If the Debtor is not permitted to continue to pay wages and salaries, provide employee benefits, and maintain benefit programs in the ordinary course of business, many of the Employees may be exposed to significant financial constraints. Consequently, the Debtor respectfully submits that the relief requested herein is necessary and appropriate under the facts and circumstances of this chapter 11 case.

71. As explained in more detail below, the Debtor seeks authority to pay, in its discretion, any prepetition amounts owed for the programs and benefits described in the Wage

Motion up to the cap amounts set forth in the chart below. The Debtor also seeks authority to continue to pay amounts related to the programs described in the Wage Motion in the ordinary course of business.

BENEFIT/PROGRAM	CAP AMOUNT⁶
Wages	\$50,000
Independent Contractor Compensation	\$40,000
Payroll Processor	\$2,500
Medical Plan/FSA	\$200,000
Dental Plan	\$15,000
Life and Disability Plans	\$15,000
Workers Compensation Plan	\$5,000
COBRA	\$2,500
401(k) Plan	\$25,000
Other Employee Benefits	\$20,000
Reimbursable Expenses	\$110,000
Independent Contractor Compensation	\$40,000s

ii. Employee and Contractor Compensation

72. Employee compensation is comprised primarily of wages and salaries (“Wages”).⁷ The current average payroll of the Debtor is approximately \$240,000 per calendar week on account of Wages.

⁶ Unless otherwise noted, the dollar caps included in the table above and in the proposed order include reasonable cushions in the event that the Debtor’s estimates herein are understated.

⁷ In addition to Wages, most Employees are eligible to receive bonuses under certain ordinary course programs. No commissions are paid to Employees. The Debtor will file a separate motion relating to ordinary course Employee

73. Employees are paid Wages on a semi-monthly payroll schedule (*i.e.*, on the 15th day of each month, or the business day immediately preceding the 15th day if that day falls on a weekend or holiday, and the last business day of the month). Per the Debtor's direction, payrolls are processed by a third party service provider, Paylocity (the "Payroll Processor"), and are generally funded with money in the Debtor's operating account one (1) business day prior to the applicable payroll date. Although the Payroll Processor typically withdraws funds from the Debtor's operating account using ACH, in some cases where the aggregate amount exceeds \$1,000,000 or the employee needs to be paid off-cycle as in the case of severance payments, the Debtor wires the money to the Payroll Processor or applicable employee recipient. The Payroll Processor then makes the applicable payroll distributions to Employees on the applicable payday.

74. The Debtor's last payroll was paid to Employees on October 11, 2019 (four days early in light of the Debtor's anticipated bankruptcy filing), on account of Wages earned from October 1, 2019, through October 15, 2019. The next payroll date is October 31, 2019, with employees to be paid concurrently. Although the last payroll was paid a few days early, it is nonetheless possible that certain Employees did not receive payment of their prepetition Wages. Accordingly, the Debtor requests authority to pay up to \$50,000 to Employees in the aggregate on account of Wages for prepetition services (excluding any vacation or other paid-time-off, reimbursable expenses, or other compensation).⁸

bonuses. The Debtor further reserves the right to seek approval of an additional bankruptcy-related key employee incentive plan and key employee retention plan.

⁸ As noted, unless stated otherwise, the dollar caps set forth herein include reasonable cushions in the event that the Debtor's estimates are understated.

iii. Payroll Administration Fees

75. As noted above, the Debtor uses the Payroll Processor to administer its payroll. The Debtor estimates that it owes no more than \$2,500 to the Payroll Processor on account of prepetition costs and fees for administrative services as of the Petition Date. The Debtor seeks authority to pay any and all prepetition amounts owing to the Payroll Processor up to the cap requested herein and to continue to make payments on account of such fees and charges in the ordinary course of business postpetition.

iv. Employee Benefits & Insurance Plans

76. The Debtor provides eligible Employees with several Benefit Programs, including (a) medical, dental, life, disability, and other insurance plans, (b) a 401(k) plan, and (c) other benefit programs.

(i) Medical Plan

77. The Debtor offers eligible Employees and their dependents 100% employer-paid PPO health insurance coverage (the "Medical Plan") through BlueCross BlueShield of Texas ("BCBS"). The Medical Plan is self-insured, but the Debtor maintains a stop-loss insurance policy with BCBS to cover catastrophic medical claims (the "Stop-Loss Insurance"). The total premiums cost of the Medical Plan, including the Stop-Loss Insurance, is approximately \$102,000 per month, paid by the Debtor each month in advance into a bank account used to pay medical/dental plan administrative fees and claims. From the total premiums of approximately \$102,000 per month, the Debtor pays approximately \$85,000 per month on average on medical claims asserted under the self-insured Medical Plan. Without the

Medical Plan, the Employees and their dependents would be forced to either forego health insurance coverage entirely or obtain themselves potentially expensive out-of-pocket insurance coverage, which would likely adversely affect the Employees' morale.

78. Relatedly, the Debtor provides Employees who participate in the Medical Plan with access to flexible spending accounts (the "FSA"), administered by Discovery Benefits, which can be used to cover incidental medical costs and dependent childcare. The Debtor pays Discovery Benefits, on average, \$300 per month for the administration of the FSAs. The Debtor does not make any contributions to any Employee's FSA.

79. The Debtor believes that, as of the Petition Date, no more than \$200,000 will be owed on account of obligations associated with the Medical Plan and the FSA. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of or related to the Medical Plan and FSAs (including any medical claims that may have accrued prepetition) up to the cap requested herein and to continue the Medical Plan and the FSA in the ordinary course of business postpetition.

(ii) *Dental Plan*

80. The Debtor offers eligible Employees a PPO dental insurance plan (the "Dental Plan") administered by BlueCross BlueShield of Texas. The Dental Plan premiums for eligible Employees and their dependents are paid by the Debtor. The average cost to the Debtor of maintaining the Dental Plan, including administrative costs and premiums, is approximately \$6,600 per month. As of the Petition Date, the Debtor estimates that no more than \$15,000 will be owed on account of obligations associated with the Dental Plan. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of the Dental Plan up

to the cap requested herein and to continue the Dental Plan in the ordinary course of business postpetition.

(iii) *Life and Disability Plans*

81. The Debtor provides all of its full-time Employees with basic life insurance, accidental death and dismemberment insurance, and short-term and long-term disability insurance (collectively, the “Standard Life and Disability Plans”), which are provided by Lincoln Financial; *provided, however*, the Debtor’s short-term disability insurance coverage is self-insured by the Debtor and administered by Lincoln Financial. Additionally, the Debtor offers its eligible senior personnel with additional life insurance and long-term disability insurance coverage (collectively, the “Executive Life and Disability Plans” and together with the Standard Life and Disability Plans, the “Life and Disability Plans”) provided by Brighthouse/MetLife and The Standard, respectively.

82. The Life and Disability Plans are fully paid for by the Debtor (except with respect to any supplemental coverage that is paid by the Employees through paycheck withholding deductions). In the aggregate, the Debtor’s average annual cost of maintaining the Life and Disability Plans, including administrative costs and premiums, is approximately \$140,000.⁹ As of the Petition Date, the Debtor estimates that no more than \$15,000 in prepetition obligations associated with the Life and Disability Plans will be owed. By the Wage Motion, the Debtor seeks authorization to pay any and all prepetition amounts due on account of the Life and Disability Plans (including, without limitation, any Employee claims payable under

⁹ This aggregate amount excludes any claim amounts that may be paid by the Debtor to recipients under the self-insured short-term disability insurance coverage.

the self-insured short-term disability insurance plan) up to the cap requested herein, and to continue the Life and Disability Plans in the ordinary course of business postpetition.

(iv) *Paid Time Off and Sick Time*

83. The Debtor grants paid time off to all Employees, which includes vacation and sick time (“PTO”), ranging from 15 to 24 days based on certain factors, in addition to holiday pay. Employees are able to carry forward up to 10 days of PTO for each year of service into a subsequent year (*e.g.*, after two years of service, an Employee can potentially roll over 20 days of PTO). In accordance with applicable state law, the Debtor pays all accrued PTO to Employees upon termination. As of the Petition Date, the accrued liabilities of the Debtor with respect to PTO are estimated to total approximately \$940,000. The Debtor seeks authority to allow Employees to use accrued prepetition PTO time after the Petition Date in the ordinary course. The Debtor further seeks authority to pay out any PTO owed to Employees who become separated from the Debtor postpetition to the extent required under the Debtor’s policies and applicable state law.

(v) *Workers’ Compensation Plan*

84. The Debtor provides all eligible Employees with workers’ compensation insurance (the “Workers’ Compensation Plan”) as required by federal and state law. The Workers’ Compensation Plan is a policy-based, fully insured plan provided by Chubb. The average annual cost of maintaining the Workers’ Compensation Plan, including administrative costs and premiums, is approximately \$11,000 in the aggregate. The Debtor makes payments to Chubb monthly in arrears. As of the Petition Date, the Debtor believes that no more than \$5,000 will be owed on account of prepetition obligations under the Workers’ Compensation Plan. By

the Wage Motion, the Debtor seeks authorization to satisfy all obligations related to the Workers' Compensation Plan, including, without limitation, premiums and any related fees, costs, and expenses up to the cap requested herein, and to continue its Workers' Compensation Plan in the ordinary course.

85. The Debtor submits that the continuance of the Workers' Compensation Plan is appropriate in the ordinary course of business, but out of abundance of caution, seeks authority to maintain the Workers' Compensation Plan in accordance with applicable law postpetition. The Debtor also seeks authority for relief from the automatic stay solely to allow holders of workers' compensation claims to proceed with their claims in accordance with the Workers' Compensation Plan and to allow the Workers Compensation Plan insurer to administer, handle, defend, settle and/or pay a claim covered by the Workers' Compensation Plan and the cost related hereto in accordance with such plan.

(vi) *COBRA*

86. Pursuant to the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"), the Debtor provides temporary continuation of healthcare benefits at group rates to former Employees after their termination, retirement, or disability leave. The former Employee or the Debtor bears the costs associated with COBRA, depending on the terms of the separation agreement between the former Employee and the Debtor. As of the Petition Date, the Debtor was responsible for COBRA related costs of approximately \$2,300 per month. The Debtor requests that former Employees and eligible dependents retain the right to coverage under the Medical Plan in accordance with the

requirements of the terms of COBRA and requests authorization to pay obligations arising under such plans, regardless of when such obligations accrued, up to \$2,500.

(vii) *401(k) Plan*

87. The Debtor allows eligible Employees to participate in a 401(k) plan (the “401(k) Plan”) administered by an independent third party, BOK Financial (the “401(k) Administrator”). The 401(k) Plan is funded by participating Employees through payroll withholding deductions, and the Debtor makes matching contributions up to 4% of the applicable Employee’s compensation (subject to certain annual caps of \$5,000 for highly compensated employees and \$11,000 for other employees). The Debtor estimates that it will fund approximately \$400,000 in total matching contributions in 2019; more than \$300,000 has been funded by the Debtor for this year to date. The Debtor intends to continue to make ordinary course matching contributions to the 401(k) Plan on a going forward basis.

88. The Debtor also has a discretionary profit sharing plan (the “Profit Sharing Plan”) administered by the 401(k) Administrator. For a given calendar year, Employees who are enrolled in the 401(k) Plan and employed by the Debtor as of December 31 of that year are eligible to participate in the Profit Sharing Plan. If profit sharing is approved for a given year, each eligible Employee would receive a percentage of his or her cash compensation based on various factors, and capped at a certain amount. The profit sharing contribution typically ranges from 4% to 7.5% of eligible compensation (for 2019, the maximum eligible compensation is \$280,000). The award is then paid into the 401(k) Plan for the Employee’s benefit as a Debtor contribution; this award vests upon three (3) years of service (with a year defined as 1,000 hours in a calendar year), but once the initial three (3) years of service has been met, all future awards

vest immediately. The approved profit sharing contributions for 2018 (approximately \$854,000) were previously funded by the Debtor prepetition. No profit sharing for year 2019 has been calculated or approved by the Debtor as yet, but would typically be approved in the ordinary course in February 2020 and would be payable no later than September 15, 2020. The Debtor will be filing a separate motion to seek authority to continue the Profit Sharing Plan on a postpetition basis in the ordinary course.

89. In the aggregate, with respect to 401(k) Plan, the Debtor annually pays approximately \$82,000 in administrative costs to the 401(k) Administrator (typically funded in part out of 401(k) Plan forfeitures), actuarial and legal costs of approximately \$50,000, and audit costs of approximately \$7,000 (audit cost is for 2018 audit which is nearly complete; 2019 audit has not yet been commenced).

90. The Debtor believes that, as of the Petition Date, all of Q3 2019 administrative costs and only a relatively *de minimis* amount of prepetition Q4 2019 administrative costs is owed relating to the 401(k) Plan. The Debtor seeks authorization to continue to pay any prepetition amounts due on account of the 401(k) Plan, including any administrative, audit or advisory fees, up to a cap of \$25,000 and to continue to pay postpetition costs of the 401(k) Plan in the ordinary course of business.

(viii) *Other Employee Benefits*

91. The Debtor provides eligible Employees with a number of other miscellaneous benefits (the “Other Employee Benefits”), which include, without limitation, (i) flexible spending accounts; (ii) daily catered lunches (the Debtor pays \$16 maximum per workday through GrubHub, *etc.*); (iii) cell phone service reimbursement (the Debtor provides

each eligible Employee \$100 per month in reimbursement); (iv) gym memberships (the Debtor pays gym dues of approximately \$25 per month for each eligible Employee); (v) paid office parking; and (vi) access to stocked office kitchens.

92. As the foregoing descriptions suggest, the aggregate cost of maintaining the Other Employee Benefits is relatively *de minimis*. The Debtor seeks authorization to pay any prepetition amounts that may be due on account of the Other Employee Benefits up to \$20,000, and to continue the Other Employee Benefits in the ordinary course of business postpetition.

v. **Reimbursable Expenses**

93. Prior to the Petition Date, the Debtor reimbursed Employees for Reimbursable Expenses incurred on behalf of the Debtor in the scope of their duties. The Reimbursable Expenses are incurred in the ordinary course of the Debtor's business operations and include, without limitation, reasonable expenses for business meals, travel, relocation, car rentals, and other business-related expenses. As of the Petition Date, the Debtor estimates that it owes no more than \$110,000 in Reimbursable Expenses. Although the Debtor has requested that Employees submit reimbursement requests promptly, Employees may nonetheless submit reimbursement requests for prepetition Reimbursable Expenses after the Petition Date. Absent authority to pay the Reimbursable Expenses incurred prepetition, the Employees could be obligated to pay such amounts out of their personal funds. The Debtor therefore seeks authority to pay all outstanding prepetition Reimbursable Expenses, and to continue its expense reimbursement policies in the ordinary course of business.

vi. **Withholding Obligations**

94. The Debtor routinely deducts amounts from Employees' compensation with respect to certain Withholding Obligations, including, but not limited to, various federal, state, and local income taxes, wage garnishments, flexible spending account contributions, dependent daycare account contributions, and 401(k) contributions (the "Employee Withholdings").

95. The Debtor is also responsible for remitting to third parties, for their own account, various taxes and fees associated with payroll pursuant to the Federal Insurance Contributions Act and federal and state laws regarding unemployment and disability taxes (the "Payroll Taxes"). On average, the Debtor pays approximately \$15,000 in the aggregate for employer-obligated Payroll Taxes each pay period.

96. The Debtor does not believe that any prepetition Withholding Obligations remain to be remitted to the appropriate parties. However, out of caution, the Debtor seeks authority to deduct and remit any outstanding prepetition Employee Withholdings and Payroll Taxes, and to continue to deduct and remit all owed Employee Withholdings and all owed Payroll Taxes to the appropriate third party recipients in the ordinary course of business.

vii. Independent Contractors

97. As noted above, the Debtor also uses and depends on various Independent Contractors. The Debtor makes payments to Independent Contractors ("Independent Contractor Compensation") and together with Wages, "Workforce Compensation") for the performance of certain specialized services important to the Debtor's business and operations, including, among other things, investment management, tax/legal, real estate advisory, executive recruiting, life settlements valuation / actuary, and other miscellaneous consulting services. On average, the

Debtor pays approximately \$80,000 per month in Independent Contractor Compensation. As of the Petition Date, the Debtor estimates that it may owe up to \$40,000 on account of accrued, unpaid Independent Contractor Compensation.

98. Importantly, the Debtor relies on the continuous support of Independent Contractors to handle and/or assist with projects and matters in furtherance of the Debtor's business. The Debtor believes the authority to continue paying the Independent Contractor Compensation, including any prepetition amounts, is critical to minimize disruption of the Debtor's operations. Accordingly, the Debtor seeks authority to satisfy any prepetition accrued but unpaid Independent Contractor Compensation up to \$40,000 and continue to pay the Independent Contractor Compensation on a postpetition basis in the ordinary course of business and consistent with past practices.

viii. Direction to Banks and Financial Institutions

99. The Debtor also seeks an order authorizing its banks and other financial institutions (collectively, the "Banks") to receive, process, honor, and pay all of the Debtor's prepetition checks and fund transfers on account of any prepetition amounts owed on account of or relating to Workforce Compensation or the Benefit Programs, including all checks issued with regard to any Workforce Compensation and Benefit Programs, and prohibiting the Banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for prepetition Workforce Compensation and Benefit Programs obligations. The Debtor also seeks an order authorizing the issuance of new postpetition checks or new postpetition funds transfers on account of prepetition Workforce Compensation and Benefit Program obligations to replace any prepetition checks or funds transfer requests that may

be dishonored or rejected, and to reimburse Employees or other applicable party for any fees or expenses incurred in connection with any rejected checks as a result of the Debtor's bankruptcy filing.

D. Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtors to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (the "Critical Vendor Motion")

100. Through the Critical Vendor Motion, the Debtor seeks the entry of interim and final orders (a) authorizing, but not directing, the Debtor to pay certain prepetition claims (each a "Critical Vendor Claim" and, collectively, the "Critical Vendor Claims") of certain essential vendors and service providers (each, a "Critical Vendor" and, collectively, the "Critical Vendors") on an interim basis not to exceed \$250,000 (the "Interim Critical Vendor Cap"), representing the critical expenditures the Debtor will need to make to Critical Vendors during the first four weeks of this case, and, on a final basis, not to exceed \$1,000,000 (the "Critical Vendor Cap") and (b) granting related relief.

101. The Debtor's business relies on continuing access to and relationships with various vendors and service providers. Any disruption in the Debtor's access to the provision of critical goods and services to the Debtor would have a far-reaching and adverse economic and operational impact on its business.

102. The bulk of the remaining goods and services that the Debtor depends on are provided by a critical network of vendors and service providers that, for the most part, conduct business with the Debtor on an invoice by invoice or purchase order by purchase order basis, and not pursuant to long-term contracts. These vendors typically supply their customers with services and products on trade terms based on their experience with and perceived risk of

conducting business with such customers. The Debtor believes that it would be extremely difficult, if not impossible, to replace the Critical Vendors within a reasonable time without severe disruption to the Debtor's business. Such harm would likely far outweigh the cost of payment of the Critical Vendor Claims.

103. Hence, it is essential to the success of the Debtor's restructuring effort that it be able to maintain the flow of goods, and services to its business.

104. Further, as discussed in the Cash Management, the Debtor will be reimbursed for a substantial amount of the payments made to Critical Vendors from the Critical Vendor Cap.

105. The Debtor undertook a process to identify the Critical Vendors using the following criteria: (i) whether certain specifications prevent the Debtor from obtaining a vendor's goods or services from alternative sources within a reasonable timeframe; and (ii) if a vendor is not a sole-source or primary provider of services or products, whether the Debtor can continue to operate in the ordinary course while a replacement vendor is secured. As a result of their critical review and evaluation, the Debtor has identified a narrow subset of vendors as Critical Vendors.

106. The Debtor's Critical Vendors generally fall into the following categories:

- a. Back Office Support Services. The Debtor contracts with certain services to assist in maintaining their back office and supporting the Debtor's investment team. These services consist of, for example, data providers that provide and manage intranet portals necessary to streamline information flow and data accuracy and other service providers that supply telephone services or warehouse necessary files or data.

b. Research Services. The Debtor’s business consists of advising its clients on potential investments. To do that, the Debtor subscribes to various services that provide access to real-time data and analytics. These services enable the Debtor to provide accurate analysis of the investments they manage and to satisfy their fiduciary and other obligations to their clients as a registered investment advisor.

107. As of the Petition Date, the Debtor will owe amounts to certain Critical Vendors (a) that have been billed and invoiced and/or (b) that have accrued immediately prior to the Petition Date for which they have not yet been invoiced or payment is not yet due. The Debtor anticipates the total amount of Critical Vendor Claims will not exceed \$1,000,000 of which \$250,000 is being requested on an interim basis. As discussed above, a portion of that amount will also be reimbursed to the Debtor through the ordinary course of the Debtor’s business.

108. Given the importance of the goods, and services provided by the Critical Vendors, it is imperative that the Debtor be granted, on an emergency basis, the flexibility and authority to satisfy the prepetition claims of the Critical Vendors up to the Interim Critical Vendor Cap and, if approved on a final basis, the Critical Vendor Cap.

E. Debtor’s Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief (the “Schedules Extension Motion”)

109. Through the Schedules Extension Motion, the Debtor seeks the entry of an order extending the deadline by which it must file its schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statement of financial affairs (collectively, the

“Schedules and Statements”) by an additional thirty (30) days, for a total of fifty-eight (58) days from the Petition Date.

110. To prepare the Schedules and Statements, the Debtor must compile information from books, records, and documents relating to creditor claims, as well as the Debtor’s various assets and contracts.

111. Given the amount of work entailed in completing the Schedules and Statements, the Debtor requires more time to complete the Schedules and Statements within the required time period. Accordingly, the Debtor requests that the Court grant the Schedules Extension Motion.

F. Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (the “Motion to Redact Employee Addresses”)

112. Through the Motion to Redact Employee Addresses, the Debtor seeks the entry of an interim order and a final order: (a) authorizing the Debtor to file a redacted version of its creditor matrix without publicly disclosing employee address information, (b) authorizing the Debtor to file under seal an unredacted version of its creditor matrix, and (c) granting such other relief as the Court deems just and proper.

113. In the present case, the Debtor respectfully submits that cause exists to authorize the Debtor to redact the address information of individual employees from the creditor matrix because such information: (a) is private and confidential, (b) could be used to perpetrate identity theft – which has occurred in the past with certain of the Debtor’s employees, (c) would potentially allow competitors to poach the Debtor’s employees at the expense of this estate; and (d) could pose other risks to employees.

114. The benefit of including such information on the publicly filed matrix is far outweighed by the potential risks for the Debtor's individual employees.

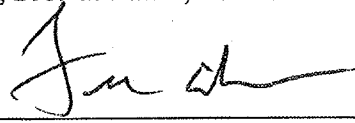
115. If the relief requested in the Motion to Redact Employee Addresses is granted, the unredacted matrix will be filed and remain under seal until further order of the Court. The Debtor will share the unredacted matrix with the Office of the United States Trustee upon request and the Debtor proposes that any party-in-interest who seeks to review the unredacted matrix may submit a request in writing to the Debtor. If the Debtor and the party seeking access to the unredacted matrix are unable to reach agreement on the terms of reviewing the unredacted matrix, the party may seek the assistance of this Court by filing a motion and make an appropriate showing for the Court to evaluate whether or not the unredacted matrix should be made available and under what terms. Upon any such motion seeking access to the unredacted matrix, the Debtor could continue to try and resolve the matter or present its opposition to the Court for consideration at a hearing on appropriate notice.

116. Accordingly, the Debtor requests that the Court grant the Motion to Redact Employee Addresses.

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I declare under penalty of perjury under the United States of America that the foregoing is true and correct.

Executed this 16 day of October, 2019 at Dallas, Texas.



Frank Waterhouse

EXHIBIT A
Organizational Chart

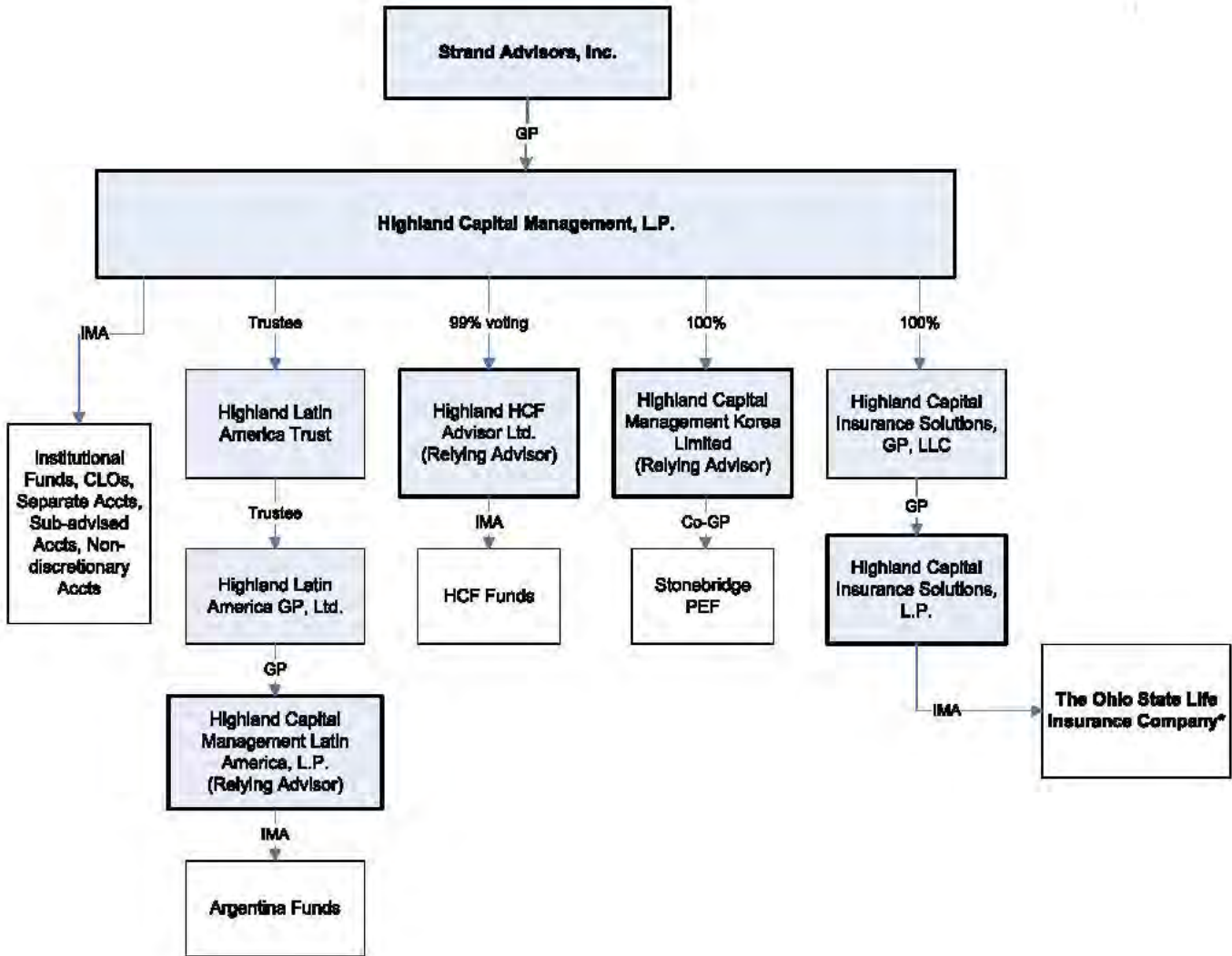


Exhibit 20



Hilary Term
[2023] UKPC 7
Privy Council Appeal No 0087 of 2020

JUDGMENT

**HEB Enterprises Ltd and another (Respondents) v
Bernice Richards (as Personal Representative of the
Estate of Anthony Richards, Deceased) (Appellant)
(Cayman Islands)**

From the Court of Appeal of the Cayman Islands

before

**Lord Reed
Lord Hodge
Lord Lloyd-Jones
Lord Briggs
Lord Kitchin**

**JUDGMENT GIVEN ON
21 February 2023**

Heard on 17 November 2022

Appellant

Jack Watson

(Instructed by KSG Attorneys at Law (Cayman Islands))

Respondent

Hector Robinson KC

(Instructed by Mourant Ozannes (Cayman Islands))

LORD KITCHIN:

1. This appeal concerns long term agreements for the sale of two lots of land within a commercial development in George Town, Grand Cayman. Each agreement provided for the payment, at the outset, of a deposit and then for the balance of the principal to be paid over 20 years by monthly instalments together with interest. As will be seen, it was also agreed that these payments would begin once the buyer had taken possession of the relevant lot.

2. After many years, during which the buyer had in fact enjoyed possession of the lots and the use of them for his commercial purposes, he repudiated the agreements, following which the sellers treated themselves as discharged from the further performance of their obligations under the agreements. The question is whether the buyer then became entitled to recover from the sellers, not just the payments of principal (as to which there is no dispute) but also all the interest payments he had made while enjoying the right to occupy the lots and use them for his own purposes. The buyer contended there had been a total failure of the basis on which those interest payments were made and so, subject to certain exceptions, he was entitled to an order for their return.

3. The Court of Appeal held that there had been a total failure of consideration but the buyer was not entitled to recover the interest payments he had made because he had enjoyed a real benefit in the form of the right to possession, and that the value of that possession, which the Court of Appeal referred to as mesne profits, had to be accounted for as part of the restitutionary adjustment which fell to be made on the failure of the agreements. The issue on this further appeal is whether the Court of Appeal approached the issues before it correctly and, so far as it did not, whether this has affected the overall conclusion to which it came.

The background

4. In the 1990s Mr Henry Bodden and his wife, acting through HEB Enterprises Ltd (“HEB”), a company of which Mr Bodden was director and principal, embarked on the development of a new shopping complex in George Town, Grand Cayman. The complex was called Caymanian Village and it was developed in two phases. It comprised, in total, 22 shops, each with its own title. Mr Bodden was the original owner of each of shops and it was always intended that HEB would act as his agent in connection with their sale. The Board will refer to Mr Bodden and HEB as “the Sellers”.

5. Caymanian Village took the form of a strata development. The properties in such a development are self-contained but share common areas. A corporation is established to manage the development and to ensure that all the appropriate supervisory and administrative work is carried out and that the necessary services are provided. The owners or occupiers of the shops then make an appropriate contribution to the costs and charges that are incurred by the corporation in so doing. These contributions are called “strata fees”.

6. Mr Anthony Richards expressed interest in acquiring a number of the shops in Caymanian Village and the dispute giving rise to these proceedings relates to two of those he ultimately agreed to buy, referred to as “Lot 10” and “Lot 11”. Mr Richards has since died and his estate is represented in this appeal by his widow, Mrs Bernice Richards. For convenience, the Board will refer to Mr Richards and now Mrs Richards, the personal representative of his estate, as “the Buyer”.

7. In very broad terms it was agreed that the Buyer would acquire each of the lots at what were described as pre-construction prices and on pre-construction terms. He would pay a small deposit at the outset and the balance of the purchase price in instalments over 20 years with interest of 12% per annum. Title to each lot would pass to the Buyer once the final payment for that lot had been made.

Lot 10

8. More specifically, in or around December 1994, the Buyer made an agreement with the Sellers to purchase Lot 10. The purchase price was CI\$ 120,000. A deposit of CI\$ 3,000 was payable at the outset and the balance of CI\$ 117,000 was payable over 20 years, with interest at 12% per annum, by monthly instalments of CI\$ 1,290.

9. Many of the important terms of the agreement to purchase Lot 10 are set out in a written contract dated 28 December 1994 but they did not represent the entire agreement between the parties. In particular, the written contract did not specify the date upon which the payment of the monthly instalments was to begin. It was agreed, however, by clause 4, that title would pass from the Sellers to the Buyer on payment of the final instalment and all outstanding interest. This was referred to as “closing”.

10. Clause 5 provided that vacant possession of Lot 10 would be given by the Sellers to the Buyer on closing unless the Sellers gave their “express consent in writing to earlier possession and subject to such terms as shall then be agreed”.

11. Clause 6, headed "DEFAULT", addressed the consequences of a failure by the Buyer (referred to in this clause as the "Purchaser") to complete the agreement in the manner provided for and the rights conferred on the Sellers (referred to in this clause as the "Vendor") by such a failure:

"If the Purchaser fails to complete this Agreement at the times and as provided for in paragraph 3 hereof (in respect of which time shall be of the essence) the Vendor may at it's [sic] option rescind this Agreement by written notice to the Purchaser and forfeit and keep absolutely as liquidated damages the deposit hereof and all or any interest accrued thereon and may in addition keep absolutely out of any further sum paid by the Purchaser such amount as is sufficient to compensate the Vendor for any work done to the Strata Lot by the Vendor at the request of the Purchaser which involves a deviation from or amendment to the basic plan for the Strata Lots or any substitution requested by the Purchaser in respect of the fixtures and fittings installed in the Strata Lot and no further rights of action shall arise in respect thereof nor shall any party hereto have any further rights, demands, actions, claims or damages the one against the other and the Vendor may resell the Strata Lot and keep the full sale price absolutely."

12. Despite the terms of clause 5, the parties had in mind from the outset that the Buyer would take possession of the lot once the building work had been finished and it was ready for occupation, and they agreed that payment of the instalments of principal and interest would begin at that time.

13. The Buyer made the initial deposit payment for the purchase of Lot 10 and he entered into possession, by agreement, on 1 August 1995, having undertaken to pay the relevant strata fees.

14. The Buyer was also provided with detailed interest work sheets showing the amortised payments of interest and principal on the lot from the date of possession to the date of closing. If matters had proceeded in the manner contemplated by the entire agreement between the parties, the final instalment of principal and interest would have fallen due on 1 July 2015.

Lot 11

15. On 11 July 1997 the Buyer made a similar agreement to purchase Lot 11. The purchase price was CI\$ 150,000. A deposit of CI\$ 7,500 was payable at the outset and the balance of CI\$ 142,500 was payable over 20 years, with interest at 12% per annum, by monthly instalments of CI\$ 1,321.30.

16. Once again, it was agreed by the Sellers that title would pass to the Buyer on making the final payment. Clauses 4, 5 and 6 of the written contract were in essentially the same terms as those summarised and set out at paras 9 to 11 above.

17. The Buyer made the initial payment required in respect of the agreement to buy Lot 11. After the construction of the shop, he entered into possession, by agreement, on 14 December 1997, having once again undertaken to pay the relevant strata fees. The Buyer was also provided with a detailed interest worksheet showing the amortised payments of principal and interest on the lot from the date of possession to the date of closing, just as he had been for his purchase of Lot 10.

18. In the case of Lot 11, if matters had proceeded in the manner contemplated by the entire agreement between the parties, the final instalment of principal and interest would have fallen due on 30 November 2017.

Repudiation and "rescission"

19. Unfortunately, the Buyer was unable to meet his obligations under the payment schedule of either agreement. Discussions between the parties took place on a number of occasions over the years but to no avail. As recorded by the Court of Appeal, the Buyer from time to time made promises to pay the arrears and benefitted from the repeated forbearance of the Sellers to enforce their rights. In February 2015 the Buyer ceased making any payments in respect of Lot 10. He made some further payments in respect of Lot 11 but was still in arrears when in April 2016 he sent a cheque to the Sellers in the sum of CI\$ 1,321 indicating that this was "for all" he "could afford".

20. The Sellers had by this time run out patience, however, and returned this cheque together with a printed email, dated 18 April 2016, which stated (using the original text):

"It would appear that you do not fully grasp the concept of breach of contract. Your after-the-fact payment, even if it were accepted (which is being sent back to you) still leaves you in breach/default of both our sales agreements.

Accordingly, we are NOT accepting any further payments on either unit #10 (which you have stopped payments on and are fourteen months behind) or #11 in which you habitually pay months late). Therefore, I will post a check back to you if you make future default payments. The attached check has been mailed back to National House Bakery today.”

21. On 28 April 2016, Samson & McGrath, attorneys by then acting for the Buyer, replied that it was clear that the Sellers had invoked clause 6 and had, in the terminology of that clause, “rescinded” each contract by giving the appropriate written notice. They continued that the Buyer was now entitled to the return of all monies paid by him in respect of Lot 10 and Lot 11, subject in each case to the deposits which had been paid and which the Sellers were entitled to keep (together with any interest that had accrued on those deposits). They then proceeded to detail, in tabular form, the payments made by the Buyer and which it was claimed were now due to repaid to him, namely:

Unit #10 payments due over 240 months	\$309,184.80
Less payments unpaid	(\$6,252)
Total	\$302,932.80
Unit #11 payments due over 240 months	\$317,112
Less payments unpaid	(\$25,977)
Total	\$291,135

22. The Buyer’s attorneys maintained that the total sum due to him on rescission was therefore CI\$ 594,067.80 (subject to verification and minor correction). They said

that it was possible that the Sellers had rescinded the contracts under the mistaken belief that they were entitled to retain all the monies that had been paid over by the Buyer, and they urged the Sellers to take legal advice. They also indicated that the Buyer might be open to a compromise but subject to that would pursue the payment of the sums to which he was in their view entitled. Finally, they said that the Buyer would need a reasonable period of time to vacate the lots.

23. In the event and as found at trial, the Buyer had by that time made payments of the principal due in respect of Lot 10 and Lot 11 of, respectively, CI\$ 110,747.47 and CI\$ 96,156.35, and corresponding interest payments of CI\$ 191,996.17 and CI\$ 194,530.39.

The proceedings

24. On 24 May 2016, the Buyer issued an originating summons seeking a declaration that the agreements had been rescinded by the Sellers' email of 18 April 2016. By a consent order dated 10 February 2017, it was directed that the claim should proceed as if brought by writ. On 29 March 2017, the Buyer filed a statement of claim setting out his claim in more detail. He sought recovery of all the payments of principal and interest he had made and an account of all sums due and owing under clause 6 of the written contracts.

25. On 21 April 2017, the Sellers filed a defence and counterclaim asserting that the Buyer's persistent failures to perform his obligations amounted to a fundamental breach and repudiation of each of the agreements which, on acceptance, discharged them of all further obligations; and that they were entitled to treat the agreements as at an end and, in respect of the breaches of each agreement, were entitled to damages to compensate them for the losses they had suffered. They sought, among other things, payment of interest on instalments due up to the date of termination, strata fees outstanding at the date of termination, strata fees due up to the date of surrender of possession, mesne profits amounting to the commercial rent payable on the shops from the termination date to the date of surrender of possession and, for the avoidance of doubt, orders for possession.

The judgment at trial

26. The action came on for trial before Williams J, in the Grand Court of the Cayman Islands, on 7 February 2018 and it lasted two days. On one important issue between the parties, the Buyer conceded that his breaches of the agreements were repudiatory.

27. Williams J gave judgment on 2 August 2018 and by his order made on 10 August 2018 awarded the Buyer CI\$ 593,430.37 on his claim and the Sellers CI\$ 135,869.29 on the counterclaim, with the latter figure to be set off against the former. He held that the Buyer was entitled to the return of all of the principal and interest he had paid to the Sellers, less the deposits and any interest on those deposits. He also found that the Sellers were entitled to set off against the sums payable to the Buyer the outstanding strata fees (and interest) in the agreed sum of CI\$ 58,297.30 and mesne profits for the period from 19 April 2016 until 30 November 2017 at a rate of CI\$ 4,000 per month for both lots. There was some doubt about the appropriate end date for the mesne profits, as the Court of Appeal later pointed out at para 20 of its judgment. But there was no confusion about the start date, this being the day after the Sellers had, by their email, accepted the Buyer's repudiation of the contracts.

28. In arriving at these conclusions, the judge reasoned that the parties had, in clause 6, addressed the consequence of a repudiatory default by the Buyer. In particular, clause 6, in referring to rescission, meant the exercise of the option to terminate the contract for breach. It provided for the forfeiture by the Buyer of his deposit; the right of the Sellers to resell the property and to retain the full resale price; and the right of the Sellers to retain from the payments made to them compensation for any work done to the relevant lot at the request of the Buyer. But it also prevented the Sellers from claiming damages to compensate them for any other losses they might have suffered as a result of the Buyer's repudiation.

Appeal to the Court of Appeal

29. On appeal, the Sellers argued that the Buyer had enjoyed possession of the lots for nearly 20 years and yet, on the judge's analysis, was entitled to the return of almost everything he had paid. They maintained this was a remarkable and unjust result. The judge ought to have found that the Buyer had repudiated the contracts; that their email accepting the repudiation had not referred to clause 6 and so that clause did not apply; and that the outcome of the repudiation therefore depended on the application of the common law.

30. The Sellers continued that a distinction should be made between, on the one hand, the return of the principal to reflect the failure of any passing of title to Lot 10 or Lot 11 and, on the other hand, the non-return of any interest payments to reflect the use of the shops that the Buyer had enjoyed over the better part of the 20 year instalment programme.

31. The Court of Appeal was persuaded as to the broad merits of the Sellers' submissions and allowed their appeal. Sir Bernard Rix JA, with whom John Martin KC, JA and Sir Alan Moses JA agreed, explained, at para 24, that an argument explored at the hearing was that the failure of the contracts required the application of restitutionary principles. On this approach, the Buyer had to give credit for the enrichment he had received, in the form of possession of the lots, by reference (if not to the interest payable over the period of his possession) to the mesne profits value of that possession.

32. The Court of Appeal acknowledged that one difficulty in the path of the Sellers was the concession at trial that a counterclaim for mesne profits in the form of damages had been abandoned and that, by further concession, the Sellers were only seeking a restitutionary credit up to the value of the interest involved (some C\$ 380,000) and not a larger sum of mesne profits over the period. Nevertheless, the application of general restitutionary principles allowed for a working out of the appropriate amount of any unjust enrichment, as opposed to a counterclaim for damages for breach of contract.

33. There followed a detailed consideration of the submissions advanced by the parties and of a number of authorities, and the Board intends no disrespect for the depth of that analysis by not relating it here. For present purposes it is sufficient to focus on the Court of Appeal's conclusion, at paras 49 to 63, that a full recovery of all the payments in restitution was not compatible with a situation where in the meantime the Buyer had enjoyed a real benefit under each agreement. That incompatibility could be accommodated under the modern law of unjust enrichment. A buyer of land who paid in advance for the later transfer of a title which was never completed could recover the price paid though, in a case such as the present, not the deposit. However, a buyer who had enjoyed possession should not be entitled to recover more than would eliminate any unjust enrichment of the seller. Equally, the Court of Appeal continued, there was no reason why, with the aim of avoiding unjust enrichment on the part of the seller, the buyer should be left unjustly enriched by his possession. As for how that possession was to be valued, there was a well-known way of carrying this out in the absence of a contract, and that was in the form of mesne profits of which the judge in this case had evidence.

34. The next question was whether such a solution was compatible with the parties' contracts. The Court of Appeal was satisfied that clause 6 did not exclude the effect of the principles of restitution. There was express provision for the forfeiture of the deposit and for the retention of sufficient moneys to compensate the Sellers for work done at the Buyer's request. On the other hand, there was no express provision for the return to the Buyer of part payments other than the deposit. This left room for the

application of the general law. Here it was common ground, at least for the purposes of the appeal to the Court of Appeal, that clause 6 did not stand in the way of the Buyer's right to recover what the law permitted by way of restitution. The issue was what that extended to, but it was certainly not to a figure which failed to take account of the value to the Buyer of possession.

35. The Court of Appeal decided that the structure of the transactions and their basis was that the Buyer would obtain possession in return for the price payable with interest over 20 years, at the end of which there would be a closing and passing of title. The court rejected the Buyer's submission that anything less than a full recovery of his payments of principal and interest would give a windfall to the Sellers. To the contrary, the lots had always belonged to the Sellers. The only windfall was that sought by the Buyer, namely that he be permitted to retain the benefit of his possession of the lots for nearly 20 years without any payment, save for the strata fees.

36. The Court of Appeal therefore allowed the Sellers' appeal to the following extent: there fell to be deducted from the sum awarded on the Buyer's claim mesne profits during the period of his possession of the lots, and these mesne profits were to be valued at a figure which, in light of the Sellers' concession, would be limited to the amount of interest paid by the Buyer over that period.

The appeal to the Board

37. Upon this further appeal the Buyer contends first, that the Grand Court and the Court of Appeal were right to recognise that, following the termination of the contracts between the parties, he was entitled to the return of his payments of principal and interest. Secondly, the Court of Appeal was wrong to hold that any award should be discounted to reflect the Buyer's possession of the lots.

38. More specifically, the Buyer contends that no deduction is permitted under the law of unjust enrichment or by reference to the parties' agreements. He argues that the Court of Appeal fell into error in failing properly to apply the legal principles underpinning any claim of unjust enrichment and instead in seeking to engineer a solution which it considered to be fair. As for the written contracts, clause 6 operated as a contractual allocation of risk. On termination, this clause conferred a contractual entitlement to the return of principal and interest without deduction, save as expressly provided for in the clause itself. Alternatively, the clause provided a contractual identification of the basis for the payment of principal and interest such that a restitutionary remedy remained available save as provided under the clause. Put another way, clause 6 provided a clear indicator that in the event of his failure to

complete, consideration in respect of the principal and interest would have failed and so they both ought to be refunded.

39. The Buyer accepts that, absent clause 6, his right to any award would have been subject to the Sellers' rights to sue for damages for his failure to complete the contracts or to seek counter restitution in respect of his occupation of the properties, so far as that was available. As it is, however, the structure of the parties' bargain means that the right to obtain damages is expressly limited to the retention of the deposit and of sums to compensate the Sellers for works carried out, and the Sellers have the right to keep the proceeds of sale of the properties. The parties in this way agreed a contractual limit on liability and a contractual means of ensuring that both parties were compensated in the event of a default.

40. The Sellers do not resist repayment of the instalments of principal but say the claim for return of the instalments of interest on the outstanding principal is misconceived. There was no failure of consideration or basis for these payments of interest because the Buyer was allowed to take possession of the lots, and this possession allowed him to use them and enjoy the commercial benefit of having them, whilst paying the purchase price in instalments, with interest, over a prolonged period. The payment of interest was directly referable to the Buyer's possession. Accordingly, the Court of Appeal arrived at the right conclusion but for rather different and not wholly correct reasons.

41. The resolution of these rival submissions depends, first, upon the identification and interpretation of the entire agreement between the parties in relation to each of the lots, and the correct analysis of the consequences of the repudiation of the agreements by the Buyer. It depends, secondly, on whether the basis for the agreements has failed.

The entire agreements and the right to possession

42. It is convenient to begin with the terms of the agreements themselves. The Board has related the substance of the important terms of the agreements, so far as they were set out in writing, at paras 8 to 18 above. But it is also necessary to say a little more about the basis for the Board's view, expressed at para 12 above, that these terms do not constitute the entire agreement between the parties in relation to each lot.

43. Clause 5 of each written contract provides that vacant possession of the lot will be given on closing unless the vendor gives earlier consent in writing and subject to such terms as shall be agreed. Nevertheless, the Court of Appeal held, and the Board agrees, that the whole arrangement between the parties only makes sense on the basis that the Buyer would take possession once he had paid the deposit and agreed to pay the strata fees and that this was in the contemplation of the parties at the outset. Here the Court of Appeal was right to find that the written contracts, although not themselves providing for vacant possession, contemplate that it will be given.

44. The structure of each of the agreements supports this conclusion. In particular, clause 3(b) of the written contracts did not specify the dates from which the 20 year periods were to run or when they were to end. It was agreed, however, that the periods would start to run with possession. As the Court of Appeal recorded, and the Board has mentioned, the Buyer entered into possession of Lot 10 on 1 August 1995, that is to say, almost nine months after the date of the contract; and he entered into possession of Lot 11 on 14 December 1997, some five months after the date of the contract. The Buyer was from each of these dates required to pay the relevant strata fees and the 20 year period for the payment of the monthly instalments began to run. It was also entirely understandable that the Buyer was thereupon presented with the worksheets setting out amortised payments of principal and interest on each lot from the date of possession to completion. The payments, as recorded on the sheets, differed slightly from those set out in the written contracts but it has not been suggested that these details should affect the outcome of this appeal.

45. The agreement as to the payment of interest is also important. The deposit was payable on making the contract but the balance of the purchase price was payable by monthly instalments over 20 years with interest at 12% per annum. As the Court of Appeal recognised, at para 59, the addition of interest meant the Buyer would pay and the Sellers would receive the equivalent of the full (and not time depreciated) payment of the balance of the price at the time of possession. But so too, the Buyer would have the right to take possession of the lots and enjoy their value over the two decades that he would be making the payments. Further, he would do so without paying rent. Possession by the Buyer was therefore a fundamental aspect of his agreement to make the scheduled payments, including interest at 12%, over such an extended period of time. For their part, the Sellers would be protected by their reservation of title until completion took place and the final payments had been made.

46. In light of all of these matters, the Board is satisfied that the Court of Appeal was entitled and right to find, at para 59, that clause 5 contemplates that possession will be given and similarly, at para 60, that the clause provides for a collateral exercise in fulfilment of what the written contracts already envisage. The Buyer's possession

was a part and parcel of the transactions; indeed, so much so that there was never any separate written consent for the Buyer to take possession, and the Buyer's agreement to pay the strata fees was not even recorded in writing. In this way and although the price would be paid in instalments over 20 years, the addition of interest meant that the Buyer would ultimately pay and the Sellers would receive the equivalent of full payment of the price as at the time of possession.

47. In summary, the entire agreement in relation to each lot is properly to be understood in this way:

(i) The parties agreed for a long postponed transfer of title (that is to say ownership) on full payment of an agreed price by instalments.

(ii) Once the shop had been built and was ready for occupation, the Buyer would have the right to occupy it and to have the full enjoyment of it, rent free, including the right to use it for the purpose of his business. The Sellers would at the same time have what was, commercially and in substance, the full enjoyment of the price.

(iii) These reciprocal rights were achieved by giving possession to the Buyer and by giving to the Sellers (a) the deposit; (b) instalments of the price as they were paid (from which they could derive an income in the form of interest); and (c) interest on the instalments not yet paid from time to time. The aggregate amounted to full enjoyment of the price from the date of possession.

Repudiation and discharge

48. The Board turns now to the repudiation of the agreements by the Buyer. As we have seen, in these circumstances, clause 6 of the contracts, invoked by the Sellers, purports to confer upon them a right to "rescind" the agreement by giving written notice to the Buyer. It is important to understand that any rescission of this kind is very different from rescission *ab initio* such as may arise in cases of fraud or mistake. As the trial judge recognised, the true effect of the step taken by the Sellers was to accept the repudiation by the Buyer as a discharge of the primary obligations of both parties, and to substitute for them a secondary obligation by the Buyer to compensate the Sellers for the losses they had suffered as a result of that repudiation, subject to the effect of any term of the agreement which restricted or excluded any remedy for breach, or provided any further remedy.

49. Here the Buyer contends that there was no term or condition of the agreements that he would, in the event of his default, forfeit his payments of principal or interest and so, the Sellers having accepted his repudiation, he is entitled to recover, if not his deposit, at least the payments of principal and the payments of interest he has made, subject of course to any permissible cross-claim by the Seller for breach of the agreements. He maintains that there is nothing in clause 6 which restricts or precludes that recovery. By contrast, the clause permits the retention by the Sellers of the deposit and any interest which has accrued on the deposit, and any further sum which is sufficient to compensate the Sellers for any work done at his request to Lot 10 or Lot 11 which deviates from the basic plan for the lot, and it also permits the Sellers to resell the lot and to keep the full sale price. But it precludes the Sellers from pursuing any other claim against him as a defaulting buyer.

50. The Board has come to the firm conclusion that this argument of the Buyer must be rejected. Subject to the further but related argument that there has been a total failure of basis for the payments of interest upon the outstanding principal (to which the Board will come), the Board is wholly unpersuaded that, as a matter of interpretation, the Buyer is entitled to the return of these payments of interest on his repudiation of the agreements. The Buyer's argument founders because he has had the benefit of the right to occupy the shops and use them for his business purposes for the many years since their construction, and to do so rent free. It would have made no sense for the parties to agree that he would have that benefit and yet, on his default, towards the end of the instalment period and as the date for closure drew close, have the right to recover all the payments of interest that he had made. Subject again to any total failure of basis, the normal rule applies and payments of interest made by the Buyer under the agreements before the date of discharge are irrecoverable.

Failure of basis?

51. These considerations also provide the foundation for the answer to the next question, namely whether, as the Buyer contends, this is a case in which it was envisaged that title to the lots would be transferred in exchange for all of these payments. The Buyer's argument proceeds in the following way. There has been a failure to transfer title which amounts to a total failure of the basis for the payments. It is important, the Buyer continues, that the court should not be distracted by the fact that he has derived a benefit under each agreement, unless it constituted the basis for the transaction, and here it did not. The only basis for the transaction was the transfer of title and that has not taken place. The Buyer was therefore entitled to recover all the payments he had made by way of principal and interest.

52. A number of other arguments are advanced in support of this aspect of the Buyer's case. It is submitted, first, that there is nothing in the written terms which allows the interest payments to be seen as a form of occupational rent. Here reliance is placed on the terms of the written contracts which provide for vacant possession on closing. It is also submitted that if the Buyer had never entered into occupation of the lots, precisely the same amount of interest would have been payable under clause 3. So, it cannot be said that possession was the basis for the payments of interest. To the contrary, there was express consideration for the Buyer's occupation of the lots namely the payment of insurance and strata fees, but nothing was said about interest.

53. The Buyer points, secondly, to the lack of any relationship between interest and rent. The requirement to pay interest is a feature of the overall price, the balance that remains to be paid and the actual and anticipated interest rates at the time of the written contract. By contrast, rent is usually priced evenly or, in cases the subject of rent review, will increase.

54. These are all powerful points but, in the Board's view, they tend to assume what they are said to establish. In particular, for the reasons the Board has already summarised, the written contract does not represent the entire agreement between the parties in respect of either lot. It was always understood and agreed as part of the complete agreement in respect of each lot that, when the shop had been built and was ready for occupation, the Buyer would take possession, subject in each case to the payment of the strata fees and the deposit. The Buyer would then begin to pay the instalments of the price and interest on the reducing unpaid balance in accordance with the schedule. That is precisely what happened.

55. Next, the Board does not accept that the basis for the interest payments was unrelated to the possession that the Buyer enjoyed. To the contrary, the basis for the interest payments included the right to possession for the duration of each agreement. The payments did not start until the Buyer took possession and the Buyer was entitled to retain possession so long as he continued to pay the strata fees and the instalments of principal and interest. In the result the Buyer was able to enjoy the use of the lots for business purposes for very many years, and to do so rent free.

56. It is true that the same amount of interest would have been payable even if the Buyer had chosen not to enjoy his right to take possession of the lots or had decided not to use them for his business. That would have been a matter for him. In the Board's opinion that does not assist him, however, because he was entitled to take possession of the lots and to use them for his business, and that is what he did. Nevertheless, he invites the Board to hold that this benefit formed no part of the basis for the payments with the result that, in this case and on his default, they must all be

returned. But the Board is firmly of the view that this is not a realistic approach to the respective benefits the parties secured from their agreement, or to the entirety of the basis for them.

57. The commerciality of this conclusion is not affected by what the Buyer calls the arbitrary and unreal relationship between interest and occupational rent. The Board recognises that the right to possession may not be the only basis for the interest payments. Indeed, there is a respectable argument that their basis also includes the Buyer's right and obligation to pay the principal in instalments over the same extended period. But that is nothing to the point if the right to possession, enjoyed by the Buyer, forms a material part of the basis for the interest payments, and the Board is satisfied that it does. As the Board has foreshadowed, it would indeed have made no sense for the parties to agree terms for payment of the price in instalments over 20 years at a significant rate of interest if the Buyer did not have the right to take possession for that time and to use the premises for his business purposes. Nor would it have made sense for the Sellers to have agreed an arrangement under which the Buyer could take possession and yet, many years later, on his repudiation of the agreement, recover all the payments he had made.

58. The Buyer has accepted before the Board that a failure of basis must be total and that if even a part of the benefit which formed the basis for the payments has been conferred, no action will lie for the return of those payments. As Lord Porter explained in *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32, 77, money had and received to the claimant's use can be recovered where the basis (there referred to as consideration) has wholly failed. So too, if a divisible part of the contract has wholly failed and part of the consideration can be attributed to that part, that portion of the money so paid can be recovered: see for example, *Barnes v Eastenders Cash & Carry plc* [2015] AC 1, para 114. On the other hand, a partial failure of consideration for a particular payment gives rise to no claim for recovery of part of what has been paid.

59. In the opinion of the Board, these principles are fatal to this aspect of the appeal. In the particular circumstances of this case, the basis for the interest payments has not wholly failed and the Court of Appeal was wrong to hold otherwise. Part of the basis for the interest payments may have been for the Buyer to obtain ownership of the lots by paying the purchase price in instalments over many years; but another and important part of the basis for these payments was to obtain the right to take possession of each of the lots and to use them for his business in the years to closing.

60. In reaching this conclusion the Board has taken careful account of a number of decisions involving hire purchase agreements to which the Buyer has referred. They

include *Rowland v Divall* [1923] 2 KB 500; *Karflex Ltd v Poole* [1933] 2 KB 251; *Warman v Southern Counties Car Finance Corporation LD* [1949] 2 KB 576; and a further case involving a conditional sale agreement: *Barber v NWS Bank Plc* [1996] 1 WLR 641. Reliance was also placed on *Rover International Ltd v Cannon Film Sales Ltd* [1989] 1 WLR 912 concerning a joint venture concerning the dubbing and distribution of films in Italy. The circumstances of each of these disputes were very different from those the subject of this appeal but all of them may be said to support a proposition which the Board would readily accept, namely that a failure of basis may be established notwithstanding the receipt of a benefit. The question in any case is not whether the party claiming a total failure of consideration has received any benefit under the agreement but whether that party has received any part of the benefit for which he bargained and which therefore forms the basis of the agreement.

61. Of more direct relevance to the issues now before the Board is the approach taken to long term agreements for the purchase of land by instalments in Victoria, Australia. Here the Board has been referred to the commentary in *Voumard, The Sale of Land*, 6th ed, 2009, an important treatise in Australia. It is explained, at para 12.280, that, at least in Victoria, Australia, where a vendor elects to rescind a contract on the ground of the buyer's default and the buyer has been in possession under the terms of the contract, the buyer is still entitled, upon adjustment of rights with the vendor, to be credited with the instalments of principal that he has paid, but he is not entitled to be credited with the instalments of interest that he has paid on the principal. The basis for that view is that consideration for the payment of the principal is the conveyance or transfer of the land and that once the vendor, in rescinding the contract, deprives the buyer of the right to the transfer, the consideration for the payment of the principal has wholly failed, and the buyer is therefore entitled to the return of the principal as money had and received to his use.

62. It is recognised in *Voumard* that the soundness of this analysis has been questioned in various articles in the Australian Law Journal (for example, an article by H. Walker, '*Rescission of contracts for sale of land*' (1934) 7(10) Australian Law Journal 366). Mr Walker argues in that article that as the buyer has had possession of the land under the contract, it cannot be said there has been a total failure of consideration for which he contracted. In other words, the contract is an entire contract for the use and occupation for a specified period and a transfer of the freehold at the end of that period in return for a principal sum with interest. The force of this view is acknowledged in *Voumard* but it is suggested that, correctly understood, the consideration is not entire but divisible and that the contract is, from the point of view of failure of consideration or basis, properly regarded as a main contract for the transfer of the freehold in return for the principal sum, and a subsidiary contract under which the buyer is entitled to enjoy possession of the land pending execution of the

transfer, in consideration of the payment of interest on the balance of the principal which remains unpaid.

63. It is not necessary for present purposes (nor would it be appropriate) to attempt to resolve the different views expressed by these authors as to the position under the law of Victoria, Australia. The important point is the recognition that, in the context of an agreement for the purchase of land over a long period, such as that with which the Board is now concerned, a right to enjoy possession of the land before title is transferred may provide at least part of the basis for an obligation to pay interest on the principal that remains outstanding from time to time.

64. The identification of the basis for the agreement in any particular case is therefore of the utmost importance. All will depend on the circumstances of the case and the nature and terms of the entire agreement in issue. The Board has carried out that exercise in the context of the agreements in relation to Lot 10 and Lot 11 and has reached the firm conclusion for the reasons given earlier in this judgment that at least a part of the basis for the entire agreement in relation to each of these lots was the right to enter into possession and occupation, on the completion of the construction, whilst the instalments of principal were being paid. That conclusion is not in any way undermined by a different conclusion reached in relation to other agreements made in different circumstances.

65. The Board must now consider the implications of clause 6 on the claim in respect of these interest payments. The Buyer submits that where a contract makes provision for the recovery of sums on termination, those provisions will govern the parties' entitlements. Here, clause 6 envisages the Buyer will be entitled to recover all payments made under the contract other than the sums expressly referred to, and so the Buyer is entitled to recover the interest payments on the outstanding principal.

66. The Board does not accept these submissions. Clause 6 does not confer on the defaulting Buyer a contractual right to the return of the interest payments he has made prior to the termination of the contract. Nor does the clause provide that in the event of the Buyer's default, the basis for the interest payments would have totally failed.

67. Accordingly, the Buyer's claim for the return of the interest payments can only be advanced on the ground that, having regard to the entire agreement in relation to each lot and all the circumstances, the basis for the obligation to make these payments has failed and that the interest therefore ought to be refunded together with the principal. But that claim suffers from the further flaw the Board has already identified,

namely that the whole basis for the requirement to pay the interest has not failed because the Buyer enjoyed the right to possession of each lot until he repudiated the agreements.

68. In reaching this conclusion the Board has given careful consideration to the decision of the Board in *Mayson v Clouet* [1924] AC 980. That case involved a contract for the sale of land with a deposit to be paid immediately, two instalments of the price to be paid on particular dates and the balance to be paid within 10 days of the production of a certificate that the construction of certain buildings on the land had been completed. The contract provided that if the buyer failed to comply with his obligations, his deposit might be forfeited and the land resold. The deposit was duly paid, as were the first two instalments of the price. But the buyer failed to pay the balance of the price at the stipulated time and failed to complete despite being served with a certificate of completion and fitness for occupation, and despite a final extension of time. The vendor rescinded the contract. The Board held the contract distinguished between the deposit and the instalments and provided for a forfeiture of the deposit only. It followed that the deposit had been forfeited, but the instalments were recoverable.

69. The Buyer contends that, just as in *Mayson*, clause 6 confers upon him a right to recover all the payments made under the agreement (including the interest payments) other than the sums expressly referred to; that if the parties had intended that the deposit and the interest payments were to be forfeited, the contract would have said so; and that the interest payments made by the Buyer on the outstanding principal were refundable on rescission is reinforced by the fact that the clause does consider the position of the interest on the deposit, making it clear that both the deposit and the interest on the deposit were non-refundable.

70. The Board is unable to accept these submissions or that the decision in *Mayson* can bear the weight the Buyer seeks to place upon it. Indeed Lord Dunedin, giving the judgment of the Judicial Committee, made clear ([1924] AC 980, 985) that the answer to the question of whether the instalments of principal and interest are in any particular case repayable must always depend on the terms of the particular contract and the circumstances in which it is made. In *Mayson* the contract distinguished between the deposit and the instalments and provided for the forfeiture of the deposit only, but there was no question of the buyer taking possession before the final payment had been made. Indeed, the balance of the price was to be paid within 10 days of the production of a certificate that certain buildings had been completed.

71. The circumstances giving rise to the dispute and appeal presently before the Board are very different because the agreements contemplated that the Buyer would

continue to make payments of interest on the outstanding part of the purchase price for many years after taking possession. The Board is satisfied that this is a case in which it is appropriate to regard the entire agreement as comprising a contract for the transfer of the title to the lots in return for the payment of the principal and a further and closely related contract under which the Buyer was, on completion of construction, entitled to take possession of the lot at least in part on the basis of the payment of interest on the balance of the purchase price which remained outstanding at any time.

Conclusion

72. For all of these reasons, which differ from those given by the Court of Appeal, the Board is of the view that the Buyer was not entitled to the return of the interest paid on the outstanding principal. The Board will therefore humbly advise His Majesty that this appeal should be dismissed.